



1. Eric Cortellessa <https://www.timesofisrael.com/why-is-there-no-civil-marriage-in-israel/>

Israeli marriages are performed under laws inherited from Ottoman times that grant each Israeli religious community's state-recognized leadership sole jurisdiction over marriage. These Ottoman religious communal structures, called millets, were continued by the British mandate. After Israel's 1948 independence, Israel too maintained the system, citing among other considerations its obligations to the country's minorities.

As a consequence, marriages in Israel are performed only through religious institutions. Jewish couples must marry through the Chief Rabbinate, whereas Catholics, Druze and Muslims all marry through their own state-sanctioned and publicly funded religious legal systems. The result: any couple whose marriage is not in keeping with the religious law of their respective religions, or who belong to a religious tradition that does not have its own state hierarchy, simply falls outside the boundaries of marriages recognized by the Israeli state....

2. Why Rav Goren Matters: The Legacy of the Langers, Elli Fischer <http://bit.ly/2zJCDVw>

In 1947, David Ben-Gurion reached an agreement, generally known "Status Quo" arrangement, with leaders of the Haredi Agudat Yisrael faction that would become the basis for religion-state relations in Israel. In exchange for Haredi willingness to present a unified front for the UN, Ben-Gurion made four concessions.... The fourth—that marriage and divorce would be controlled by religious (in context, this meant Orthodox) Jews—indeed limits citizens' freedom to choose who and how to marry (as any marriage regime must, by definition) by subjecting it to the dictates of rabbinic law. In other words, the Jewish state would be particularly accommodating and respectful of Jewish observance, but with the exception of marriage and divorce, it would not be governed by *Halakha*.

The fact that Israel would not be a halakhic state posed practical and philosophical dilemmas for religious Jews. *Halakha* is the Jewish people's native legal system, and the restoration of the ancient Jewish judicial system was an integral part of the age-old anticipation of an eventual return to Zion. Isaiah's prophecy (1:26-27), "I will restore your magistrates as of old, and your counselors as of yore... Zion shall be redeemed through justice..." is paraphrased thrice daily in the prayers recited by religious Jews throughout history: "Restore our magistrates as of old, and our counselors as of yore... and You, Lord, reign over us alone, with kindness and mercy..." That is, the imagined restoration had an inescapably theocratic dimension. **Secularist forms of Zionism were more than willing to dispense with the theocratic elements in favor of democracy, and Haredim denied that the anticipated redemption would come about through the vehicle of the state; they desired state adherence to certain elements of Jewish law for solely pragmatic reasons. Some religious Zionists, however, sought to square the circle of a modern democratic state with a halakhic state.**

3. Status Quo Letter

"C. Marital Law. All the members of the Executive appreciate the seriousness of the problem and the grave difficulties pertaining to it, and all the bodies represented in the Agency's Executive will do whatever possible to satisfy the deep need of the religiously observant in this matter, lest the House of Israel be divided in two.

4. Cortellessa

In light of that informal track for marriage-like partnerships, many Israeli couples have taken to signing cohabitation agreements, and marriage liberalization advocacy groups distribute so-called Domestic Union Cards intended to convey intent in the case of any future court proceeding.

They are still excluded, however, from some marital rights. For instance, in such common law partnerships, one partner's retirement or disability does not confer tax breaks on the other, as it does in a recognized marriage.

But common-law marriage is not the only loophole. The state is required by international agreements to recognize marriages performed abroad that are recognized by those jurisdictions. Many couples, consequently, simply choose to marry elsewhere, according to Rivlin. In 2006, the High Court clarified that this requirement also applied to gay marriages conducted overseas...

Halakhic Concerns:

I. Rebuke

5. Vayyikra 19:17-18

לא תשנא את אחיך בלבבך הוכח תוכיח את עמיתך ולא תשא עליו חטא. לא תקם ולא תטר את בני עמך ואהבת לרעך כמוך אני ה'.

Do not hate your brother in your heart. Rebuke your friend, and do not bear sin for him. You shall neither take revenge nor bear a grudge against another member of your nation; you shall love your neighbor as yourself. I am Gd.

II. Arevut – Mutual Responsibility

6. Talmud, Sanhedrin 43b

הנסתרת לה' אלקינו והגגלת לנו ולבנינו עד עולם למה נקוד על לנו ולבנינו ועל עי"ן שבעד? מלמד שלא ענש על הנסתרות עד שעברו ישראל את הירדן, דברי רבי יהודה, אמר ליה רבי נחמיה: וכי ענש על הנסתרות לעולם? והלא כבר נאמר עד עולם. אלא כשם שלא ענש על הנסתרות - כך לא ענש על עונשין שבגלוי עד שעברו ישראל את הירדן.

