

# How Jewish Identity is Being Constructed Over the Bodies of Women in Israel: Agunot, Noafot/Mamzerim, and Converts

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Center for Women's Justice

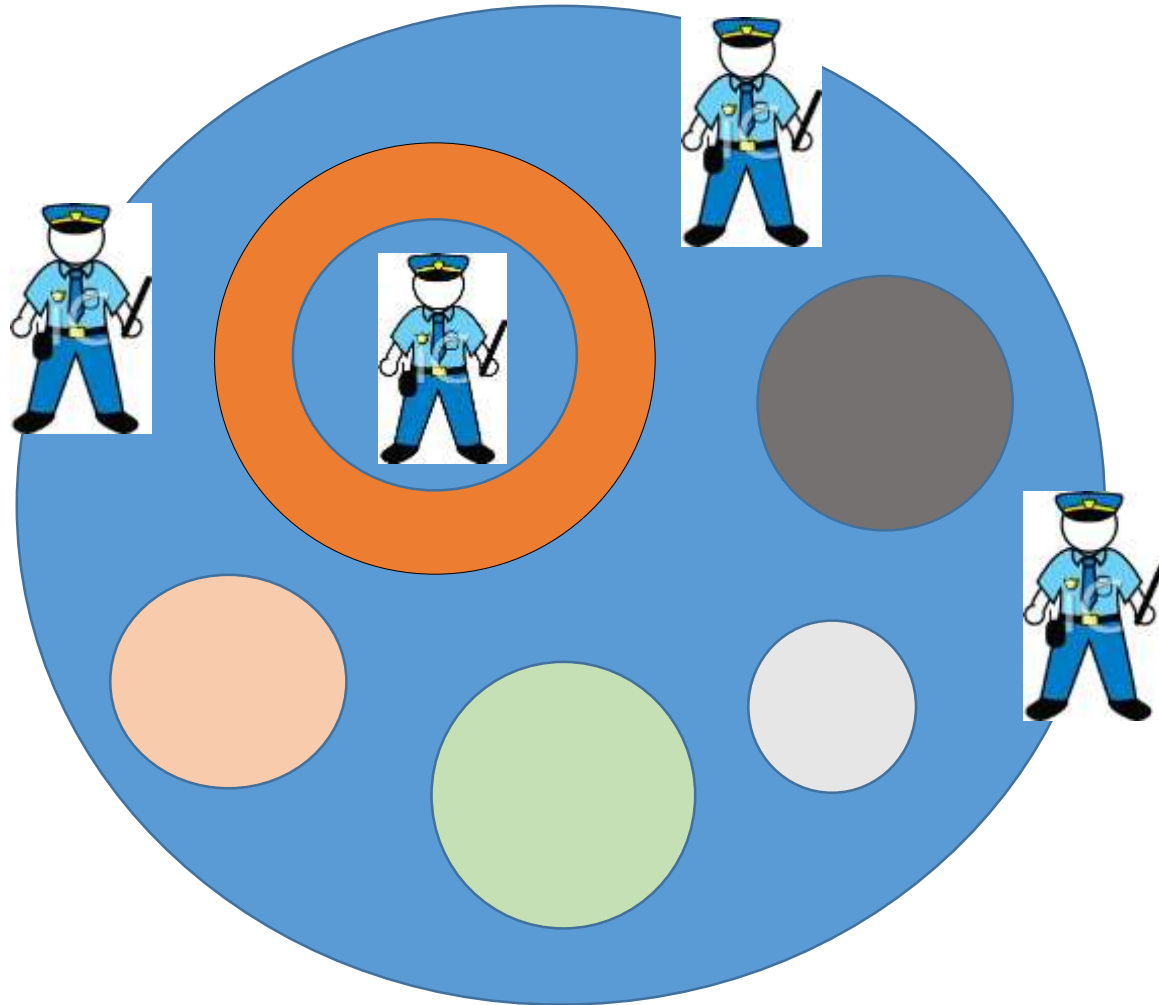
# Agunot, Noafot/Mamzerim, and Converts

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Thesis: Take the State out of Religion  
(not religion out of state)



In Israel, State and religion are conflated. State extends police power to religious functionaries.



• דין תורה = חוק

	state
	religion
	universities
	culture
	Private business
	Ngo's

**State** is a compulsory political organization with a centralized government that **maintains a monopoly of the legitimate use of force** within a certain territory. (Max Weber).



- It is only the **nation-state** which can provide that "mechanism [which] will assure the protection of minorities, the minimal distribution of democratic rights, and the reasonable possibility of the growth of civil society."
- (Appadurai, *Modernity at Large, Cultural Dimensions of Globalization*, 1996).

