BORN TO BE A MOTHER:  
ANATOMY, AUTONOMY, AND SUBSTANTIVE  
CITIZENSHIP FOR WOMEN IN ISRAEL  

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"Everything about woman is a riddle, and everything about woman has one solution: that is pregnancy."1

One of the major focuses of Israel's citizenship discourse is civic virtue. How the nation defines contributing to the community depends, however, on the citizen's gender. This article establishes the thesis that for Israeli Jewish women, the only route to acceptance in society is through the concept of "reproductive citizenship."

The laws that most critically perpetuate what I term "the categorical imperative of compulsory motherhood" are abortion law and child support law. While ordinarily perceived as unrelated fields of state regulation, I argue that these bodies of law must be read together and exposed as a legislative enterprise designed to demarcate the normative boundaries of citizenship for Israeli women.

Whereas abortion law mostly focuses on ensuring a "proper" numerical quantity and genetic quality of the Jewish people, child support law operates to ensure social quality. From this perspective, the gender-deadly combination of abortion-restrictive regulations and child support obligations supplies a unique and largely ignored lens through which to explore how the state constructs the social category of "woman." I conclude that the two laws

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* Assistant Professor, Faculty of Law, University of Haifa; alumna Yale University School of Law, LL.M, J.S.D. programs; Bar Ilan University, LL.B., LL.M honors program, summa cum laude. The article is dedicated to my dear friend and mentor, Professor Shulamit Almog, whose groundbreaking scholarship has been devoted to improving women's citizenship status in Israel. Distinguished by its breadth and multi-faceted analysis, Almog's feminist legal research is remarkably anti-essentialist and deals with a wide range of sub-categories of women, including the most disadvantaged or neglected, from the virgin (as Ultra-Orthodox women) to the whore (as women in prostitution), in both the public and private spheres. I am deeply indebted to Shulamit for her personal support and for her scholarship which greatly inspired my own research.

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reinforce the state’s view that women have importance not as individuals, but as mothers, and that it is only through women’s distinct maternal contribution to the nation that they may be incorporated into the Israeli collective.

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I. INTRODUCTION

One of the major focuses of Israel’s citizenship discourse is civic virtue. How the nation defines contribution to the community depends, however, on the citizen’s gender. For Israeli women, the only route to acceptance in society is through reproductive citizenship. They are effectively coerced

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3 In this Article, I discuss Jewish-Israeli women, as opposed to Arab-Israeli women.

into roles of motherhood and ‘high-quality’ mothering through national duty, abortion law, and child support law. Using these mechanisms, Israel indoctrinates women with the credo that childbearing is the defining characteristic of the normal and patriotic Israeli woman. These policies profoundly influence women’s perceptions of self, such that they amplify the Israeli government’s model of social order.

This construction of motherhood as a national mission is a reaction to threats against the Jews. The Holocaust, the existence of a substantial Palestinian minority in Israel, and the fear of attack from the surrounding Arab nations fuel the constant drive for renewal of the Jewish population. This complex reality sets the stage for citizenship definitions based on gender, even in a country that lies near the Western end of the cultural continuum. Israeli men enjoy citizenship through active participation in the military as the highest form of civic virtue. They become incorporated into the state through their social identities as warrior-citizens. Meanwhile, women are entrusted with enlarging the Jewish people, both to increase the ratio of Jews

[i] is a central means of acquiring comprehensive entitlements of citizenship and fulfilling its corresponding obligations).

5 See, e.g., Larissa Remennick, Between Reproductive Citizenship and Consumerism: Attitudes Towards Assisted Reproductive Technologies Among Jewish and Arab Israeli Women, in Kin, Gene, Community 319, 324 (Daphna Birenbaum-Carmeli & Yoram S. Carmeli eds., 2010) [hereinafter Remennick, Between Reproductive Citizenship] (arguing that motherhood is perceived in Israel as “a mission one cannot really choose but is conscripted to by the virtue of being a woman”); Larissa Remennick, Childless in the Land of Imperative Motherhood: Stigma and Coping Among Infertile Women, 43 Sex Roles 821, 839 (2000) [hereinafter Remennick, Childless] (arguing that the dominant social discourse in Israel, as a pro-natalist society, is “essentialist, that is, presenting motherhood as imminent, natural, and universally expected from all women”).

6 Cf. Daphna Hacker, Single and Married Women In the Law Of Israel—A Feminist Perspective 29–37 (Tel Aviv Univ. Law Faculty Papers, Paper No. 150, 2001), http://law.bepress.com/cgi/viewcontent.cgi?article=1158&context=taulwps [http://perma.cc/9QLU-HYW4] [hereinafter Hacker, Single and Married] (observing that “[l]aw is a symbol, as well as a mean [sic] to channel people’s behaviour [sic] and distribute social resources and so can affect the options available for women”). As studies that have examined Jewish-Israeli women’s perception of the relationship between motherhood and their role and place in society report, women have fully internalized and endorsed the pro-natalist discourse, and subscribe to the view that “[m]aternal instinct is essential in every woman, and in a Jewish woman it is double. If we want to be true to our nature we just have to become mothers, there is no other way in life. Women who don’t want children are barren, selfish, unable of love.” Remennick, Childless, supra note 5, at 828; see also id. at 825 (only a minority of educated and career-minded women are somewhat willing to challenge the dominant discourse on maternity); see also Tamar Rapoport & Tamar El-Or, Cultures of Womanhood in Israel: Social Agencies and Gender Production, 20 Women’s Stud. Int’l F. 573, 577 (1997) (“[The state] usually enjoys the ‘cooperation’ of women, who find it difficult to rebel against [society’s] basic values.”). 7 Susan Martha Kahn, Reproducing Jews: A Cultural Account of Assisted Conception in Israel 3 (2000) (The “imperative to reproduce has deep political and historical roots” for Israeli-Jews to “counterbalance the . . . demographic threat represented by Palestinian and Arab birthrates” and to “produce soldiers to defend the fledgling state.”); see also Hacker, Single and Married, supra note 6, at 40 (“[H]aving many children is viewed as a national mission.”).

8 See Delila Amir & Orly Benjamin, Defining Encounters: Who Are the Women Entitled to Join the Israeli Collective?, 20 Women’s Stud. Int’l F. 639, 641 (1997) [herein-
to Palestinians and to create future soldiers to defend the state. Indeed, military service for men and childbirth for women are constantly compared as parallel routes to full membership in the collective.

This Article contributes to the ongoing Israeli feminist project exploring the connection between womanhood, motherhood, and citizenship. It deconstructs this nexus through a critical analysis of the synergy between abortion law and child support law. While ordinarily perceived as unrelated fields of state regulation, these bodies of law must be read together and exposed as a legislative enterprise designed to demarcate the normative boundaries of citizenship for Israeli women. Whereas abortion law chiefly focuses on ensuring a ‘proper’ quantity and genetic quality of the Jewish people, child support law operates to ensure social quality. The gender-deadly combination of abortion-restrictive regulations and child support obligations thus supplies a unique and largely ignored lens through which to explore how motherhood in Israel becomes a key citizenship-certifying process.

The first Part of the Article provides context for the analyses of abortion law and child support law. It explores the historical, legal, and informal systems that embedded ‘compulsory motherhood’ in Israeli society. As this Part concludes, woman’s role as a mother has become a “categorical imperative”—an absolute, unconditional requirement—for citizenship. This categorical imperative for compulsory motherhood is the social foundation formalized through the combined force of abortion and child support law.

after Amir & Benjamin, Defining Encounters] (“For the Israeli man, the process of constituting his national identity is inseparable from his army service.”).


