## משמר הגבול: רבנות בשירות הקדושה המינית והלאומית

In this section, I argue that the IRC, empowered by the state to determine Jewish citizens’ personal status, plays a crucial role as gatekeepers who secure the body politic in a contested context. Elements in the rabbinate consider themselves responsible for demarcating, controlling and protecting the borders of the Jewish collective, as well as the Jewish nature of the State (via conversion, marriage and divorce and more). As “rabbinic gatekeepers of the national collective” (Kravel-Tovi, 2017, p. 62), they counter the efforts of various “enemies” (e.g., secularism, liberal Judaism, feminism, or assimilation). They view such “external” forces as threats who destabilize national boundaries, cause damage to unity, cultural continuity and integrity of Torah-true Judaism, and undermine the divinely-ordained gendered social order. Based on this amalgamation of perceived threats, the fundamentalist rabbinic mission of preservation is often reactionary and pro-active in nature. Multiple attempts have been made over the past decade to stretch the limits of the IRC’s political power and legal reach. For example, the IRC (and legislators supporting it) began exceeding spatial and temporal boundaries, by claiming jurisdiction over divorce and conversion cases that take place beyond Israel’s geo-political borders or by claiming retroactive authority, reaching into the past to rewrite the present and future.[[1]](#footnote-1) Such efforts could be interpreted as a simple power grab for greater political and institutional control, an attempt to counteract “secular” forces and an “activist” civil judiciary supposedly trying to curtail the rabbinic courts’ autonomy and authority. But, as I will demonstrate, the Rabbinic Courts’ discourse reveals they feel driven by an ideological call to defend the Jewish nation’s authenticity, purity, unity and security. I argue this echoes the Israeli discourse of national security, merging its secular national logic with a conservative approach to safeguarding religion in a modern secular context, as well as with patriarchal beliefs in securing society via hierarchal gender relations.

The ultra-Orthodox community sees itself as the authentic heir of Jewish tradition charged with sustaining the Jewish people’s continuity, particularly in the post-Holocaust era.[[2]](#footnote-2) Prominent Rabbinic Court judges view themselves as “play[ing] the role of ‘gatekeepers’ of the *halakhic* field” (Westreich, 2011, p. 354),[[3]](#footnote-3) particularly in light of more liberal and egalitarian trends that are gaining traction within Orthodoxy and Israeli society at large. Moreover, although ultra-Orthodox Jewry was historically disengaged from nationalism, ideologically either set against or indifferent to the Zionist State; some ultra-Orthodox elements have, in recent years, increasingly developed a religio-nationalist attitude that asserts itself by “assuming responsibility for demarcating the boundaries of the Jewish collective” (Leon, 2014, p. 22).[[4]](#footnote-4)

The image of IRC as the sole authentic gatekeeper is perhaps most overt in cases which involve contests of jurisdiction between the rabbinic and civil courts, two parallel branches of the Israeli judiciary. For example, a 2004 ruling by *Beit Din HaGadol*, the Rabbinic Supreme Court, expressed its ire at a husband’s decision to advance his case by turning to Israel’s civil courts.[[5]](#footnote-5) Exemplifying controversial boundary-work, the Rabbinic Court likens the Israeli civil courts to “*arka’ot goyim*” – a historic rabbinic term for non-Jewish Courts (see Brand, 2019). The term was created in the context of colonial rule over a Jewish minority in the diaspora but is reassigned here to mean any court that does not operate exclusively under Jewish law, primarily referring to the civil court appointed by the Jewish majority in modern Israel. The rabbinic judge uses this as a basis for his legal claim that the Israeli civil courts lack legitimate authority to adjudicate the personal status of Jews and their divorces:[[6]](#footnote-6)

המערער בפנייתו לערכאה האזרחית שתדון ותכריע בעניין הצדדים, רומס ברגל גאווה ובעזות מצח האיסור החמור להתדיין בפני ערכאות [גוים], שכפופים לשיפוט על פי חוקים שאינם דין תורה, ובזה הרימו יד בתורת משה רבינו עליו השלום... ואדרבא הדבר יותר מגונה ששופטים יהודים המירו את משפטי ה' בתורתו הקדושה למשפטי ההבל של הגויים ואפילו אם יסכימו כל בני העיר על זה אין שום ממש בהסכמתם... ומשפטם חמס עושק וגזל ומרימים יד בתורת ישראל.[[7]](#footnote-7)