# Why?

1. Because **state** adoption and enforcement of religion/halakha results in a “failed” legal system (I. Agunot)
2. Because **state** enforcement of religion/halakha violates basic human rights (II. Mamzerim/Noafot)
3. Because **state** enforcement of religion/halakha can result in an inadvertent but very real Inquisition (III. Converts)

I. Agunot. Or, Is There A Cause Of Action  
For Divorce for Israeli Jews? a case study

Defn. In the law, a **cause of action** is a set of **facts** sufficient to **justify a right** to sue to obtain money, property, or the enforcement of a right against another party.

Cause of Action – Nolo's Free Dictionary of Law Terms and Legal Definitions.  
Nolo.com.



NY, 20<sup>th</sup> century: Staged adultery

**Adultery**  
**(fact) →**  
**Divorce**  
**(right)**



Question: in Israel, what ???? facts →  
divorce



Is There A Cause Of Action For Divorce for Israeli Jews?  
Answer: No, not for Israeli women.

Thesis: state adoption and enforcement of *halakha* as the law in matters of marriage and divorce results in a “failed” legal system

# Case Study: the Pious and the Gay



# Text Study

# Facts set forth in 2002 divorce petition

- §2: irretrievable breakdown of marriage
- §3, 4: wastes money (i.e., can't support her)
- §5: no sex for past 3 years (constructive abandonment)
- §5: is gay
- §6: is threatening her life (sexually transmitted diseases)
- §7: no chance or reconciliation

There is no “cause of action”:  
(no facts → no divorce)

- No facts

We do not know what facts need to be alleged.

- No right

Since, no set of facts will lead to the right to divorce, is no *gett* till H. says “I do”

Corollary: state adoption of *halakha* for laws of marriage and divorce results in a failed legal system

- Lon Fuller: “The Morality of Law” (Revised ed, Yale University Press, New Haven, 1964)
- 8 routes of failure for any legal system (p. 33-38).





# 8 Routes Of Failure For Any Legal System

1. The lack of rules of law, leading to ad hoc, inconsistent adjudication.
2. Failure to publicize or make known the rules of law.
3. Unclear or obscure legislation that is impossible to understand.
4. Retrospective legislation that undercuts prospective legislation
5. Contradictory rules.
6. Demands that are beyond the power of the subjects and the ruled.
7. Unstable legislation (ex. daily revisions of laws).
8. lack of congruence between announced rules and their administration

# 1. No rule

Is homosexuality grounds for divorce?

Is constructive abandonment (no sex) grounds for divorce?

Is adultery? Is loathing– irretrievable breakdown of marriage?

(January 2006) Only obligates H to divorce W. Does not compel H. Does not explain rule.

## 2. No publication

N.B. Bar Ilan/CWJ: Law and its Decisor

# 3. Impossible to understand

Mish. Ket. 7:10 (BT, Ket.77a) (parashat ha-madir)

And these are the men whom we force to divorce their wives: A man smitten with boils, a man who has polypus, a gatherer of handfuls of excrement, a refiner of copper and a tanner. [In these cases a wife can demand a divorce since her husband is unbearably odious.] (Shottenstein Commentary).

But see, Yerushalmi Gittin 9:10 (if we force a man [to divorce his wife] for bad breath, how the more so if her life is in danger.)

# 4. retrospective

Is homosexuality reason to obligate divorce?

(Jan. 2006) 2006, yes

(Jan. 2014) 2014, “suspension”

# 5. Contradictory rules

Must give a get (Igrot Moshe)– vs-- but not if he has conditions (Maharashdam), and not if he just doesn't want to.

# 6. Unrealistic demands

No divorce till husband says “I do” (September 2014)

# 7. unstable

restraining order, he's dangerous (Jan. 2004)

restraining order repealed , (he's not dangerous?) (Dec. 2004))

restraining order reinstated, (dangerous again?) (March 2005)

Order obligating get (Jan/ 2006), suspension of order (Dec. 20012), general inability to enforce order



# 8. Incongruence rule and administration

Time: 12 years 2002- 2014

Even if is rule (“gay man must give a gett”), administration of rule (after 12 years) makes it moot

Obligation and Coercion to give a gett is never “administered”

### 3 Crude Methods Of Divorce for Israeli Jews

- Rigid fundamentalism/  
formalism (Dec. 2004)
- Extortion (May 2008) (May 2012)
  - Violence (Dec. 2012)

# Not a legal system at all

“A total failure in any one of these eight directions does not simply result in a bad system of law: it results in something that is not properly called a legal system at all, except perhaps in the Pickwickian sense in which a void contract can still be said to be a kind of contract.”