“That which is hidden is for HaShem our Gd, and that which is revealed is for us and our descendants forever” – Why are there dots on ‘for us and our descendants’ and the עי"ן? To teach that Gd did not punish [collectively] for hidden sin until the Jews crossed the Yarden, according to R' Yehudah. R' Nechemiah asked: Has Gd ever punished for hidden sin? It is written, ‘Forever!’ Rather: Just as Gd did not punish for hidden sin, so He did not punish [collectively] for public guilt until the Jews crossed the Jordan.

7. Talmud, Shevuot 39a-b

וכל עבירות שבתורה מכל העולם לא? והכתיב: +ויקרא כ"ו+ וכשלו איש באחיו - איש בעון אחיו, מלמד שכל ישראל ערבים זה בזה! התם שיש בידם למחות ולא מיחו

Does Gd not punish the community for any sin? It is written, ‘And one will stumble in his brother,’ which we explain to mean, ‘And one will stumble because of his brother’s sin,’ which teaches that all Jews are guarantors for each other! That is where they could have protested, and they did not.

8. Talmud, Yevamot 65b

ואמר רבי אילעא משום ר' אלעזר בר' שמעון: כשם שמצוה על אדם לומר דבר הנשמע, כך מצוה על אדם שלא לומר דבר שאינו נשמע. רבי אבא אומר: חובה, שנאמר: +משלי ט'+ אל תוכח לץ פן ישנאך הוכח לחכם ויאהבך.

And R' Ila'a said, citing R' Elazar b'R' Shimon: Just as there is a mitzvah to say that which will be heard, so there is a mitzvah to avoid saying that which will not be heard. Rabbi Abba said: It is obligatory, as it is written, ‘Do not rebuke a scorner, lest he hate you. Rebuke a wise man and he will love you.’

9. Shut Rashba 5:238

דע: כי לשון רכה תשובור גרם... כבר ידעת מ"ש בנזיר (כג): גדולה עבירה לשמה, ממצוה שלא לשמה... כ"ש אנו, שאין בנו כח מדין תורה לדין בדיני נפשות, ואף לא בדיני קנסות, אלא לצורך השעה. ולא לעבור על דברי תורה, אלא לעשות סייג לתורה... ואם השתיקה לעתים לגדר...

Know that a soft tongue can break bones... and you know what it says in Nazir 23b, “a sin for the proper reason is greater than a mitzvah for the wrong reason”... How much more so us, who do not have power from the power of Torah to judge capital punishments, nor even fines, except when it is needed for the time. This is not to violate the Torah, but to make a fence for the Torah... And if silence is sometimes a fence...

III. Coercion Regarding Mitzvot

10. Talmud Ketubot 86a

אבל במצוות עשה, כגון שאומרים לו 'עשה סוכה', ואינו עושה, 'לולב', ואינו עושה - מכין אותו עד שתצא נפשו

However, regarding commandments, such as saying “make a sukkah” and he does not; “lulav” and he does not – we beat him until his soul leaves.

11. Is this only a Beit Din? Ketzot (yes) and Netivot (no) – See Choshen Mishpat 3

12. Prof. Eliav Shochtmann notes the complexities regarding using political power to force mitzvot nowadays, but continues (<http://www.daat.ac.il/mishpat-ivri/skirot/311-2.htm>):

אכן, אם מגמת החקיקה רק להתערב באורח חייו הפרטיים של האדם, דומה שראוי לקיים את הוראותיהם של חכמי ישראל שנזכרו לעיל, שקבעו שאם הכפייה עלולה להרחיק יהודים מלקיים את מצוות, הרי שהדבר פסול. ברם, אם המגמה בחקיקה זו להעניק צביון יהודי לאורחות החיים הציבוריים במדינת ישראל, אין בדבר כל פסול, לא מבחינת ההלכה היהודית וגם לא מבחינת חוקתית. כידוע, צביונה היהודי של מדינת ישראל מעוגן בהכרזת העצמאות, שנקבע בה שמדינת ישראל היא מדינה יהודית, והוא מעוגן כיום גם בחוקי היסוד של המדינה, שמטרתם "לעגן בחוק יסוד את ערכיה של מדינת ישראל כמדינה יהודית ודמוקרטית

Indeed, if the goal of the legislation is only to interfere with people’s private lives, it seems appropriate to follow the instructions of the sages mentioned above, who ruled that if coercion is liable to keep Jews from performing mitzvot, this is unacceptable. However, if the goal of this legislation to give a Jewish character to public life in the State of Israel, there is nothing wrong with this, neither in terms of Jewish law nor from a constitutional point of view. As is well known, the Jewish character of the State of Israel is anchored in the Declaration of Independence, which states that the State of Israel is a Jewish state, and is now anchored in the Basic Laws of the State, whose purpose is "to anchor in the Basic Law the values of the State of Israel as a Jewish and democratic state.”

