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Erica Weiss

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ARTICLE



Adjudicating the spiritual world in Israeli courts: dilemmas of equality of justice

Erica Weiss 

Department of Sociology and Anthropology, Tel Aviv University, Tel Aviv, Israel

ABSTRACT

In this article, I examine how the Israeli legal system grapples with cases involving the spiritual world. Many Israelis do not separate the natural from the supernatural in their understanding of causation or in their attribution of responsibility and culpability, and as a result, they expect the legal system to regulate social life in the spiritual world as well as the natural one. This article examines the ways in which the Israeli legal system confronts three cases culled from the lives of religious Israeli Jews: claims of domestic abuse; ceremonial curses conducted in public; and political parties' appeals to voters with promises of religious salvation and/or threats of damnation. This article raises significant questions regarding legal equality for those citizens whose understandings of justice extend into the spiritual world, when the law fails to follow.

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Introduction

On the eve of Yom Kippur, the Jewish day of atonement, a small group of Orthodox Jewish men gathered near the home of then-Prime Minister Yitzhak Rabin. In response to his signing the Oslo Peace Accords, they recited the *Pulsa DiNura*, an Aramaic curse, imploring the angels of death to strike him down. A month later, Rabin was fatally shot. The men rejoiced, declaring their curse a success. Despite the fact that they had publicly admitted their violent intentions, and openly claimed responsibility for the murder of Rabin, there was little recourse from the secular criminal code. Public outrage forced the state to pursue these men, but the available secular legal categories ultimately failed to secure lasting convictions against them. This, and the other cases I discuss in this article, raises significant questions regarding justice for those citizens whose understanding of right and wrong extend into the spiritual world, when the law fails to follow.

The role of the state in religious life and the role of religion in state policies are very controversial issues in Israel (Edelman 1994; Mautner 2011). Israeli law defines the country as a 'state of the Jewish people', a designation with significant implications regarding policies towards Jews and non-Jews (Yiftachel 2006). But the manifestation of this principle is complex and under constant debate. The majority of Israeli Jews are to some degree observant, and many believe in the supernatural and see the impact of the spiritual world in everyday life. This article shows that some citizens look to the state

CONTACT Erica Weiss  weiss.eric@gmail.com  Department of Sociology and Anthropology, Tel Aviv University, Tel Aviv, Israel

to respond to wrongs done in the spiritual realm, where for them matters of responsibility and culpability extend. However, the Israeli criminal and civil legal systems are largely secular (Mautner 2011), and are not accustomed to processing such claims.

The Zionist movement, the call for Jewish sovereignty, intended to solve the 'Jewish question', the problem of Jews as a minority within society, and to offer Jews full religious and cultural freedom. And indeed, Israel promotes Jewish collective rights, religiously, culturally, and nationally (Strong 1997, 114).¹ But, surprisingly, the 'Jewish question' persists in the Israeli state. Historical research disrupts the nationalist narrative of Zionism being the natural and inevitable outcome of Judaism and Jewish history (Rabkin 2016), and has shown the erasure of Jewish (and Palestinian) life and tradition that does not support the hegemonic Zionist narrative (Raz-Krakotzkin 1993; Yadgar 2020).

While in other situations spiritual practices have fostered a sense of citizenship and practices of liberation (Castor 2017), Joyce Dalsheim has shown that in Israel the promised liberation through sovereignty has not actually provided religious and cultural freedom to all Jews. Rather, the Jewish state has narrowly defined the acceptable range of Jewish identity and expression, forcing many Jews to assimilate to the state-sanctioned version of Judaism (Orthodox, nationalistic, militaristic), recalling the cultural assimilation demanded of European Jews in the eighteenth century (2019). Similarly, in her examination of state-run religious conversion, Michal Kravel Tovi shows the ways the Israeli state deploys a narrowly conceived form of Jewish affiliation and practice (2017). While the Israeli state is comfortable deploying Jewish symbols and history to bolster its sovereignty, it is much less comfortable with Jewish religious observance, beliefs, and values as they are actually practiced, especially when they are not in direct service to the state (Weiss 2011).

The struggles of self-identified secular Jews in the context of religious law in Israel are well-known and documented both popularly and academically, often referred to in Israel as 'religious coercion' (Ben-Porat 2013; Triger 2012). The cases considered here examine the inverse, exploring how some religious Jews experience a certain degree of coercive alienation in their interactions with the secular branches of the legal system. This article examines the ways in which the Israeli legal system confronts three cases culled from the lives of religious Israeli Jews: claims of domestic abuse; ceremonial curses conducted in public; and political parties' appeals to voters with promises of religious salvation and/or threats of damnation. I observe that the state's legal system appears to take a hands-off approach in the first two cases, yet an 'interventionist' one in the third. In my discussion, I show that the state used a technique of translation from spiritual concepts to disenchanting legal categories in the first two cases. By contrast, in the case of election laws, we will see that the courts are capable of engaging supernatural religious concepts directly without secular translation, when motivated to protect the secular public sphere.