10 Sperling, supra note 9, at 364.

11 To take two prominent examples, Noya Rimalt examined the judicial vision of mothers in the case law, see generally Noya Rimalt, A Good Mother, a Bad Mother, an Irrelevant Mother: Parenthood in Law Between the Equality Ideal and the Motherly Reality, 39 HEBREW U.L. REV. 573 (2010) (in Hebrew), and Nitza Berkovitch studied the connection between motherhood and citizenship as reflected in military regulations and the Women’s Equal Rights Law, see Berkovitch, supra note 9. For a feminist analysis of sub-categories of disadvantaged Israeli women and the complex challenges they face see generally, for example, SHULAMIT ALMOG, PROSTITUTION: CULTURAL AND LEGAL ASPECTS (2008) (in Hebrew); Shulamit Almog & Lotem Perry-Hazan, Contesting Religious Authority: The Immanuel “Beis-Yuakov” School Segregation Case, 26 INT’L J. FOR SEMIO-TICS L. 211 (2013).

12 This term is borrowed from IMMANUEL KANT, GROUNDING FOR THE METAPHYSICS OF MORALS (James W. Ellington trans., 3d ed. 1993) (1785).
The second Part of the Article discusses abortion law in Israel and its symbolic significance as a socio-legal statement of the state's position on female reproductive conduct. Israel—otherwise a modern, liberal, constitutional democracy—has one of the most legally restrictive abortion regimes in the Western world. Israeli abortion law is unique in that it both envisions women solely in the status-role of mothers as well as constructs the legal image of the 'good' mother through carefully defined terms of pregnancy termination. By signaling that only 'deviant' women are legally entitled to undergo abortion, the law serves a disciplinary social mechanism designed to control the boundaries of female patterns of reproduction.

Notwithstanding this restrictiveness, abortion issues elicit apathy rather than concern in Israeli political life, and reproductive rights are a perplexingly marginal, and even silenced, legal discourse. I will suggest that Israeli women's rights organizations, unlike their feminist sisters in virtually any other liberal nation, have shied away from publicly renouncing the anti-abortion regime because they fear being portrayed as traitors of the national collective. After all, obeying the maxim of women as 'mothers first and foremost,' is the prerequisite for women's social legitimation.

The third Part of the Article analyzes Israeli child support law, a legal field that has received sparse academic treatment. It shows that the child support regime assigns mothers and fathers gendered roles to ensure the 'quality' of the population. This ideology of gendered parenting casts men as breadwinners only, with no social obligations to their children, and women as caretakers, with no monetary obligations.

Child support law works together with Israel's abortion law to formalize the terms underlying female citizenship status in the Jewish state: a legal duty of both biological and social motherhood, childbearing followed by childrearing. It is only through these legal roles—not only as biological reproducers of the nation, but also as ideological reproducers—that Israeli women are granted effective membership in the community. Taken together, abortion law and child support law are powerful mechanisms through which the Jewish state maintains control of its vision for the national collective.

The concluding Part sketches a preliminary blueprint for severing the Gordian knot between anatomy and autonomy and between compulsory motherhood and female substantive citizenship in Israel.

13 Sperling, supra note 9, at 364.
14 See, e.g., NITZAN RIMON-ZARFATY, ABORTION COMMITTEE DELIBERATIONS 23 (2007) (in Hebrew); Yael Hashiloni-Dolev, Between Mothers, Fetuses and Society: Reproductive Genetics in the Israeli-Jewish Context, 12 J. JEWISH WOMEN'S STUD. & GENDER ISSUES 129, 134 (2006) [hereinafter Hashiloni-Dolev, Between Mothers] ("[I]n sharp contrast to the American or German political history of abortions, the legal interruption of pregnancy has remained largely tangential to Israeli public debate."); Larissa I. Remennick & Rosie Segal, Socio-Cultural Context and Women's Experiences of Abortion: Israeli Women and Russian Immigrants Compared, 3 CULTURE HEALTH & SEXUALITY 49, 52 (2001) (noting that the abortion issue in Israel has remained "politically latent").
II. COMPELLS MOTHERHOOD IN THE HOLY LAND: AN ISRAELI CATEGORICAL IMPERATIVE

If the United States is a country "conceived in [l]iberty," Israel is a nation-state conceived in order to conceive Jews. It is defined as a state for Jews, and anyone born of a Jewish mother—anywhere in the world—is granted the right to citizenship in Israel. Accordingly, key legal instruments in Israel use Jewishness as a criterion for various entitlements. While Jewish identity is matrilineal, I argue that for women, substantive citizenship depends on them becoming Jewish mothers themselves.

This Part aims to lay a foundation for the task of deconstructing Israel’s abortion and child support laws by showing that the Jewish-Israeli woman is bound to the collective through her womb. Israel adheres to the holy trinity of ‘nature, nurture, nation’ to define a woman’s relationship with motherhood as the cornerstone of her identity in Israeli society.

The compulsory nature of motherhood in Israel is deeply rooted in historical and emotional imperatives reinforced by law. Israeli women are drafted for compulsory maternal service as their national mission to compensate for the calamitous losses of the Holocaust, which destroyed a substantial part of the Jewish population, and to offset the ‘demographic threat’ of a hostile Middle East. David Ben Gurion, the country’s first Premier, asserted that:

15 These words are taken from Abraham Lincoln’s famous Gettysburg Address, stating that “Four score and seven years ago our fathers brought forth, upon this continent, a new nation, conceived in [l]iberty, and dedicated to the proposition that all men are created equal . . . .” President Abraham Lincoln, Gettysburg Address (Nov. 19, 1863), reprinted in The Gettysburg Address, AM. HIST. CENT., http://www.americanhistorycentral.com/entry.php?rec=563 [http://perma.cc/Z7C6-84YR].

16 See, e.g., Yuval-Davis, Woman/Nation/State, supra note 9, at 39 (noting that according to the Israeli Nationality Law and the Law of Return, all those born of a Jewish mother, wherever they come from, are entitled automatically to Israeli citizenship, while non-Jews, even if born in Israel, are not, unless born to Israeli citizens).

17 See id.; cf. Kahn, supra note 7, at 71 (explaining the significance of Jewish principles to Israeli law).

18 See, e.g., Robert Gordis, The Dynamics of Judaism: A Study in Jewish Law 186 (1990) (“If self-preservation is the first law of nature, the injunction ‘Be fruitful and multiply’ is properly the first Commandment, not merely because it occurs in the opening chapter of Genesis but because it is the cornerstone of Jewish life, upon which all else depends.”).

19 See, e.g., J. David Bleich, Judaism and Healing: Halakhic Perspectives 52 (1981) (stressing that Jews must continually procreate “if Jews are to remain a viable ethnic group capable of continuing the uniquely Jewish contribution to human civilization”).