jokes: are 2 causes of action for Divorce in Israel

- There is “no fault divorce”: no fault of the Jewish husband is grounds for divorce
- There is ‘fed up’ rule : when Israeli rabbinic court is fed up with a recalcitrant Jewish husband, they will order him to deliver a get

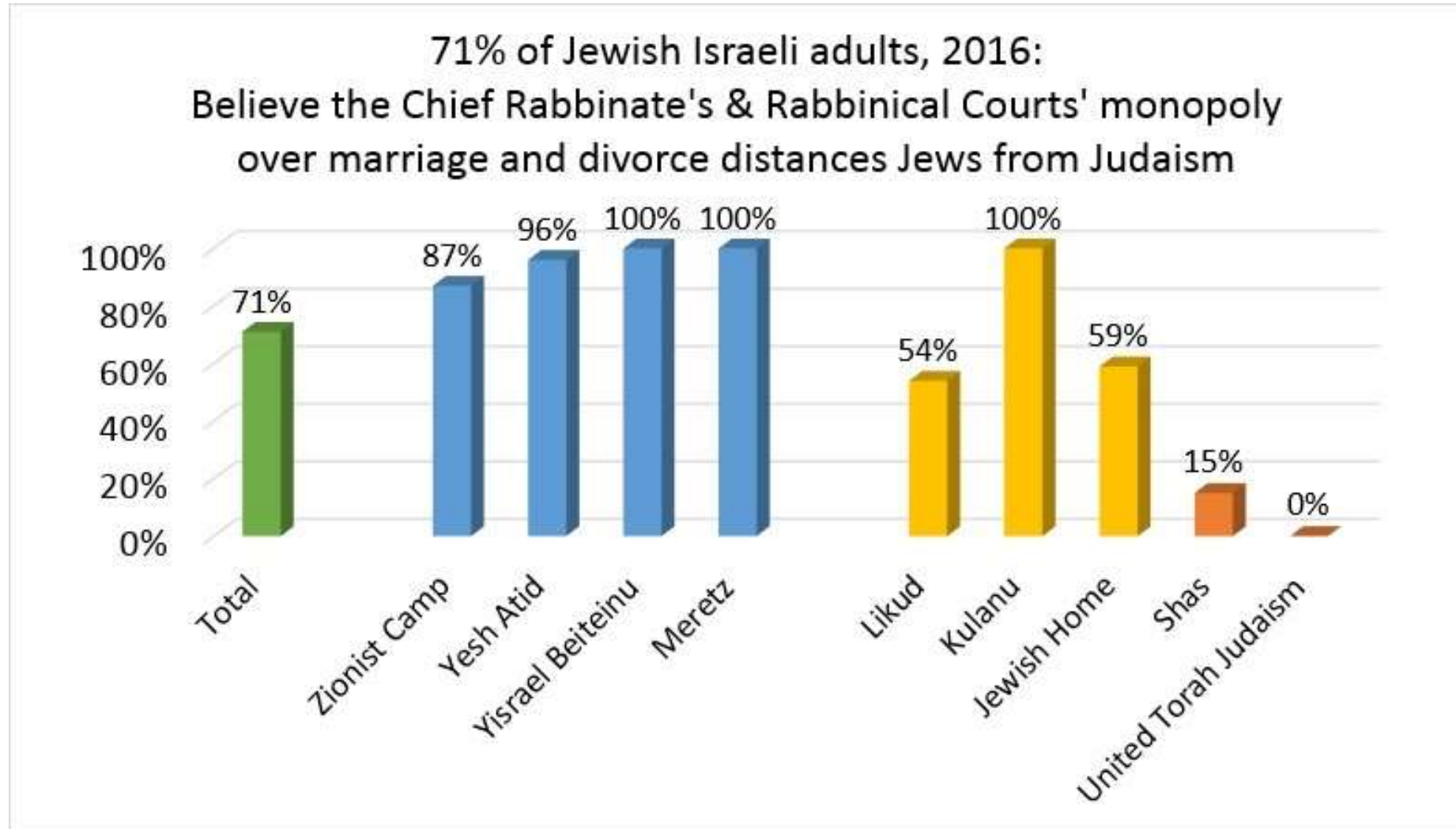
*?So, Why did the husband give a gett?*



Some partial solutions: go outside rabbinic courts and laws: contract (prenups) and civil law (tort)



# Support Civil Marriage and Divorce in Israel



# Privatizes the Rabbinate





# The Never Ending Story



Send us your converts, your mamzerim, your adulteresses.....



CENTER FOR WOMEN'S JUSTICE  
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