The multidisciplinary edited volume *Politics of Religious Freedom* demonstrates that the liberal discourse of freedom of religion is narrowly focused on the degree to which religious people should be tolerated, that is left alone in their religious practices (Sullivan et al. 2015). This approach locates religious practices in the private sphere (Hurd 2015), and posits that religion in public life can only hinder human emancipation (Keane 2015), as well as other epistemological and cultural assumptions that do not hold in Israel and Palestine (Karayanni 2018; Raz-Krakotzkin 1993; Yonah and Goodman

2004). The cases here highlight this tension specifically where a secular legal system and culture encounters a population that does not share its epistemic assumptions. The case raises questions about the possibility of justice and democracy under secular law, as well as the conditions of possibility for the legal sphere to wade into the spiritual realm.

Methodologically, this article follows the ethnographic approach in legal anthropology that examines law as culture and the ways people experience and use law and the legal system (Coutin 2003; Greenhouse 1989; Merry 2009). This approach also resonates with the legal scholarship that examines micro-level social engagements with Israeli courts in everyday life, or in other words, the ethnographic context of legal reasoning and legal decisions (Mazie and Woods 2003). In the Israeli context, this approach has been pioneered by scholars such as Patricia Woods who has examined the interplay of religious and secular forces between the judiciary (the legal), state (the political), and society (the social/cultural) (2001, 2003, 2008; Woods 2005). Steven Mazie, by examining beliefs among ordinary Israelis concerning the ideal relationship between religion and democracy, similarly contextualises cross-cultural legal differences and legal shifts within ethnographic realities (2006). Woods, along with Assaf Meydani, has also done extensive work to show the ways in which the courts and the ideas and norm of justice that they produce directly impact the political system (Meydani 2011; Woods 2009). This insight is particularly critical to this article. When I claim that the legal treatment of spiritual belief has a political and social life beyond the legal sphere and impacts the quality of the democratic experience among religious populations, I am relying on this scholarship. This article is based on research conducted as part of an ongoing project on grassroots approaches to pluralism and democracy in Israel and Palestine among non-liberal religious groups. I have conducted ethnographic fieldwork with such groups, including the Citizens Accord Forum, Shaharit, Roots, and others from 2013 to the present. Interview data, as well as legal research, are also reflected here.²

Religion and state in Israel and in the legal system

Israeli Jews commonly define the different sectors of the population according to their level of religious observance. 42% of the Jewish population self-identifies as secular, while 58% defines itself according to varying streams of religiosity (8% of Israel's Jewish population defines itself as Haredi or ultra-Orthodox, 12% as religious, 13% as traditional-religious, 25% as traditional (Ynet Staff 2010). In the Israeli context, secular does not just imply 'not religious', but rather is a way that people positively self-identify in opposition to religiosity. However, in contrast with secular people in Western Christian contexts, Israeli secular Jews may not observe Jewish law, but their lives are nevertheless typically embedded in the Jewish religious calendar and they carry out lifecycle events in a religious context (Gutkowski 2020). In addition, 'secular' often reflects political resistance to the imposition of religious influence on public life (Cohen and Susser 2000). The 'non-secular' population observes Jewish law to varying degrees, but one finds spiritual practices in all of these sectors, practices such as prayer and belief in divine intervention, spiritual healing practices, pilgrimages to tombs of righteous rabbis, mannerisms and practices to deter the 'evil eye', the use of religious amulets, among others.

The Israeli legal system is a hybrid, religiously speaking. Israel's Zionist founders were Jewish nationalists, secular, and often adherents to a morally-infused notion of progressivism and modernism (Cohen and Susser 2000). They cast off God and religious observance as a form of self-emancipation in the pursuit of modernity and national redemption (Yadgar 2017). The secular founders valued Judaism as identity and ethnic heritage, but did not engage with its legal or spiritual content (Shetreet and Homolka 2017, 326–239, 336–339; Englard 1987, 187). These founders tended to see Judaism as identity and heritage fuelling the secular Zionist project, and not as a legitimate legal system. This is evident in modern liberal legal scholars such as Aharon Barak, who insists that Israel is and should be part of the 'Western legal culture' (1992; 2009). Despite being a minority at the beginning of the state, religious Jews did manage to extract certain concessions from the secular founders, one of which was control over part of the legal system. Israel has secular criminal and civil courts, while the issues of family law, including marriage and divorce, as well as conversion are handled by the religious legal systems (Jewish, Muslim, and Christian) (Zemach 2002). As a result, secular Jews interact with the religious legal system, and religious Jews interact with the secular legal system, something Pinhas Shifman has described as legal schizophrenia, pulling jurisprudence in opposite directions (1990), and producing many internal contradictions within the Israeli legal system (Englard 1987, 193). Despite the attempts of liberal legal scholars to create a clear hierarchy of state (positivist) law above religious law, Itzhak Englard points out that the all-encompassing nature of Jewish law (and presumably Islamic law) positions it to be inherently in competition with state law, not existing in parallel or in a deferential relationship (1975, 1987).