20 See Yael Hashiloni-Dolev & Noga Weiner, New Reproductive Technologies, Genetic Counseling and the Standing of the Fetus: Views from Germany and Israel, 30 SOC. HEALTH & ILLNESS 1055, 1058 (2008) (“[T]he perceived importance of Jewish fertility rates lies within the significance of parenthood in Jewish tradition, where infertility is regarded as a severe disability and there is an overall Jewish-Israeli wish to conform to the biblical imperative to ‘replenish and multiply’ . . . as well as a desire to make up for the Jewish genocide during the Holocaust and the substantial fear of losing a child in war or in a terrorist attack.”).
[E]very Jewish mother can and must understand that the unique situation of the Jewish people, not only in Israel but throughout the world . . . imposed on her a sacred duty to do her utmost for the nation’s rapid growth. One of the conditions for growth is that every family have at least four sons and daughters, and the more the better.\(^{21}\)

A complex web of social and legal norms reinforces the absolute maternity duty, rendering the reproductive norms of Israeli Jews unique in the developed world. Despite its post-industrial economy and Westernized lifestyle, Israeli society is intensely family-oriented,\(^ {22} \) with parenthood a core social value, marriage almost universal, divorce rates relatively low and birth rates high—about three children per woman,\(^ {23} \) which crowns Israel as the “fertility champion among developed nations.”\(^ {24} \) Even professional middle-class Jewish-Israeli women often have more children than their peers in other economically advanced countries, despite similar patterns of education and labor-force participation.\(^ {25} \) Finally, unlike in other Western countries, unmarried women in Israel use reproduction to achieve a status upgrade; becoming mothers moves them from marginal to normative social standing.\(^ {26} \)

The practice of reproductive genetics in Israel is part of a national culture of fertility. In a country that conceptualizes parenthood as the normal accomplishment of mature adulthood and treats infertility as a “severe disability,” childlessness takes on “master status” for Jewish-Israeli women.\(^ {28} \)


\(^{22}\) See Daphna Hacker, \textit{Motherhood, Fatherhood and Law: Child Custody and Visitation in Israel}, 14 SOC. & LEGAL STUD. 409, 411 (2005) [hereinafter Hacker, \textit{Motherhood}] (“Israeli society is still more familial and traditional than other western society . . . .”); Michal Tamir & Dalia Cahana-Amitay, “The Hebrew Language Has Not Created a Title for Me”: A Legal and Sociolinguistic Analysis of New-Type Families, 17 AM. U. J. GENDER SOC. POLY & L. 545, 589 (2009) (noting that Israeli society “cherishes the family institution and perceives it as one of its most defining trademarks,” and that having a family in Israel is the valued course of personal development).

\(^{23}\) Larissa I. Remennick & Amir Hetsroni, \textit{Public Attitudes Toward Abortion in Israel: A Research Note}, 82 SOC. SCI. Q. 420, 422 (2001) (“about 3 children per woman in a lifetime, compared to 1.3–1.5 in Western Europe and 1.9 in the United States”).

\(^{24}\) Remennick, \textit{Childless, supra} note 5, at 822.

\(^{25}\) Yuval-Davis, \textit{Woman/Nation/State, supra} note 9, at 55.

\(^{26}\) See, e.g., Elly Teman, \textit{The Last Outpost of the Nuclear Family: A Cultural Critique of Israeli Surrogacy Policy, in Kin, Gene, Community, supra note 5, at 107, 122} [hereinafter Teman, \textit{The Last Outpost}] (“It is better in the eyes of the state to be a single mother than just a single woman . . . .”); Hacker, \textit{Single and Married, supra} note 6, at 34 (noting that single women “seek legitimacy” by becoming mothers, often believing that “having a child will help them achieve womanhood”); id. at 51–52 (observing that only when a single woman becomes a mother is her lifestyle socially valued).

\(^{27}\) Hashiloni-Dolev, \textit{Between Mothers, supra} note 14, at 130; see also KAHN, \textit{supra} note 7, at 3; Tsipy Ivry, \textit{Ultrasound Challenges To Pro-Natalism, in Kin, Gene, Community, supra note 5, at 174} (infertility is conceived of as an “unbearable tragedy”).

\(^{28}\) Remennick, \textit{Childless, supra} note 5, at 837.
It is therefore hardly surprising that new reproductive technologies have been made accessible on a scale unknown anywhere else in the world.\textsuperscript{29} There are more fertility clinics per capita in Israel than in any other country,\textsuperscript{30} and Israel boasts a world record for the greatest number of fertility treatments per capita.\textsuperscript{31} Israel is the only country with nearly full funding for procreative medical services, including an \textit{unlimited} number of in vitro fertilization ("IVF") cycles until the woman has had two children with her \textit{current} partner.\textsuperscript{32} The extraordinary state support for all forms of reproductive technology constitutes an implied social contract between the woman and the state: she performs the invaluable service of citizen-making, and the state acknowledges her as a legitimate and valuable citizen herself.\textsuperscript{33} Unsurprisingly, IVF has quickly become a "token of reproductive citizenship,"\textsuperscript{34} with Israeli women using the technology more times per capita than anywhere else in the world.\textsuperscript{35}

In a study examining Israeli attitudes toward assisted reproductive technology ("ART"), women exhibited profound internalization of the cultural master narrative of reproduction as a condition of membership in the ‘males-stream’ collective.\textsuperscript{36} They implicated macro-level political motifs with heroic, sacrificial overtones, exclaiming that it was their national mission to ensure the future of the Jewish people.\textsuperscript{37} For these women, “being an IVF client

\textsuperscript{29} See, e.g., Hashiloni-Dolev, \textit{Between Mothers}, supra note 14, at 131.
\textsuperscript{30} Yael Hashiloni-Dolev, \textit{Genetic Counseling for Sex Chromosome Anomalies (SCAs) in Israel and Germany: Assessing Medical Risks According to the Importance of Fertility in Two Cultures}, 20 \textit{MED. ANTHROPOLOGY} Q. 469, 480 (2006) [hereinafter Hashiloni-Dolev, \textit{Genetic Counseling}] (observing that "reproductive laws and fertility services reflect the fact that parenthood is highly valued" in Israel).
\textsuperscript{31} Ivry, supra note 27, at 177; Remennick, \textit{Between Reproductive Citizenship}, supra note 5, at 319 ("The prevalence of infertility treatments in Israel is the highest in the world . . ."); Sperling, supra note 9, at 363 ("Israel has more fertility clinics per capita than any other nation.").
\textsuperscript{32} Daphna Birenbaum-Carmeli & Yoram S. Carmeli, \textit{Reproductive Technologies Among Jewish Israelis: Setting the Ground, in Kin, Gene, Community, supra note 5, at 17; Ivry, supra note 27, at 177; see also KAHN, supra note 7, at 16 (observing that the state funds “all forms of technological treatment, from relatively simple procedures” to highly advanced ones).
\textsuperscript{33} See, e.g., Birenbaum-Carmeli & Carmeli, supra note 32, at 24 ("If having children is a paramount goal in one’s life, and if it justifies, maybe requires, any effort in the name of personal and national accomplishment, then consumers, who willingly subject their bodies to prolonged treatment, can readily claim funding from the state . . ."); Remennick, \textit{Between Reproductive Citizenship, supra note 5, at 327-28 ("It seems only fair that the state would assist these women to further contribute to the common good (and meet social and family expectations) by becoming mothers.").
\textsuperscript{34} Remennick, \textit{Between Reproductive Citizenship, supra note 5, at 335.}
\textsuperscript{35} Birenbaum-Carmeli & Carmeli, supra note 32, at 18.
\textsuperscript{36} See, e.g., Remennick, \textit{Between Reproductive Citizenship, supra note 5, at 323 (identifying an overarching theme of the “unquestioned supreme value of motherhood and a rejection of childlessness as demeaning” in women’s accounts and reporting that many women construed motherhood “in essentialist and primordial terms as an intrinsic feminine propensity”); see also Birenbaum-Carmeli & Carmeli, supra note 32, at 8.
\textsuperscript{37} Remennick, \textit{Between Reproductive Citizenship, supra note 5, at 324 (“If we stopped bearing children by whatever means—natural or medical—what would become
became an indispensable part of their identity as 'women on the way to motherhood,'”38 and they commonly believed that being in treatment made them each “a better person.”39