The Rabbinic Court’s dramatic affective language about brazen aggressive transgressions requires clarification: What “strict” boundaries have been trampled and who was robbed? The underlying claim behind this furious call to arms seems to be that morality is endangered and ethno-national and religious identities borders have been breached. Ignoring the fact that the Rabbinic Court’s own mandate derives from the civil law of the State, the ruling revives a historic ethno-religious battle cry but redraws the Jewish/non-Jewish line, resetting it *within* the Jewish collective and State to differentiate between authentic native loyalists and infiltrations of assimilationist secular fake-Jews, compromised by the values and discourses of Western Imperialism. This places any traitorous individual who dares to call themselves Jewish, let alone Orthodox, yet turns to civil courts for legal recourse in a precarious position. The ruling argues that “insolently” petitioning the civil courts robs rabbis of their God-given right to rule since only Torah-identified scholars (i.e., religious loyalists aligned with a purist ultra-Orthodox agenda) are legitimately authorized to determine what’s best for *all* Jews. It further proposes that engaging with the Israeli civil courts is an “evil” attack on the Torah itself, representing the desecration of everything Jews hold sacred and a violent erasure of the core identity marker of what being Jewish means. The ruling’s language evokes the historic narrative of the destruction of the Temple, and with it, the end of Jews’ self-rule, a national and religious tragedy which led to Jews’ dispersion and exile from their homeland.

From the perspective of the secular democratic nation-state, the Rabbinic Court is expressing an oxymoronic and even intolerable position. The court’s claim that the public’s will (“all the members of the city concur”) is an insufficient and invalid basis for empowering lawmakers is antithetical to both the democratic logic and – many scholars of Jewish law and history would argue – to the internal logic of Jewish tradition which is not monolithic but rather promotes debate in decision-making within diverse local settings. Furthermore, legally and politically, both civil *and* rabbinic courts’ authority derives from Israeli sovereignty, not the “laws of Torah”.[[8]](#footnote-8) It is the Israeli legislature that empowers and limits these institutions’ power to adjudicate and enforce their rulings, and it is the State that requires the public to resolve certain disputes through these courts. The Israeli government appoints both civil and rabbinic courts justices, rendering them civil servants accountable to state regulation whose salaries are funded by taxpayers. The ruling’s logic is also highly problematic from a Religious Zionist Orthodox perspective. Portrayals of civil court justices as enemies of the “Torah of Israel” who are imitating and therefore – “worse” than – “*goyim*” (non-Jews) is a direct rejection of the religious-Zionist ideology which views the state as a messianic dream-come-true and imbues national institutions with holy meaning.

Thus, the court’s ruling plays creatively with boundaries: On one hand, it claims its moral authority derives from God, even though many within its own ultra-Orthodox milieu seek God’s legal word elsewhere, within private religious courts not associated with the Zionist-secular state,[[9]](#footnote-9) and certainly more liberal Jewish communities interpret God’s word differently. On the other, it derives its legal authority from the state’s civil law which it rejects as an immoral affront and foreign influence. The dynamics of ‘othering’ – creating an authentic ‘us’ by marking and delegitimizing others as disloyal traitors – loses its internal logic when the rabbinate, a hybrid institution, finds itself simultaneously on opposite sides of this narrative.

A similar paradox appears in another Rabbinic Court ruling from 2007 on a divorce which became entangled with the issue of conversion:[[10]](#footnote-10)

בבית דין זה של גיור, שוברים את הלוחות, שורפים את התורה על ידי העמדת צלם, מכניסים בתוכינו עובדי צלמים, וזאת בהיכל ה'. הנביא מלאכי הצביע על חילול הברית ועל הבגידה, על התועבה שנעשתה בישראל ובירושלים בזה שבחופשיות מתירים את הרצועה ומתירים את העריות באיצטלא של "נושאים פנים בתורה" (כלומר בנימוקי הלכתי). ...[הדבר] מדיר שינה מעינינו, ושוב בקריאת זעקה וקריאת הצלת עם ישראל, אני כבר לא מדבר על הרוחניות של עם ישראל, שזה כבר נהפך להיות השמדת קדושתו והיא יחוסו של עם ישראל, השמדה ממש, בקבלנות וסיטונאות, אלא גם בגשמיות אנחנו רואים... ומביא את דברי הרב גדליהו אקסלרוד, אב בית דין חיפה: '...בפועל בתי הדין המיוחדים לגיור ברובם אינם מפנים מוקשים אלא זורעים הרס וגורמים על ידי "גיוריהם" להתבוללות של עם ישראל לתוך גוי נכר וגורם לטרגדיות נוראות גם בגשמיות וגם ברוחניות לפרט ולכלל האומה'... בעניין סמכותו [של בית הדין] לדון בכך מציין הדיין כי 'ענייני נישואין וגירושין' הם בסמכות בלעדית של בתי הדין הרבניים על פי חוק שיפוט בתי דין רבניים (נישואין וגירושין) התשי"ג 1953, וסעיף 2 לחוק קובע שנישואין וגירושין של יהודים ייערכו בישראל על פי דין תורה, 'ובוודאי שגיור שלא כהלכה הוא עניין נישואין'.[[11]](#footnote-11)