In the scholarship, most examples of a clash between secular law and the religious beliefs of the population involve the imposition of European colonial law on non-European populations, where colonial law was a civilising project intended to achieve uniformity and replace what was considered primitive morality with morally superior common law (Chukkol 1983; Ludsin 2003). Kate Ramsey has shown that even in the postcolonial context, the role of religious beliefs are often highly contested, and religious practices are even suppressed in order to maintain international legitimacy and image as a modern nation-state (2011). Similarly, Israel's leaders have been very concerned to downplay the influence of Jewish law and values on Israeli law out of concern for their international reputation (Weiss 2009).

Secular ideology invented itself as modern, while simultaneously inventing a very specific image of its 'religious' past as its premodern, irrational antithesis (Agrama 2012; Lavi 2011). Secular positivist law promised the transformation of modern society, claiming to be not only religiously neutral, but also paradigmatically rational (Sullivan, Yelle, and Taussig-Rubbo 2011, 2; Folsom 2008), central components of the melioristic and evolutionary faith in what Webb Keane calls the 'moral narrative of modernity' (Sullivan et al 2011; Keane 2009). Legal positivism manifests the disenchantment of the law, yet, this disenchantment is never fully complete (Agrama 2012; Blank 2011; Modak Truran 2004). The cases below demonstrate how the division between secular and religious is continuously reproduced and guarded by the secular legal institution. In the Israeli case, the secular hegemony in Israel's mainstream legal culture has only strengthened over the years (Mautner 2011, 38), even as the secular elites have lost their hegemony in Israeli society at large since the 1970s. Starting at this time, the rise of religious nationalism and the festering resentments and anti-establishment sentiment of religious Jewish

immigrants from Islamic countries pushed back against their political exclusion by secular Jews from Europe (Kimmerling 1998). The crystallisation of the secular and liberal legal culture was accompanied by a period of judicial empowerment and judicial activism in rights jurisprudence and in public law in Israel (Kretzmer 1990), in ways that have frequently been out of step with the broader population, causing the legal system to become a symbol of secular elitism and an object of scorn for significant parts of the population (Mautner 2011, 87).

Spiritual violence

We sat, 15 religious women, Jewish and Muslim, around a large table in a conference room. Leah stirred her coffee vigorously and it seemed as though she was trying to restrain her outrage while speaking. 'It's very frustrating for us . . . because we meet these women, and they tell us about this abuse in their marriage, in their homes, and we understand this abuse, but we can't help them. It's our job to help them, and if it were any other kind of abuse, we could do something about it'.

Leah was speaking about her experiences with 'spiritual violence', a term these women use to describe a form of domestic abuse used against religious women to sabotage their religious and spiritual practices, and harm their relationship with God. For 15 months during 2017 and 2018 I participated in a working group comprised of religious Jewish and Palestinian Arab Israeli women social workers, and Leah was part of that group. As a group of state employees working in the public sphere among their own marginalised communities, they were privy to the contradictions and blind spots of state policy. These women felt that the state, of whose bureaucracy they were a part, was failing to protect the women of their community from harm.

Israeli law has for some time recognised forms of violence and domestic abuse beyond the physical. For example, verbal abuse, emotional and psychological abuse as well as financial abuse are all recognised in Israel as types of domestic abuse that are sometimes prosecuted, but are more often raised as evidence in divorce and custody disputes. The religious social workers in the group I did participant observations with felt that the devout women in their communities were also being subjected to another type of domestic abuse that was not legally recognised, 'spiritual violence' (Dahan and Levy 2011).