A. Legal Cooperation in the Project of Reproduction

The state actively presents biotechnology as crucial for the continuity of Jewish existence in the Arab-dominated Middle East. The Israeli legal system colludes with the medical establishment to promote reproductive technologies that other medically advanced nations prohibit, such as egg and embryo donation, attempts to fertilize more eggs than can be transferred to a woman within one IVF treatment cycle (in order to prevent intentional embryo wastage), pre-implantation diagnosis, and sex selection.40 Even labor laws contribute normatively, authorizing work absences for women undertaking fertility treatments.41 Employers who violate the norm—say, by firing the female employee—are forced to compensate the woman at exceptionally high cost.42

As part of its ‘fertility cult,’ Israel became the first country on earth to legalize surrogate motherhood.43 Its Embryo Carrying Agreements Act of 1996 was unanimously supported by an otherwise bitterly divided Parliament.44 Among the few countries that do allow surrogacy, Israel’s laws are especially permissive.45 The law insists on reproduction as a natural duty and denies it economic value by designating the surrogate a ‘volunteer.’46 Surrogates are allowed compensation only for “actual expenses,” subject to the approval of a state committee, and any payment beyond the approved sum of this country? Israel is doomed if Jewish women do not wish to be mothers.”); see also id. at 329 (contrasting the native-Israeli narrative with that of Russian immigrants).

38 Id. at 326–27.

39 Id. at 335; see also Remennick, Childless, supra note 5, at 839 (noting that women consider their “lives meaningful only insofar as they are in the process of becoming pregnant”).

40 See, e.g., Hashiloni-Dolev & Weiner, supra note 20, at 1059–60; see also Hashiloni-Dolev, Between Mothers, supra note 14, at 139–40.

41 Sperling, supra note 9, at 366; see also Birenbaum-Carmeli & Carmeli, supra note 32, at 7 (observing that law protects pregnant women as well as women in fertility treatment from adverse treatment at work and grants the latter up to eighty days of annual paid leave).

42 Sperling, supra note 9, at 366, 370 n.47.

43 Hashiloni-Dolev, Genetic Counseling, supra note 30, at 480.


45 See, e.g., D. KELLY WEISBERG, THE BIRTH OF SURROGACY IN ISRAEL 4 (2005); Sperling, supra note 9, at 365; Teman, The Last Outpost, supra note 26, at 108.

46 Carmel Shalev, Halakha and Patriarchal Motherhood—an Anatomy of the New Israeli Surrogacy Law, 32 ISR. L. REV. 51, 72 (1998); see also id. at 73 (“[T]here is an underlying view that the carrying mother’s activity is not work, or occupational.”).
can result in criminal liability. The willingness of women to rent out their wombs in service of populating the nation has been termed by sociologists an act of "docile citizenship."

Israeli courts have contributed their share to the ‘compulsory motherhood’ ideology by endorsing controversial practices that result in pregnancy. One widely known example is transplanting cryopreserved embryos into a surrogate mother after the intended parents divorced and over the objections of the father. Nor did courts shy away from legitimizing the retrieval of sperm from a dead body at a bereaved widow’s request in order to carry her late husband’s children—which is now “standard practice” in the Jewish state. Parents are now even allowed to produce grandchildren posthumously from their dead sons’ sperm. Recently, the court went one step further, legitimizing postmortem reproduction at the deceased’s parents’ request, notwithstanding the widow’s vehement opposition.

B. Mother v. Father: Gendered Visions of Parenting

While women’s existence is equated with motherhood, men’s role of fatherhood is largely downplayed. They are merely biological participants in reproduction. This should not be surprising in a country which grounds male citizenship in military participation. The Zionist ideology, deeply impacted by anti-Semitic European images of Diaspora Jews as weak, effeminate, and homosexual, re-envisioned the ‘New Jew’ as a man’s man, a decidedly mas-

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47 Embryo Carrying Agreements § 19(b) (in Hebrew) translates to “Any party to a surrogacy agreement or any person on their behalf who offers, gives, requests or receives consideration in money or kind in connection with performance of the surrogacy agreement without approval of the Approval Committee, is liable to one year imprisonment.” (translation by author). In England, in contrast, even though commercial surrogacy is banned, the surrogate mother is specifically exempted from criminal liability. See, e.g., Shalev, supra note 46, at 72.

48 Teman, The Last Outpost, supra note 26, at 113. Teman persuasively makes the case for the selective component of surrogacy law as expressing the image of the heteronormative nuclear family. Id. at 119–20; see also Elly Teman, The Medicalization of “Nature” in the “Artificial Body”: Surrogate Motherhood in Israel, 17 Med. Anthropology Q. 78, 93 (2003) [hereinafter Teman, Medicalization] (“Surrogates establish themselves as conformist Israeli women who have heeded their ‘natural’ and national reproductive calling in the past and are now continuing their missions as good national subjects by helping childless women achieve their own ‘natural/national goal.’”).

49 See CA 2401/95 Nahamani v. Nahamani, 50(4) PD 661 (1996) (in Hebrew). This case will be analyzed in depth infra Part III.C.

50 See Birenbaum-Carmeli & Carmeli, supra note 32, at 19; Sperling, supra note 9, at 365. See generally Ruth Zafran, Dying to be a Father: Legal Paternity in Cases of Posthumous Conception, 8 Hous. J. Health L. & Pol’y 47 (2008) (discussing the harvest and use of sperm from the mother’s late spouse).

51 Birenbaum-Carmeli & Carmeli, supra note 32, at 19.

culine warrior. As I argue elsewhere, in order to compensate for Jewish men’s ‘crippled’ masculinity, the Zionist project has been preoccupied with promoting a hyper-masculine archetype for Israeli men. This archetype is painfully narrow, mandating, inter alia, a bio-economic model of fatherhood: it excludes men from caring and nurturing roles and focuses instead on biological connection and economic contribution. The bio-economic model of fatherhood serves two ideological philosophies. First, it underscores values of fertility and virility and combats the horror of failed sperm, failed intercourse, and failed masculinity. Second, it rejects the social model of relatedness that focuses on the man’s actual relationship with his child, removing caretaking responsibilities from the father’s role.

It is illuminating to contrast the differing conditions for men and women to acquire legitimate status as parents. To begin, it is the woman’s body, not the man’s, that is associated with reproduction. A Jewish father can bestow neither Jewishness nor citizenship status on his offspring. Moreover, noticeable silence surrounds male infertility in medical research and practice; that is, the female body is routinely the one treated, even when the source of infertility is the man.

Israel’s surrogacy regime also reinforces the gendered dichotomy of motherhood as social and fatherhood as biological. The law insists that the designated father must always provide the sperm: if a man cannot be the genetic father, he cannot legally be a father via surrogacy. The opposite is true for the infertile wife, who may use the surrogate service without any biogenetic connection—gestational or genetic—to the child. As long as the woman is the intended caretaker, in the eyes of the law she is the legal mother. This is another manifestation of the selective nature of Israeli pro-natalism: the state will not promote pro-natal interests when the practice symbolically threatens core concepts of fatherhood, which in Israel means a genetic tie maintained by economic support. Recognizing paternity founded...

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53 See, e.g., MEIRA WEISS, THE CHOSEN BODY: THE POLITICS OF THE BODY IN ISRAELI SOCIETY 1 (2002); Yuval-Davis, Woman/Nation/State, supra note 9, at 55.
55 For the “bio-economic” model of fatherhood entrenched in Israeli law, see generally id. (discussing the parent-child relationship under the masculinity culture of the Israeli law).
56 For the analysis of a diverse body of doctrines that exposes the sophisticated ideological work done by the law in entrenching an essentialist form of idealized masculinity through what I term a “bio-economic model” of fatherhood, see generally id.
57 See KAHN, supra note 7, at 166-67 (noting that the male role in reproduction is exclusively generative as opposed to creative).
60 Id.
61 Id.
in childrearing is foreign to Israeli social values. Law and medicine will step in to play the role of nature—but only if there is a woman ready to fulfill the role of nurture.