IV. Mamzerut! Inter-marriage!!!

V. This is unique – Kedushat Yisrael (R. David Stav)

13. Rambam Hilchot Ishut 1:1

קדם ממן תורה הנה אדם פוגע אשה בשוק אם רצה הוא והיא לשא אותה מכניסה לתוך ביתו ובועלה בינו לבין עצמו ותהיה לו לאשה. כיון שנתנה תורה נצטוו ישראל שאם ירצה האיש לשא אשה יקנה אותה תחלה בפני עדים ואחר כך תהיה לו לאשה שנאמר (דברים כב יג) "כי יקח איש אשה ויא אליה":

Before the giving of the Torah, it would be that if a man happened upon a woman in the marketplace and they wanted to marry each other, he would bring her into his house and consummate the marriage between them privately, and she would be his wife. Once the Torah was given, Israel was commanded that if a man wanted to marry a woman, he would acquire her first through witnesses, and afterwards she would be his wife, as it says, "When a man takes a woman and comes (sleeps with) to her..." (Deuteronomy 22:13).

14. <https://www.haaretz.com/israel-news/without-the-rabbinate-i-ll-thee-wed-1.392439>

David Stav, a modern-Orthodox rabbi who heads the Tzohar organization of rabbis, speaks out very harshly against the possibility of non-Rabbinate-sanctioned private weddings: "The moment there is a rabbi who conducts such private ceremonies, I think it is proper to ban him and divest him of his rabbinic capacity. Personally, I would even report such a rabbi to the police, because a rabbi like that causes the proliferation of mamzerim [illegitimate offspring, in halakhic terms] and creates anarchy. I have personally been approached by five to 10 couples who asked for such weddings and I threw them out."

15. Elli Fischer <http://jewishweek.timesofisrael.com/not-all-orthodox-rabbis-oppose-civil-marriage-in-israel/>

Among high-profile rabbis associated with the liberal end of the Orthodox spectrum, Minister of Education Rabbi Shai Piron, Rabbi Benny Lau, Rabbi Shlomo Riskin and Rabbi Seth Farber have recently endorsed civil marriage. Civil marriage has been supported by brighter stars in the Orthodox pantheon as well. Rabbi Eliezer Melamed... penned an essay in favor of "Domestic Partnership Agreements"... A decade ago, Rabbi Eliyahu Bakshi-Doron, former Sephardic chief rabbi of Israel, stated at a Tzohar conference that the time had come to end the Chief Rabbinate's monopoly on personal-status issues, as the position only generates antipathy and does not really stop individuals from living their lives as they see fit. The Tzohar organization immediately dissociated itself from Rabbi Bakshi-Doron's statements.

16. Rabbi Eliezer Melamed <http://blogs.timesofisrael.com/halakhic-marriage-and-domestic-partnership/>

While we believe that the State of Israel must have a Jewish character, we also do not wish to cause grief to anyone. Nor do we claim the authority to interfere with one's personal life and tell him who to live with, or how. It is our religious and moral duty to criticize lifestyles that are *halakhically* and morally improper, but out of respect and love for all humans, and acknowledging the value of freedom that is based on God-given freedom of choice, we must recognize their right to choose their own lifestyle.

Some may claim that there is a religious duty to oppose and interfere with any type of relationship that fails to abide by *halakha*. I cannot expand upon this now, but it seems that such an obligation existed when there was full public consensus favoring such a lifestyle, and even isolated offenders agreed to it in principle, though their urges overcame them. But in a situation like ours, the principle of freedom prevails, and our sole remaining duty is to protest against manifestations that oppose *halakha*. Moreover, an individual who fails to act in accordance with *halakha* should be judged favorably, for we do not know that we would have done any better had we grown up under the same conditions that he did.

The question therefore is: how do we strengthen the Jewish character of the state without harming those who do not wish to live according to *halakha*? This question is likely to trouble us for many years – even when the religious become a majority in the state – since the question is of a religious and moral nature, and not merely a question of political power.