In the cases they described, a husband would disrupt or prevent his wife's religious obligations, such as disrupting her prayers. Jews have 613 commandments, and violating these commandments is a sin. In the case of ultra-Orthodox Jewish women, they described cases where the husband would interfere with the wife's Sabbath obligations such as lighting candles and the ritual of receiving the Sabbath. In one case, the husband would say a blessing that is required before eating, ostensibly on behalf of the entire family, but would then whisper in his wife's ear that the blessing did not include her, and afterwards she would not be able to eat for fear of violating the religious prohibition of doing so without the blessing. In another case, a husband would extinguish the candles his wife had lit to fulfil the commandment of welcoming the Sabbath in this way, and she could not relight them because of the prohibition against kindling a flame on the Sabbath. In other cases, the husband would try and trick or persuade the wife into violating religious prohibitions of various sorts, including dietary and sexual prohibitions.

After the ultra-Orthodox Jewish women introduced this concept, the religious Muslim social workers said that this type of abuse also registered with their own experiences of witnessing patterns of domestic abuse among religious families, and that they believed their communities would also benefit from having spiritual abuse officially recognised.

The harm caused by 'spiritual violence' is of a specific nature. The social workers resisted the idea that this type of abuse could be folded into other categories of abuse such as emotional or psychological, because for them the harm was distinct and not a kind of mental harm. As one woman in the group articulated it: 'To an ultra-Orthodox woman, it is also upsetting, but that is the side effect of the abuse, not the abuse itself. This abuse is something a secular social worker cannot understand, she never experienced the joy of religious observance, so she cannot understand the harm when it is stolen from her'. Specifically, the injury being done was to the relationship of the woman to God and to the woman's spiritual wellbeing. Because her husband had caused her to sin, he had potentially exposed her and her family to the retributions and punishments of God. In other words, the feeling described was not one of being emotionally tormented, but rather one of being pushed into oncoming traffic, spiritually. These women felt uniquely unprotected against domestic abuse due to their religious beliefs, because this abuse is unrecognised by the law.

The social workers decided that they wanted to pursue the issue of having spiritual violence recognised by the court system as a form of domestic violence, so that its victims could appeal to the state for protection and for justice. They performed outreach and gave presentations to decision makers in the legal system, as well as within the government's department of social services. They faced a great deal of resistance. Secular legal scholars expressed evidentiary concerns regarding on what basis a judge would be able to determine whether or not spiritual abuse had actually occurred. They posited that spiritual abuse has no apparent signs or manifestations, and that it would be a matter of competing claims. Religious judges they contacted were also vaguely reticent and declined to take up the vanguard on this issue.

The women were not surprised by the reaction from secular authorities, and speculated that the hesitation from religious judges was related to the anticipated secular reaction if they were to recognise spiritual violence as a valid concept. 'Maybe, but they aren't wrong' Sarah told the women. 'Did you see the fuss they made over the witchcraft case in Haifa? We have to be careful. There are many people who are waiting to jump on anything to embarrass and mock the religious community'. In this she was referring to a divorce case that had recently appeared before the rabbinical court in the city of Haifa, where the judge had given credence to claims by a husband that his wife had been involved in witchcraft and this had negatively impacted her alimony payment.³ Afterwards the secular press reacted with shock and mockery, as well as disbelief that accusations of witchcraft were being taken seriously in a court of law in 'modern-day Israel', making pithy comparisons to the Salem Witch trials and to Monty Python (Gurvitz 2011; Sommer 2011).

Nevertheless, the women vowed to continue to try and raise awareness of this issue. The concept has been gathering traction in religious therapeutic community. Furthermore, the legal aid organisation, Bat Melech, that specialises in assisting ultra-Orthodox victims of domestic abuse, has taken up spiritual violence as central to its legal advocacy and is seeking to have this form of domestic violence recognised in the courts.

The concept of spiritual violence is already being introduced into the courts by women, therapists, and their legal advocates. But their citations in legal decisions in Israel are sparse and vague. For example, sometimes the term is used in quotes ('spiritual' violence), while in other cases, it is used to mean something else (suppression of the spirit, as in vitality), and elsewhere it is used interchangeably with mental abuse.⁴

Pulsa diNura curse

The majority of the students I teach are secular. In that way one student of mine, Bracha, stood out as someone who had grown up in an ultra-Orthodox household, and maintained a religious lifestyle. One day, in a class on the Anthropology of Ethics, she raised an interesting question. In the news, there had been a report that a number of rabbis had placed a Pulsa diNura curse against a well-known politician, Naftali Bennet. Bracha expressed the opinion that the rabbis should be prosecuted for attempted murder (or murder if anything were to happen to Bennet), and was curious to see what the other students felt. 'Basically, they are trying to kill him, out in the open', she said. 'It is very distressing to religious people who know about these things, like curses, because the police aren't really doing anything about it. I don't know if using the Pulsa diNura would ever be justified, I'm not very political. But, I think it is really problematic that they are doing this, but then they are still allowed to go free and even do it again.' The other students adamantly rejected the potential efficacy of the curse, but were split regarding how the state should treat this practice. The following exchange is illustrative of the conversation:

Maya: I guess if some crazy people want to stand in the dark and read curses, they can do it. Since I don't believe in curses, I don't really care.