The law also aims at neutralizing the symbolic challenges that surrogacy presents to the traditional definition of ‘mother’ as a natural caretaker. The surrogate appears to “subvert[] the national and natural orders” by relinquishing the child and denying her maternal instinct. Thus, legalizing this practice creates a paradox where allowing one woman to fulfill her duty of womanhood undercuts the deeply entrenched notion that every woman harbors a biologically determined desire to become a mother. The law’s coping strategy is to outlaw the traditional form of surrogacy—allowed in the United States—where the woman carrying the child is also its genetic mother. Instead, Israel mandates that the surrogate can never provide the female gamete. To this effect, the law stresses the ‘artificial’ nature of the surrogacy so as to rationalize the surrogate’s willingness to give up her child. Remarkably, the surrogate is not even termed a “mother” in colloquial parlance. Unlike the English term “surrogate” (meaning a substitute), the word for surrogacy in Hebrew is poondeka’it, that is, “innkeeper,” thus linguistically constructing the carrying woman as a sort of temporary hostess for the child. Indeed, the very language with which Israeli surrogates articulate their experience is that of the fetus as a “boarder in [the] body.”

The surrogate accordingly is vested with no legal rights toward the child; she is hospitalized in the gynecological ward, while the intended mother is hospitalized in the maternity ward. Only to the latter will the state grant maternity leave. Finally, the entire procedure is veiled in criminally enforced nondisclosure: whoever reveals that the intended mother was not the carrying mother is liable to one year imprisonment, the surrogate herself included.

In short, the law selectively privileges either biogenetic or social relatedness depending on the sex of the parent. The state simultaneously exerts

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62 See, e.g., id. at 81.
64 Cf. id. at 82 (noting that the law limits surrogacy to the gestational variant only).
65 See, e.g., Teman, The Last Outpost, supra note 26, at 119 (noting the “continuous effort” to “categorically designate only one woman as the mother,” which results in “the surrogate being alternately classified as carrier/hostess/innkeeper/woman/sick”).
66 Kahn, supra note 7, at 154; Teman, The Last Outpost, supra note 26, at 118.
67 Kahn, supra note 7, at 154.
68 See Embryo Carrying Agreements Law (Approval of the Agreement and Status of the Newborn), 5756-1996, SH No.1577 p. 176, § 2(4) (in Hebrew); Teman, The Last Outpost, supra note 26, at 118.
69 Teman, The Last Outpost, supra note 26, at 118.
70 Cf. Embryo Carrying Agreements Law § 19(c) (in Hebrew) (prohibiting any party from disclosing information that might make public the identity of the child, surrogate, or intended parents).
social control over women's bodies and lifestyle choices, prescribing reproduction as the prerequisite to female substantive citizenship. The compulsory motherhood enforced by these socio-legal regimes has proved a stumbling block to Israeli women's associations in their efforts to promote gender equality. It has effectively chained women to traditional roles, rationalized their exclusion from positions of power in the public sphere, and cultivated their economic and political inferiority. In this project of compulsory motherhood, Israeli abortion law plays a starring role. As the following Part demonstrates, Israeli abortion law uniquely problematizes our understanding of Israeli pro-natalism and of the maternal role as a prerequisite to substantive citizenship.

III. CONSCRIPTING FEMALE BODIES THROUGH ABORTION LAW

Abortion policies around the world heed two seminal considerations: the degree of reproductive freedom and the extent of commitment to female choice through access to abortion. Consideration of both choice and access gives rise to four main types of statutory regimes.

Enabling regimes are predicated on a woman's right to be the master of her own fate and body; they enable freedom of choice through funding and healthcare facilities. Swedish abortion law is one classic example. In restrictive regimes, conversely, states disregard private discretion and hinder female choice. Ireland's famously restrictive abortion law constitutes the most extreme example among modern democratic societies. Hindering regimes respect individual choice and permit abortion; however, they do not ensure its meaningful exercise. Under United States law, for example, although women enjoy a constitutional right to abortion, they receive no financial assistance for it, and facilities providing abortions are deprived of federal funds. Finally, intrusive regimes limit female choice and bodily self-determination, yet they facilitate those abortions duly authorized by designated governmental machinery.

73 See generally e.g., Orit Kamir, Israeli, Legal, and Social Feminism (2007) (in Hebrew); see also id. at 80 (arguing that Israeli honor revolves around the glorification of the fertility and motherhood of Jewish women, effectively compelling them to reproduce).
74 Yishai, Public Ideas, supra note 72, at 210.
75 Id. at 211.
76 Id.
77 Id.
78 Id. at 211-12.
80 See Yishai, Public Ideas, supra note 72, at 214.
As the subsequent discussion will show, Israeli women live under an intrusive regime.\textsuperscript{81} Israeli abortion law patronizes women, takes away basic entitlements of body and choice, and restricts their autonomy with heavy scrutiny and supervision.

\textbf{A. Criminalizing the Female Body}

Israel’s attitude towards reproduction and abortion is hardly surprising for a state that, haunted by World War II, sought desperately to rehabilitate its dwindling, Holocaust-battered population. In such a social climate, not having children was conceptualized as tantamount to a second “[d]emographic [h]olocaust,”\textsuperscript{82} rendering abortion supporters “incarnation[s] of Hitler.”\textsuperscript{83}

The drive for a majority-Jewish population has always been at the heart of Zionist philosophy.\textsuperscript{84} A possible erosion of the Jewish majority and a growing, hostile Arab population together posed the “ultimate threat” for Israelis\textsuperscript{85}—so much so that, in the 1970s, Prime Minister Golda Meir feared a situation in which she would need to “wake up every morning wondering how many Arab babies [had] been born during the night!”\textsuperscript{86} Indeed, the “demographic race” was well captured by a popular Palestinian saying: “The Israelis beat us in the borders, we beat them in the bedrooms.”\textsuperscript{87} Childbearing thus was a pressing political concern, and the Israeli government exhorted women to bear children to fulfill their duty to the Jewish People.\textsuperscript{88} This view of childbearing—as women’s most fundamental contribution to the Jewish nation-state—helps us comprehend the particularities of Israeli abortion law.

As part of its pro-natal regime, Israel employed abortion law as a regulatory mechanism for directing women’s ‘national’ reproductive role. Historically, abortions were subject to extremely strict policies: pregnancy termination was categorically prohibited, with both the woman undergoing