A Proposed Solution

To begin with, it should be enshrined in a Basic Law that for Jews in the State of Israel there is one mode of marriage: according to the age-old accepted Jewish *halakha*. In other words, marriage *ke-dat Moshe ve-Yisrael* is the sole path to establishing a family in Israel. This negates any proposal for the creation a new civil institution of marriage. This is because marriage is a sacred concept, based on the longstanding foundations of *halakha*, and the state must not desecrate it by means of alternatives or ceremonies that are not faithful to this tradition.

Additionally, there should be legislation affirming that the State of Israel will work to reinforce family values *ke-dat Moshe ve-Yisrael*, including by strengthening the status of rabbinical courts and increasing the number of rabbinical court judges so they

may respond promptly to all needs. Similarly, family values based on Jewish tradition should be emphasized throughout the educational system, though without harming or insulting anyone who acts or thinks differently.

On the other hand, it should be established that any two people are entitled to sign a domestic partnership agreement that grants them all privileges derived from shared life, like a family. It is not appropriate to call this agreement a “covenant” (“*brit*”) because the word ‘*brit*’ expresses sanctity and eternity, whereas the state must allow even partnerships that are devoid of holiness, and or, commitment to the eternal. Thus, the appropriate name for such an arrangement is “domestic partnership” (“*shutafut zugit*”)....

The Proposal Hinges on Both Components

This proposal is of value provided that both sides of the political spectrum feel that they benefit from it. Those faithful to the Torah benefit in that the status of *halakhic* marriage is strengthened in the State of Israel, via its incorporation as a major educational value and through the allocation of all resources necessary for the optimal functioning of the marriage and divorce system in the rabbinical courts. Liberals benefit in that the individual gains recognition of his right to define himself and his life, and this self-definition is honored by the state through the granting of rights equal to those given to couples married *halakhically*.

17. Gavison-Medan Covenant

1. A Basic Law will be promulgated to the following effect: Every person has the right to establish a family. Specific provisions to this effect will be anchored in law.
2. Only those persons who have received a marriage license from the state are eligible for marriage. Such a license will be granted only to a man and a woman, both of whom are single, at an age specified by law, between whom there exists no prohibited blood relationship. A person will be considered as single only if he is defined as such both according to civil law and according to the law of his religion. It shall be explicitly stipulated that a Jew may be recognized as single for purposes of this clause only by a rabbinic court authorized by the Chief Rabbinate, or by a rabbinic court abroad which is recognized by the Chief Rabbinate.
7. Dissolution of marriages will be conducted by civil and rabbinic courts. A civil court is permitted to condition a civil dissolution on the prior conclusion of the marriage according to religious law (in accordance with clause 2)
12. The sweeping legal recognition of common-law spouses and their rights will be abolished. The rights of persons who reside together outside of the legal framework of marriage shall be organized in contracts and special arrangements according to need.

Prof. Gavison:

Divorce according to Jewish law – Considering the welfare of the child and concerns regarding a schism in the nation: The *coda* to clause 2 states that a person will be considered single only if he is also considered single according to religious law. This is not an easy coda for the free-thinking public (and even for a portion of the observant). There are those who claim it is actually worse than the *status quo* on this issue...

Despite these concerns, I stand behind the agreement. **First**, the secular public must understand that the requirement for divorce according to Orthodox halakha is **critical** for the religiously observant. Without this requirement, there would be no alternative to maintaining independent genealogical records. We can reasonably assume that if independent records were instituted, no agreement would be reached to eliminate the Orthodox monopoly. **Second**, the proposed arrangement is needed to protect ‘the best interests of the child’. Only this arrangement guarantees that a woman defined as already married by Jewish law will not remarry. A child born to a woman whose previous marriage has not been dissolved is a *mamzer*, a “bastard” according to Jewish law. And the halakhic status of a “bastard” deals a mortal blow to the child’s basic right to marry, while stigmatizing him in the eyes of the wider Israeli religious community. **Third**, and perhaps most important, is the fear of dividing the nation. From my perspective, the reason for requiring a religious divorce is not a religious reason *per se*, but a cultural-national one...

R. Medan:

The problems deriving from divorces that are not according to halakha are immeasurably more intractable than those deriving from marriages not according to halakha. **Our proposal is therefore based on the principle that with regard to marriage the “religious” side will bend over backwards to accommodate the secular, and with regard to divorce, the “secular” side will exert itself to the same extent to accommodate the religious.**