Doron: I don't believe in curses either, of course, but still you can't let people say whatever they want, since makes other religious people commit real violence.

The conversation went on for about 40 minutes with secular students continuously denying the efficacy of curses while debating whether their performance was protected speech or not. But the last statements where Bracha responded were the most significant for this article.

Maya: But obviously you can't prosecute them for performing a curse, they didn't actually *do* anything

Bracha: You don't believe in the curse, but I do, and they do, so I'm not sure why you think it is so obvious that they can't be prosecuted.

Bracha made it clear that she considered the curse to be an act of violence and expected the state to respond.

The Pulsa diNura is a Kabbalistic curse that is intended to bring about the death of a specific individual. According to descriptions of the ceremony, promulgated by its own participants, ten Torah-observant Jewish men, each of whom has fasted for three consecutive days, gather at a graveyard in the dead of night. By the light of black candles and accompanied by the sound of the *shofar* (ram's horn) they recite the curse. If the curse ceremony is conducted by righteous individuals against someone who is deserving, that

person will soon be struck dead by the angels of destruction. If the ceremony is not conducted by righteous individuals or if the cursed person has not sinned, the curse will boomerang, killing those who conducted it.

Those who believe in the curse's efficacy remark on its impressive track record. Due to his involvement in the Oslo Peace Accords, the *Pulsa diNura* was recited against former Prime Minister Yitzhak Rabin on 6 October 1995, and Rabin was assassinated within the month. Due to his role in the Israeli withdrawal from Gaza in 2005, the *Pulsa diNura* was recited against former Prime Minister Ariel Sharon, who fell into a coma six months later. The performing of these curses has led to complaints made to the police and demands that the state step in and hold the individuals performing the curse accountable. The legal paradox is easily apparent. Some Israeli citizens believe that a group of people have acted in such a way as to cause an individual's death, as directly as poisoning or any other type of murder, while others, including most of those in the legal field, do not believe in the efficacy of this curse.

The religious legal system has no jurisdiction over such criminal matters in Israel, while the secular criminal system has no legal taxonomy that can process this as a crime. Cursing someone is not illegal in Israel and the idea is clearly in conflict with the secular basis of the criminal legal system. But at the same time, the police receive complaints from individuals who have been cursed, and there is public outcry over the incidents that receive significant media attention. A popular joke among secular Israelis goes: 'You haven't really made it in Israeli politics if you haven't been cursed by the rabbis.' State silence on these matters gives some citizens, like Bracha, a sense of a loss of state control and general lawlessness, which resonates with scholarship that shows that the state loses legitimacy when it refuses to prosecute crimes (Steven 1998; Wills 1996).

In 2013 a religious member of the government, then Economy Minister Naftali Bennett (of the Jewish Home party), who is currently the Israeli prime minister (with the New Right party), received a letter that informed him that a *Pulsa diNura* had been recited against him. He filed a complaint with the police, who decided to open an investigation. From the beginning it was difficult for the police to articulate exactly what they were investigating. When police spokesperson Micky Rosenfeld was asked, he confessed that the curse did not constitute an explicit death threat, but said that it was nevertheless, 'serious enough' to warrant an investigation (Hartman 2013).

Despite the recognition that the curse causes significant distress and a sense among some of the population that harm has been done, this case and those like it raise significant legal dilemmas for a secular legal system. For example, Chukkol notes the difficulty in determining *mens rea*⁵ in cases of supernatural violence and also evidentiary issues emerging from the use of metaphysical weapons (1983). The Israeli state has on occasion, when forced to answer complaints regarding the *Pulsa DiNura*, taken to secularising the issue and judging the *Pulsa diNura* by the standards of 'incitement to violence'. In fact, the law against incitement to violence was passed in 2002 in part as a response to the atmosphere that led to the killing of Yitzhak Rabin, including the *Pulsa diNura* recited against him. The arguments in favour of considering the *Pulsa diNura* incitement are that the curse is often recited very publicly and it sends the message that a death curse has been placed on someone, and so in a religious sense, their death is allowed or even called for (Cohen-Almagor 2007, 28). Thus the secular legal reasoning is a departure from the explicit statements of those who conduct the curse. Calling the *Pulsa diNura* 'incitement' walks

a fine line, and functions as a kind of translation. On the one hand, it does not violate secular principles by recognising the curse as violence in and of itself. At the same time, incitement does not reduce the curse to 'mere words' but rather does recognise that, like a curse, the *Pulsa diNura* is speech of a special nature, with added power, a speech act.