\textsuperscript{81} See id.
\textsuperscript{83} Yael Yishai, \textit{Abortion in Israel: Social Demands and Political Responses}, in \textit{6 WOMEN IN ISRAEL} 287, 298 (Yael Azmon & Dafna N. Israeli eds., 1993) [hereinafter Yishai, \textit{Abortion in Israel}]. Parliamentary members made an explicit connection between abortion and the Holocaust: “Hitler murdered and burned a million Jewish children in the gas chambers.... Here in the State of Israel some million Jewish children were murdered through abortions.” Yishai, \textit{Hidden Agenda}, supra note 21, at 198.
\textsuperscript{84} Yuval-Davis, \textit{Woman/Nation/State}, supra note 9, at 50.
\textsuperscript{85} Id. at 50; see id. at 51 (noting that “family size has become a conscious political weapon among Palestinian nationalists”); see also Yishai, \textit{Abortion in Israel}, supra note 83, at 291.
\textsuperscript{86} Yuval-Davis, \textit{Woman/Nation/State}, supra note 9, at 38.
\textsuperscript{87} Yuval-Davis, \textit{Biological Reproduction}, supra note 82, at 22.
\textsuperscript{88} See Yishai, \textit{Abortion in Israel}, supra note 83, at 292; Yuval-Davis, \textit{Woman/Nation/State}, supra note 9, at 54.
the abortion and the person performing it subject to imprisonment.\textsuperscript{89} Later judicial discretion disposed of this criminal liability upon showing medical necessity.\textsuperscript{90} Still, to have such an abortion, a woman needed both physician approval and her husband’s consent.\textsuperscript{91} This pro-childbearing regime was accompanied by monetary incentives: paid maternity leave was the first social benefit enacted,\textsuperscript{92} and national awards were granted to “Heroine Mothers” who gave birth to ten or more children.\textsuperscript{93} A decade later, however, the “Heroine Mothers” monetary policy was abolished for its ‘perverse’ effects: Palestinian women—i.e., members of the ‘wrong’ ethnic group—had become the policy’s primary beneficiaries.\textsuperscript{94} Thereafter, only Palestinian women were entitled to free contraceptives in Israel,\textsuperscript{95} revealing a selectively pro-natalist policy carefully directed at increasing Israel’s Jewish population.\textsuperscript{96}

Under this rigid legal framework, abortions were relegated to the shadow of the law, with women resorting to private, expensive, and often unsafe abortion procedures. Abortion became the “dead secret of [Israeli] society,”\textsuperscript{97} while in public it was still reprimanded as dangerous and revealing of a “selfishness” that led “spoiled” and “frivolous” Ashkenazi Jewish women to stray from their maternal responsibility.\textsuperscript{98}

The Natality Commission for the Study of Birthrate Problems—created in response to growing concerns over declining population growth and the diverging fertility levels of Arabs and Jews—singled out abortion as a cru-


\textsuperscript{90} See CC (Hi) 207/52 Attorney Gen. v. Horvitz, PM 5713(5) 459, 466–67 (1952) (in Hebrew); see also Yishai, \textit{Hidden Agenda}, supra note 21, at 195. See generally Dan Shnit, \textit{Induced Abortion in Israeli Law}, 15 \textit{ISRAELI Y.B. ON HUM. RTS.} 155 (1985) (suggesting that Israel has adopted an intermediate approach to regulation which excludes justified exceptions from bans on abortion).

\textsuperscript{91} See Yishai, \textit{Abortion in Israel}, supra note 83, at 290. Husbandly control over women’s reproductive decisions presented itself as an indispensable necessity in a society in which masculinity was measured in terms of fertility. See \textit{id}.

\textsuperscript{92} See Birenbaum-Carmeli & Carmeli, \textit{supra} note 32, at 7.

\textsuperscript{93} See Yuval-Davis, \textit{Biological Reproduction}, \textit{supra} note 82, at 19.

\textsuperscript{94} See Yishai, \textit{Abortion in Israel, supra note 83, at 292; see also Berkovitch, supra note 9, at 607 (“[M]otherhood of Jewish women alone is the one that is being promoted and celebrated.”); id. at 616 (observing that motherhood of non-Jewish women is perceived as “a threat to the ideological foundations of the Zionist State”).

\textsuperscript{95} Yuval-Davis, \textit{Woman/Nation/State} supra note 9, at 55.

\textsuperscript{96} See, e.g., Katherine M. Franke, \textit{Theorizing Yes: An Essay on Feminism, Law, and Desire}, 101 \textit{COLUM. L. REV.} 181, 194 (2001) (“In Israel ... the government has long-favored maternal policies that generously subsidize Jewish women’s maternity ... while actively discouraging Palestinian women’s reproduction.”).

\textsuperscript{97} See Yishai, \textit{Abortion in Israel, supra note 83, at 287}.

\textsuperscript{98} See Amir & Shoshi, \textit{Israeli Abortion Law, supra note 89, at 785, 789; see also Delila Amir & Niva Shoshi, \textit{Feminism and the Empowerment of Women in Israel: Abortion Policy as a Case Study}, in \textit{EMPOWERMENT ON TRIAL} 279, 289, 291 (Mimi Ajzenstadt & Guy Mundlak eds., 2008) (in Hebrew) [hereinafter Amir & Shoshi, \textit{Feminism and Empowerment}].
cial issue in its 1966 report. The report's discussion of abortion policy implications focused entirely on the collective and took no efforts to include the interests or autonomy of women. The Commission worried about the risks that women undergoing abortion posed to their future reproductive fertility and characterized such risks as undermining the demographic project and as a threat to public "health" and "strength." Believing these threats could be neutralized by reducing the market for illegal abortions, the Commission called for a more realistic abortion regime with improved public enforcement.

These pressures culminated in 1972 in the newly formed Committee on the Study of Abortion, entrusted with formulating a more realistic abortion policy that would allow 'necessary' abortions by qualified physicians in authorized medical institutions. Unlike most Westernized countries, in Israel, abortion laws were reformed for manifestly anti-feminist reasons: women's health mattered for the survival of the Jewish demographic. And rather than the conventional anti-abortion rhetoric characterizing abortion as murder, pro-natalism called on Jewish women to fulfill their national duty of repopulating the state and its army.

99 See, e.g., Noga Morag Levine, Abortion in Israel: Community, Rights, and the Context of Compromise, 19 LAW SOC. INVQ. 313, 323 (1994); see also Yishai, Abortion in Israel, supra note 83, at 293.

100 See Amir & Shoshi, Israeli Abortion Law, supra note 89, at 786 (translation by author).

101 See, e.g., Yael Yishai, Abortion in Israel: Social Demands and Political Responses, in WOMEN IN ISRAEL, supra note 83, at 287, 303 ("[A]bortion was defined in terms of national objectives, rather than in terms of individual liberty."); Levine, supra note 99, at 323–24; Remennick & Hetsroni, supra note 23, at 421 (noting that the "inefficient and negative health implications of the prohibitive law became evident").

102 See MINISTRY OF HEALTH, REPORT OF THE COMMITTEE FOR THE STUDY OF THE BAN ON INDUCED Abortions (Shabtay Ginaton ed., 1974); see also Amir & Shoshi, Israeli Abortion Law, supra note 89, at 791.

103 See, e.g., DELILA AMIR & DAVID NAVON, THE POLITICS OF ABORTION IN ISRAEL 50 (1989) (in Hebrew); Amir & Shoshi, Israeli Abortion Law, supra note 89, at 791, 804; Yishai, Hidden Agenda, supra note 21, at 199–200 (noting demographic concerns and that "[t]he theme of women's liberation hardly surfaced in the abortion deliberations . . . both the tone and the music were anti-feminist," with parliamentary atmosphere and hearings being "dismissive of women"). It is noteworthy that the role religious parties and the Jewish Halakha played in the formulation of the anti-abortion law was relatively minor. See id. at 200. In fact, Jewish law is much more lenient on abortion issues than other religions and as such was secondary in the shaping of abortion law. See, e.g., Levine, supra note 99, at 317–20.