This ruling is blatantly inconsistent: On one hand, the judge refutes the legitimacy of a parallel state-recognized rabbinic judiciary (under Orthodox but not *ultra*-Orthodox control), going beyond vehement critique of its supposed halachic leniency by calling for this institution’s abolishment. On the other hand, to assert his own authority the judge closes his argument by citing Israeli law as his source of legitimacy to rule over this divorce-turned-conversion case in the first place. Furthermore, Rabbi Atiya describes an urgent crisis, a devastating tragedy, a fight for national survival. His rhetoric also conjures images of the historic destruction of the Temple and the threat of foreign invasion, both laced with overtones of sexual promiscuity, perversion and violation. His words are meant to reflect and evoke intense distress and anxiety because multiple boundaries are being aggressively trampled and perilous transgressions are going unchecked. The linkage between holiness, national security and sexuality undergirds the gendered demarcation of the Jewish collective, which resonates strongly in contemporary ethno-nationalist Israeli discourse. Indeed, the notion that the nation is in peril, that the Jewish people must be rescued from cultural assimilation, spiritual desecration, and biological dilution is reminiscent of another discourse, among extreme right-wing activists who violently oppose romantic relations between Jews and Arabs (see Engelberg, 2017). In this case, a specific woman’s Jewish identity and divorce (tied to one another via her sexuality and fertility), converted into an inter-judicial struggle, symbolizes an attack on the very existence – and purity – of the Jewish people, putting the “whole nation” at risk.

When analysing these discursive constructions, it is important to remember that while they may reflect an individual or even a group mindset which does not represent *all* Rabbinic Court judges, they are considered legally binding rulings by Israeli officials. Thus, these Rabbinic Court rulings, and others like them, advance the view that the only legitimate gatekeepers are ultra-Orthodox loyalists who must protect the Jewish people from the moral ills of (so-called) evil-doing Jews and the (misguided and culturally-disingenuous) Jewish state itself; all the while wielding power granted them by the State which is thereby increasingly aligning itself with, and promoting, an exclusive idea of what it means to be Jewish – manifested primarily by controlling women’s sexuality.

To complete my argument, I return to the words of Judge Yanai, quoted at the opening of this paper:[[12]](#footnote-12)

לא מדובר כאן במאבק גרידא אלא ב"מלחמת עולם" של ממש. מבחינה הלכתית טהורה, מדובר כאן בנושאים החמורים והמהותיים ביותר בדין אישי - כשרותו של הגט והחשש מפני ממזרות. באם התופעה הקשה הזו של הגשת תביעות נזיקין תתפשט ותתרחב ללא הצבת מחסומים ברורים - סופה מי ישורנו?[[13]](#footnote-13)

The Rabbi critiques a feminist strategy: by suing recalcitrant husbands for damages in civil courts, *aguna* women gain a rare chance to level the playing field in divorce negotiations, to redress Jewish marriage law’s core gender injustice. Women can thereby undermine the ultimate control accorded by Jewish law to the husband (to grant or deny a *gett*, thereby indefinitely indenturing his dependent wife and anchoring the family structure by male “free will”, i.e., by force). However, it also represents a threat because of the institutional context: going to the civil courts plays into the clash between judiciaries and highlights the state’s internal ambivalence over the extent of religious control over all matters pertaining to marriage and divorce. But there seems to be a deeper level that is the driving force behind the Rabbinic Court’s urgency and militaristic rhetoric. Lack “clear limitations” today may lead to anarchy (“who knows where this will lead?”), to the future collapse of the whole social structure epitomized by the loss of ultimate patriarchal control over the Jewish family.