Webb Keane has also explored this topic in his work on the controversy over the Danish cartoons of the Prophet Muhammad that sparked protests by Muslims on a global scale. He shows that the idea of freedom of speech posits, in the western ideology of modernity, that words and pictures are only representations existing apart from action and actors, and not actual deeds (2009, 58). In Maya's words, those who performed the curse did not *do* anything. The *Pulsa diNura* curse exists outside the secular semiotic ideology because the words themselves enact violence. The secular Israeli legal system cannot find a category for this because it cannot decipher the claim within its semiotic ideology. Using 'incitement' to try and capture the harm done through the *Pulsa diNura*, can be seen as an attempt to pull the supernatural act into the secular semiotic sphere, while still maintaining the structure of the offence.

Shimon Peres said that there was no doubt that the *Pulsa diNura* led to the murder of Rabin (Zelikovich 2005), and its use is one of the reasons behind the passing of the law against incitement (Cohen-Almagor 2007). Yet, the state has been timid in applying the law against incitement in subsequent cases. For example, in 2005, when a group of rabbis decided to curse Ariel Sharon, they claimed they did so because his security was so tight that no person would be able to kill him, and therefore they were forced to call on the angels of destruction to do so. A number of people called for investigations, but the attorney general at the time, Menachem Mazuz, decided that the ritual does not, in and of itself, constitute incitement. But, at the same time, Mazuz decided recommend to the Justice Ministry to conduct a disciplinary trial for a rabbi who had called for the *Pulsa diNura* to be performed (Zelikovich 2005).

The case of Avigdor Eskin further demonstrates the state's ambivalence. Eskin was one of the rabbis who performed the *Pulsa diNura* against Yitzhak Rabin in 1995, but no action was initially taken against him. However, after the assassination Eskin began appearing publicly and taking responsibility for the death, claiming that the curse had worked, and threatening to perform it again against other public figures. After receiving complaints, the police arrested Eskin, and he was put on trial for performing the ceremony, for noting the connection to the death of Rabin, as well as declaring his intention to perform the ceremony for a second time (Cohen-Almagor 2007, 25). He was convicted of violating the prevention of terrorism ordinance of 1948 and was sentenced to a four-month prison sentence, plus parole. In the decision on his case, Judge Bela Kahana did not address the essence of the *Pulsa DiNura* ceremony. Rather, she focused only on the message that the defendant conveyed to the Israeli public. Because the prosecutor proved that Eskin had performed and publicised the ceremony, the judge ruled that he 'recognised the power of the media, chose his words carefully, he wanted to convey the message to the wider public, acted accordingly and was happy when his wish was fulfilled'.⁶ In this formulation, the content of the curse becomes a 'wish', presumably protected speech, while publicly discussing the curse becomes the real crime. Soon after Eskin's conviction, the prosecutor agreed to an acquittal after a similar case against a Palestinian-Israeli citizen was decided in the defendant's favour, demonstrating the state's fitful and inconsistent approach to the issue.

Election-related amulets and blessings

The third category of state adjudication over the supernatural offers a contrasting case in which the state takes an interventionist position. This concerns the prevention of the distribution of spiritual gifts (or harm) by political parties during election seasons. In Israel's multiparty political system, the Mizrahi ultra-Orthodox political party, Shas, has made a number of campaign efforts that appeal to the spiritual world. During the 2015 elections, they distributed cards quoting their founding Rabbi Ovadia Yosef as saying that whoever votes Shas will go straight to the heaven. They also sent SMS messages to voters quoting Rabbi Yosef that read: 'I will not forgive someone who does not vote for Shas, not in this world and not in the world to come'. Shas has handed out sign-up sheets for people to receive blessings in return for voting Shas. The party has also distributed religious amulets believed to protect individuals from evil and bad luck to potential voters. In the 2019 elections, they published campaign ads promising the blessings of heaven to those who vote Shas. They also offered to honour new supporters and existing supporters who recruit them with the inscription of a letter in a new Torah scroll being prepared for the Western Wall. In Judaism, having a letter inscribed in one's name in the Torah is a great honour, the fulfilment of a religious commandment, and is also often considered a kind of spiritual protection.[Figure 1](#)

Israel's campaign laws forbid using curses, blessings, and amulets to persuade voters (sec. 122 of the Knesset Elections [Consolidated Version] Law, 5729–1968). In each election season, questions of campaigning through the spiritual realm are brought to adjudication. In most cases involving Shas, the Election Committee rules against their practices. In the above-mentioned case where Shas offered a letter in a Torah scroll, the election committee ruled that: *'In the eyes of a reasonable voter, there seems to be a spiritual value to the promise that a person will receive a letter in a Torah scroll, even if it is an undefined letter'*.⁷ The ruling then moves into an in-depth analysis of the religious Jewish opinions regarding the spiritual meaning of receiving a letter in the Torah scroll, notably citing a number of significant rabbis, and finding that such a gift should in fact be considered a spiritual amulet.