104 See Hashiloni-Dolev, Between Mothers, supra note 14, at 135 ("[A]bortion is usually justified or opposed in Israeli culture in terms of arguments about demographic or social distress, and not in terms of feminist or right-to-life discourse."); Rimon-Zarfaty & Jotkowitz, The Israeli Abortion Committees' Process of Decision Making: An Ethical Analysis, 38 J. MED. ETHICS 26, 29 (2012); cf. Yuval-Davis, Woman/Nation/State, supra note 9, at 55 (discussing women's "national role" of "producing babies who would become soldiers").
B. Abortion Laws as Population Quality Control

The 1977 amendments to abortion law transformed the regime from prohibitory to situational. Abortion remained a crime, punishable by five years imprisonment, but could be legal upon approval by a special committee. The committee was authorized, but not required, to approve abortions that met a restricted list of carefully defined conditions. Those terms of pregnancy termination do not depend on the reasons for which the woman seeks an abortion. Under the 1977 amendment, the committee could approve an abortion believed to be justified based on the following factors:

1. A woman’s age, if she is younger than the legal age of marriage (18) or older than 40;
2. The circumstances of pregnancy, if pregnancy resulted from socially condemned relations, such as rape, incest, pre- or extra-marital relationships;
3. Whether the fetus is likely to have a physical or mental birth defect; or
4. A woman’s health, if continuing the pregnancy may put the woman’s life at risk or damage her physically or mentally.

Originally a fifth “social conditions” clause allowed for abortions in difficult socioeconomic circumstances. This clause proved extremely popular as a device for female liberation but was repealed less than two years after its enactment.

Sociologists Delila Amir and Niva Shoshi challenge us to conceive of law as a cultural storyteller and thus to contemplate why the state selected these abortion-enabling conditions and not others. As they observe, the classificatory law distinguishes between categories of women and of fetuses and may thus serve as a normative statement as to who should reproduce and

105 See Amendment to the Penal Laws (Abortion), 5737–1977, SH No. 842 p. 70 (in Hebrew). It is noteworthy that according to Israeli law, only the physician may be subject to criminal liability, not the woman undergoing the abortion.
106 Id. § 5.
108 Amendment to the Penal Laws (Abortion) § 5(a); see also Hashiloni-Dolev & Weiner, supra note 20, at 1057.
110 Cf. Yishai, Hidden Agenda, supra note 21, at 202–03 (noting that feminists opposed the clause’s repeal and that, before its repeal, almost forty percent of abortion approvals used the clause).
111 See id.
112 See generally Amir & Shoshi, Israeli Abortion Law, supra note 89 (providing an account that probes the social meaning of the Israeli abortion law).
how in the ideal Israeli family. Drawing on this insight, I argue that by stipulating these specific terms of termination, Israeli legislation serves a dual purpose: first, it facilitates population growth (quantity); second, it facilitates population control (quality).

1. The ‘New Jew’: Deconstructing the Regulatory Elements of Abortion Law

The statutory terms of pregnancy termination may be classified into four categories: the ‘chosen mothers’ clause, the ‘chosen bodies’ clause, the ‘chosen people’ clause, and the ‘missing’ clause. Viewed together, they may be read as founded on the Zionist reconstruction of the ‘New Jew.’ As such, they restrain the pronatalistic desire by demanding the delivery of ‘perfect’ babies: normal, healthy, intelligent, purely Jewish (and preferably Ashkenazi) citizens, conceived through morally accepted relationships and at a proper age. Stated simply, under the selective abortion regime, a Jewish woman’s role as reproducer involves not only quantity, but also quality.

(a) The ‘Chosen Mothers’ Clause

The first clause allows legal abortions for women whom the state considers too young to serve as ‘good’ mothers or to do justice to the mission of producing normative future citizens. These are ‘deviant’ women, having attested to their own untrustworthiness by having unprotected sex. At the same time, since the state has a stake in terminating such pregnancies, the law considers minor women sufficiently mature to have an abortion without notifying their legal guardians. With similar reasoning, the first clause considers some women too old to be trusted with carrying a healthy normal fetus or providing sufficient childcare. The second clause gives similar treatment to women who conceive outside of officially sanctioned relationships. As Amir and Shoshi note, a

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113 See id, at 794–95, 801–05; see also Amir & Shoshi, Feminism and Empowerment, supra note 98, at 284.
114 See Amir & Shoshi, Feminism and Empowerment, supra note 98, at 298 (a woman younger than the marriage age is deemed incapable of coping with maternal commitments).
116 See e.g., Amir & Shoshi, Feminism and Empowerment, supra note 98, at 299 (explaining that the age limit is meant to minimize the risk of a defective fetus); Zvi Triger, Crimes Against Patriarchy: Adultery, Abortion and Homosexuality 99 (2013) (in Hebrew) (noting that the State is willing to allow abortion, inter alia, in cases where women are perceived as not being able to take care of the child). Similarly, age is part of the eligibility criteria for single women seeking insemination precisely because “the higher limit is intended to ensure parental responsibility until the child turns 18 out of fear of orphaning the child.” Kahn, supra note 7, at 28.
117 Reflective of the regulatory regime’s assumption that unmarried women are per se unfit to be mothers is their disenitlement to use egg donations unless they get married.
comparative look at other situational laws worldwide shows that Israel is unique in considering both the woman's personal characteristics and the relationship between her and the father in validating abortion. I suggest that this is because being Jewish is not a purely genetic matter: "to be a Jew one has to be born to a Jewish mother in the 'proper' way." 'Irresponsible' pregnancies cast doubt on the legitimacy and 'Jewishness' of the child-to-be, thus risking contamination of the Jewish demographic. Cases of adulterous or incestuous conception, for example, would produce socially disabled offspring—offspring who cannot legally marry in Israel and who can only produce other 'defective' offspring like themselves.

Cognizant of the link between maternal responsibility and 'moral' conception, women invoked adultery as the ultimate entry ticket to reproductive freedom. Such a reason kills two birds with one stone, disqualifying the woman as a trustworthy and normative mother while bastardizing the fetus. Extramarital pregnancy is indeed the most common reason for pregnancy termination in Israel, accounting for more than fifty percent of all abortion permits.

This recurring theme—preoccupation with the identity of the parents and the legitimacy of the children—is echoed in other statutes as well. Under surrogacy law, for example, the surrogate cannot be married and must be Jewish so as to not jeopardize the social and spiritual 'purity' of the fetus she is carrying. Likewise, adoption law imposes a strict religious matching precondition, barring Jewish parents from adopting a Gentile child, and non-Jews from adopting a Jewish child.

See Kahn, supra note 7, at 84. "[T]he regulatory limit that excludes unmarried Israeli women under the age of thirty from insurance coverage for artificial insemination also reifies the assumption that a woman would not, or should not, choose the course of unmarried motherhood unless and until other avenues for maternity have failed to materialize." Id. at 18.

119 Yuval-Davis, Woman/Nation/State, supra note 9, at 42; see also id. at 41 ("Jewish national ideology is explicit in placing a greater emphasis on the right 'genetic' origin rather than other national collectivities.").
120 Id. at 42 (noting that if one is not born in the "proper" way (for example, as a result of forbidden relationships of adultery or incest), one is considered a mamzer (bastard), an outcast from the Jewish national collectivity forever, whose descendants are unable to marry other Jews); see also Hashiloni-Dolev & Weiner, supra note 20, at 1059 ("[T]he legitimisation [sic] of abortion on the grounds of extramarital sex . . . is based on the Jewish fear of giving birth to a 'mamzer . . .'.")
121 See Kahn, supra note 7, at 74 (describing the social disabilities of the mamzer).
122 RUTH HALPERIN-KADDARI, WOMEN IN ISRAEL: A STATE OF THEIR OWN 77 (2004).
123 If the contracting parties are not Jewish, the religious matching requirement may be waived. See Embryo Carrying Agreements Law (Approval of the Agreement and Status of the Newborn), 5756-1996, SH No. 1577 p. 176, § 2(5) (in Hebrew); see also Shulamit Almog & Ariel Bendor, Freedom of Fertility as a Basic Human Right, in A DIFFERENT KIND OF PREGNANCY 115, 126 (Shulamit Almog et al. eds., 1996) (in Hebrew); Michael M. Karayanni, In the Best Interests of the Group: Religious Matching Under Israeli Adoption Law, 3 BERKELEY J. MIDDLE E. & ISLAMIC L. 1, 65 (2010).
Unmarried women defying the traditional family structure are also frowned upon as potential mothers. Importantly, according to Jewish law—in marked contradistinction to other religions and traditional western law—the legitimacy of children born out of wedlock is impeccable. And yet it is precisely the State of Israel, again exceptional among abortion regimes, that treats singlehood as a justified cause for pregnancy termination. Understood thus, Israeli abortion law in fact operates to transfer illegitimacy from the fetus to the mother. What makes pregnancy termination justified, then, is not the status of the fetus but the status of the woman carrying it. She herself is not trusted to be a competent, normative mother.