Joining this decision, another judge named Rabbi Amos further clarifies the connection between the family unit and the national collective:

בית הדין יעשה כל אשר בידו שלא לפגוע ב"כרם ישראל" על ידי מתן גט מעושה שהוא בטל, שתוצאותיו יגרמו לממזרות והרס התא המשפחתי וממילא פגיעה ב"כרם ישראל". זו דעתו של בית הדין וזו דעתה של תורתינו הקדושה. .... ו"ה' יגדור פרצות ישראל" .[[14]](#footnote-14)

Rabbi Amos’ metaphor denotes a fear of infiltration and moral pollution, requiring protective measures against the blurring of symbolic boundaries – gendered and sexualized national borders. The issue of *mamzerut,* at once an ambiguous socio-cultural category with a liminal legal status as well as a clear boundary marker, is a central symbolic battlefield which ties together care/neglect for family, gatekeeping, continuity, cohesion, holiness and purity. The ruptures in the fences, which produce a sense of insecurity, are indisputable. It is also clear whose wounded bodies are caught up in the barbed wire of these fences – *aguna* women and their children, who could potentially be declared *mamzerim*. But who is responsible for these rents, who is owed reparations, and how they should be repaired is aggressively disputed.

ביבליוגרפיה – לצורך שילוב כהפניות בהערות שוליים

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1. In YEARxxx, the Rabbinate published a list of North American Orthodox rabbis, pre-emptively announcing their conversions, marriages and divorces would not be recognized in the Israeli Rabbinic Court. Retroactively, the IRC annulled divorces or challenged and overturned conversions previously certified by other courts (Radzyner, 2008, 2013), and asserted authority over Jews in Israel who had chosen civil marriages abroad (REF). [↑](#footnote-ref-1)
2. For many decades this translated primarily into a politics of survival aimed at enabling authentic Jewish life in insulated Ultra-orthodox communities despite the temptations and threats posed by the Israeli secular surrounding. [↑](#footnote-ref-2)
3. Westreich argues this is part of a struggle over symbolic capital in the field of Halakha against more liberal Orthodox forces both within the Rabbinic Courts and amongst Orthodox rabbis more generally. [↑](#footnote-ref-3)
4. In a recent media interview, Israeli Prime Minister Netanyahu reported that a proposal for more inclusive conversion “was immediately condemned by Orthodox leaders who urged the premier to bury it, warning it would divide Jewry and facilitate the loss of Jewish heritage” (TOI). [↑](#footnote-ref-4)
5. The case dealt with a married couple who had been living separately for nearly six years, after the wife had filed for divorce. Although the husband had been ordered by the lower rabbinic court to grant his wife a *Get,* he appealed this decision in both the civil courts and the higher rabbinic court claiming his wife admitted to an ongoing relationship with a non-Jewish man. The court’s final verdict rejected the husband’s appeal and condemned his continued refusal to grant his wife a *Get.* Interestingly, the IRC criticizes the wife’s choice of a non-Jewish partner claiming it is unjustifiable. Yet it also criticizes the husband for denying his “not so young” wife whose “biological clock is ticking to her detriment” additional children. Thus, the IRC adopts a purely Halachic logic that determines that Jewish identity is only a matter of maternal descent (urging the husband to free her while she is still fertile, regardless of the likelihood that the child’s father would be her non-Jewish partner). [↑](#footnote-ref-5)
6. The validity of this Halachic argument and its relevance to the case of a modern Israeli court is debateable ,(ברנד 2010). [↑](#footnote-ref-6)
7. Dayan Daichovsky and Dayan Ben Shimon, Great Beit Din, case 051957892-13-1, quoted in HaDin VeHadayan 7. [↑](#footnote-ref-7)
8. (ADD REF RAB.COURTS LAW 1953) [↑](#footnote-ref-8)
9. Many ultra-Orthodox Jews in Israel do not choose to adjudicate their marriages and divorces in the State-run Rabbinic Courts, preferring instead to use a political-legal loophole that recognizes the legitimacy of private ultra-Orthodox rabbinic courts that function on a communal – rather than national – basis. [↑](#footnote-ref-9)
10. The divorce case brought before the Rabbinic Court was used as an excuse to reopen the question of a woman’s conversion to Judaism. The Court contentiously took the liberty to reconsider – and eventually revoke – the wife’s conversion, which had been approved decades earlier by the special courts for conversion. [↑](#footnote-ref-10)
11. Case 057845489-25-1, quoted in HaDin VeHadayan 16, see https://din-online.info/pdf/din16.pdf [↑](#footnote-ref-11)
12. This ruling from 2011 responds to the practice promoted by feminist Agunah activists wherein their clients, Agunah women, file tort cases (claims for damages) in civil courts to get compensation for years of suffering from *get* refusal and/or as a counter measure to their structurally weaker hand in the Rabbinic Courts’ *get* negotiations. [↑](#footnote-ref-12)
13. (Dayan Yanai, IRC decision 272088/6) [↑](#footnote-ref-13)
14. (Dayan Michael Amos, IRC decision 272088/6) [↑](#footnote-ref-14)