In contrast to the criminal code, here we see recognition by the state of the social role of supernatural beliefs. The election committee even employs the evaluative tool of the 'reasonable voter' to describe those people who see spiritual value in the offer of this spiritual gift. 'Reasonable voter' is a reference to the standard of evaluation of the 'reasonable person', inherited from British law, which posits what the hypothetical, yet ordinary, reasonable, and prudent individual would do in the same circumstances. It is interesting that insofar as the 'reasonable person' is culturally defined by the social context, this language explicitly recognises that someone who sees spiritual value in a Torah letter is in the mainstream in Israeli society. We might note that the case in which the state decided to take an interventionist role, and take the spiritual world seriously, was one in which the religious sector was perceived to be receiving undo benefit, and was seen as a threat to the secular political parties. This is in contrast to the previous two cases in which religious people felt exposed to harm and the state took a more hands-off approach.



Figure 1. Election Campaign Card for the Shas party. The front features a picture of Rabbi Ovadia Yosef with the writing: 'Words of the Maran [a title for a particularly exalted rabbi]: Whoever votes Shas, [will go] straight to heaven'. The back features a Kabbalistic prayer written by Rabbi Nehonia in the first century CE, known as the *Ana beKoach*. It also has a picture of a key and the text 'Your key'. Author's image.

Discussion: the spiritual world in the secular legal context

One theme to emerge in the cases described above is the clear ambivalence of the secular legal system. Structurally, we see that the legal categories that would be necessary to address the spiritual world within a legal context often do not exist. But, we see demands from citizens on the state and its secular legal system to expand its jurisdiction to the spiritual world. In the first example, it is from women who demand that the state protect them from domestic abuse; in the case of curses, people file complaints with the police and insist that the state protect them.

When the state does decide to wade into the spiritual world, we see that it often uses secular translation to grapple with the supernatural elements of the case. When pressured to respond to the *Pulsa diNura*, the state adopted the standard of 'incitement to violence'. This is an imperfect and problematic translation, which ultimately makes it difficult for

charges to stick, as we saw with the case of Avigdor Eskin. According to believers, the curse is the violence itself. Supernatural weapons are deployed, explicitly not human violence. In the case of spiritual domestic violence, it was suggested that mental and emotional abuse stand in for the spiritual category, but each time this was suggested, the social workers refused this elision.

These attempts at secular translation can be compared to the liberal ideology regarding 'public reasons'. John Rawls delineates the use of public reasons in liberal theory as justifying a particular position by way of reasons that people of different moral or political backgrounds could accept (Sikka 2016). Notably, this involves secularising any religious arguments, in what Jurgen Habermas has termed a 'translation proviso', which many have noted puts an unequal burden on religious citizens relative to their secular counterparts (Greenawalt 1995; Sikka 2016). Comparably, Nicholas Howe shows that when U.S. law fails to understand the religion of Indigenous Americans on its own terms, in particular its geographical rootedness, the effect is inherently discriminatory (2016).

These cases raise the question of what the legal system could do otherwise to provide its ultra-Orthodox citizens with a sense of justice. From that many questions follow. What kind of legal conditions, such as standards of evidence and matters of jurisdiction, would need to be established for the state to adjudicate such issues? For example, if the state intervened in a curse that caused the angels to kill a human, would the state be prosecuting the humans who spoke the curse or the angels? What kinds of complications or dangers should we expect to ensue?

Clearly, the application of supernatural law is shocking to the secular sensibility, raising fear of irrational and primitive versions of justice, and furthermore, legal pluralism and heterodoxy frequently hit the limits of liberal legal tolerance, and challenge ideas of legal sovereignty. Comaroff and Comaroff ask 'What are the limits of liberalism in accommodating difference? Can a Euromodernist nation-state, founded on the sovereignty of one law, actually infuse itself with another jurisprudence?' (2004, 189). Yet, Steven Mazie challenges the absolute separation of religion and state and encourages nuance and attentiveness to local expectations and concepts of justice (2004, 2006). Often, this is within the capabilities of the existing judicial system. For example, in the example of election law, the secular state was able to seriously engage with the religious meaning of a letter in a Torah scroll directly and without translation to secular concepts. Supernatural concepts became legally legible and actionable. But, we see that the spiritual was recognised and incorporated into the law exactly at the point where it threatened secular political hegemony in order to prevent it from influencing the secular process. In other words, the spiritual was legally recognised without a translation proviso, exactly at the point where it stood ready to impact the public domain.

These cases show that secular law does not in fact provide state neutrality, offering a lower standard of justice for those whose social lives extend to the spiritual world. While considering the possibility for religious freedom Winnifred Sullivan writes: 'When the law speaks, people must recognise themselves. For law to be successful, they must see law as a way to go forward with their lives. If the gap becomes too great, law fails' (2018, xv). The ethnography here offers examples of cases where people do not recognise themselves in the law, in part because the law cannot, or will not, recognise their realities.

Furthermore, Hussein Agrama has observed that many states stake fundamental freedoms on the existence of secular governance, while they continue to exhibit significant secular-religious ambiguities (2012). Here, I further suggest where legal system is unable or unwilling to represent the values and beliefs of a significant portion of its citizens, in which it does not recognise and govern the social worlds of its citizenry, there is not only a problem of inequality, but also a problem of democracy. These issues are pushed to the fore in Israel because of state's own claims to represent Jewish identity. But the essential critique regarding the failure of legal secularism to fulfil the role of equal outcomes of justice is similar for places like the United States or France where secularism is more explicit.

Conclusion

In this article, I have examined the way the Israeli legal system has grappled with the spiritual world. Israel is a particularly potent site for investigation. There is widespread consensus among the Jewish population regarding the ethnic Jewish identity of the state (often to the detriment of its non-Jewish population). But with regard to religious belief and practice, its population is heterogenous, and its legal system is split between a completely secular civil and criminal court and a religious family court. The religious-secular tension is actively cultivated and sustained, and in Israel as elsewhere, the legal sphere is a potent and symbolic site of cultural confrontation.

I have chosen to explore situations in which the state is called upon to extend its governance, protection, and justice into the spiritual realm. Taken together the cases reveal a number of interesting insights. One is attempts to adapt by using different forms of translation of supernatural to secular concepts. We also see quite clearly that secular governance depends on shared cultural assumptions, which in this case is not widespread enough to constitute a societal consensus. As such, adhering strictly to secularism in the Israeli case risks delegitimising the state in the eyes of significant portions of the citizenry. Israel is but one such country. Many postcolonial and settler colonial countries experience secular-religious divisions that are similarly mapped onto differences of ethnicity, class, and hegemony over the legal system.

Liberal models of religious freedom and tolerance ask to what degree religious individuals can be left alone in their faith and practice. The cases examined here show how the needs and concerns of a non-secular citizenry are left unanswered by a legal system that does not wade into the spiritual world. This is because these citizens do not compartmentalise causality and culpability between the realms. Such dilemmas leave us to contemplate the meaning of democratic citizenship in societies with deep secular-religious divisions.

Notes

1. These collective rights are not extended to Palestinians and often come at their expense.
2. This research was conducted in accordance with the ethical guidelines of Tel Aviv University and with the approval of the Israeli Science Foundation, 765/17.
3. *Jane Doe v. John Doe* (Plonit v. Ploni) 2016. Haifa Rabbinical Court (764231–9).

4. Dr Michael Bizer v Avi Yifrach. 2003. Magistrate's Court Tel Aviv-Yaffo (167926/02); G.T. v A.T. 2009. Tel Aviv Family Court (6591/07); Jane Doe v Anonymous. 2012. Beer Sheva Family Court (28990/08).
5. *Mens rea* refers to the state of mind required to convict a defendant of a crime, criminal intent.
6. State of Israel v Avigdor Eskin. 1997. Magistrate's Court Jerusalem (96/827).
7. Knesset Election File 44/21, The Movement for Quality Government in Israel vs Shas.

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Notes on contributor

Erica Weiss is a tenured Senior Lecturer (between Assistant and Associate Professor) in the Department of Sociology and Anthropology at Tel Aviv University. She has been carrying out research on non-liberal approaches to pluralism and democracy for more than seven years. She previously published a book on her dissertation research with Penn Press in 2014: *Conscientious Objectors in Israel: Sacrifice, Citizenship, Trials of Fealty*. She has published articles in *Cultural Anthropology*, *American Ethnologist*, *American Anthropologist*, *Current Anthropology*, *HAU*, *JRAI*, *Theory and Society*, *European Journal of Cultural and Political Sociology*, *Anthropological Theory*, *Political and Legal Anthropology Review*, *Anthropological Quarterly*, and *Ethnos*.

ORCID

Erica Weiss  <http://orcid.org/0000-0002-7047-6712>

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