The legal disfavor conferring illegitimacy on unmarried women is reinforced again by the combined force of adoption law—only married couples, not single women, are qualified as adoptive parents—and surrogacy law—single women are prohibited from becoming mothers via surrogacy. Ironically, at the same time that they are unwelcome as intended mothers, only unmarried women are legally competent to serve as surrogate mothers, with the underlying offensive undercurrent that “single women are good as pregnancy bearers for heterosexual couples as ‘wombs for rent,’ but not as mothers.”

When one such woman petitioned the Supreme Court to declare the discriminatory surrogacy law unconstitutional, she found no recourse. In a peculiar decision, the Court resisted invalidating the law, even though almost all Justices conceded that the law indefensibly violated fundamental rights, while acknowledging that the right to parenthood is “the aspiration of humankind—and certainly the aspiration of every woman.” The message to single women is clear: you may want to be a mother, but the state is not interested in your motherhood.

125 Take Islamic law, for example, which is the binding law for the Muslim citizens of Israel. A child born out of wedlock is illegitimate and legally considered nobody’s child. This means that the biological father has no obligations whatsoever toward the child. For this religious rule and for a precedential case discussing illegitimacy and developing a civil alternative to religious fatherhood, see CA 3077/90 Plonit v. Ploni 49(2) PD 578 (1995) (in Hebrew).

126 Adoption of Children Law § 3; Embryo Carrying Agreements Law § 1; KAhn, supra note 7, at 156. The legal system is not consistent, however, in the ideological message to unmarried motherhood. For example, since 1997 single women are no longer discriminated against in the usage of IVF and artificial insemination. See Daphna Hacker, Beyond ‘Old Maid’ and ‘Sex and the City’: Singlehood as an Important Option for Women and Israeli Law’s Attitude Towards It, 28 Tel. Aviv L. Rev. 903, 939–40 (2005) [hereinafter Hacker, Old Maid] (in Hebrew).

127 Hacker, Old Maid, supra note 127, at 942. Married women may only serve as surrogates in exceptional circumstances. Id. at 941–42 (translation by author) (analyzing Embryo Carrying Agreements Law § 2(3)(a)).


129 Id. § 9 (Strasberg-Cohen, J.).

130 Id. § 32 (Cheshin, J.) (translation by author) (emphasis added).
The second clause, in short, indirectly regulates women's sexual conduct while revealing social concerns over their maternal competence and eugenic concerns for the 'moral' excellence of their progeny.

The clause focusing on women's health may also be read as implicating both dimensions of Israel's selective reproduction project. It is a 'quantity' growth regulation because the state has a stake in protecting women's health and reproductive capacity to allow them to produce more children in the future. At the same time it is also a 'quality' control regulation supervising mothers: the state is interested in healthy women who are capable, physically as well as emotionally, of devoting body and soul to Israeli babies.

Against this backdrop, it is unsurprising that a 2015 Supreme Court decision unanimously rejected a petition by a disabled woman to recognize her parenthood over a child she 'created.' Seizing her only chance at motherhood, as her muscular atrophy disease made bearing a child impossible, the woman singlehandedly orchestrated the fertilization of a donated sperm and a donated egg and had them transplanted in a surrogate mother. When the child was born, the State—and then all three courts hearing the case—refused to recognize the woman as the legal mother and placed the baby up for adoption.

In this reading, only women in overall good health may provide the high-quality childcare that is expected of the 'good' Jewish mother.

(b) The 'Chosen Bodies' Clause

The third clause expands bio-political considerations to include the genetic quality of Israel's "chosen bodies." It establishes that a 'qualified' Jewish citizen must be both physically and mentally healthy. Emblematic of this obsession with the "perfect child" is the "relative absence of people with deformities in the Israeli public sphere." The "fetal defect" clause

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132 Id. § 1.
133 Id. § 2. Of course, nothing in the Court's hard-letter legal reasoning referred to the woman's health or doubted her competence as a mother. Yet, at least with regard to the Appellate Court's opinion, one could sense an implicit disapproval of the woman. That court contrasted the woman's actions with adoption, implying that while the latter was altruistic, the former was selfish and without due sensitivity to the best interests of the child. See FA (BS) 59993/07 Plonit v. Plonit, § 22 (2014) (unpublished decision) (in Hebrew).
134 The 'quality control' of children through selective abortion, alongside Israel's world-record rate of rejecting less-than-perfect babies, has led one sociologist to coin the term "chosen body." This term describes the cultural script of monitoring, screening, molding, and selecting concrete Israeli bodies from womb to tomb as part and parcel of the promise of the Zionist eugenicist ideology to replace the "sick" Jewish collective with a healed, whole, and better one—to improve, both quantitatively and qualitatively, future generations of Israeli-born Jews. See generally WEISS, supra note 53 (explaining that, by regulating the bodies of mothers and fetuses, the Israeli quest for the 'perfect' child also constructs Israeli collective identity).
135 See Ivry, supra note 27, at 186.
imposes these standards of perfection through abortion law, permitting abortions even in cases of mild or unconfirmed defects, including those that in other cultures would simply be corrected through surgery or dismissed as merely aesthetic (such as a cleft lip or a small penis).

Israel’s demand for the supply of “perfect” babies has led to world records: Israeli women undergo more pregnancy screenings and resort to abortion for minor defects more often than women in any other country. They also set records for pre-pregnancy examinations, including genetic tests that raise acute ethical dilemmas and are not performed anywhere else around the globe.

A recent study showed that a key force driving Jewish-Israeli women’s choice for prenatal genetic diagnosis has been the motivation to conform to the collective ideals of good parenting. Jewish-Israeli women are powerfully socialized to consider the health, appearance, and normalcy of their fetus as part of their own maternal responsibility of ‘protecting’ society.

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136 See RIMON-ZARFATY, supra note 14, at 85 (finding that parents and committee members in Israel tend to select abortion even in cases of relatively mild defects, that is, when individuals would still have normal intelligence, a normal life span, and a reasonable quality of life, in cases where the probability of the phenotype being affected is low, as well as in cases of late-stage pregnancies); see also, e.g., id. at 58 (finding that professionals themselves encourage unwilling parents to terminate pregnancies in case of fetal malformations as part of the construction of responsible parenthood).

137 Israeli women abort fetuses that suffer from mild impairments such as the mildest form of Gaucher and congenital deafness, milder forms of dwarfism, repairable heart defects, and absence or surplus of a limb. See Rimon-Zarfaty & Jotkowitz, supra note 104, at 29 (finding that abortions are approved and performed in Israel even in cases of mild to moderate or merely possible embryopathies and suggesting that the Israeli tendency to approve abortion due to mild to moderate or likely embryopathies may be explained in terms of “society’s desire for the perfect child”). As one pregnancy-termination committee member testified, the Israeli population “manages its reproductive decisions according to risk margins that are lower than anywhere else in the world. People here are not willing to take any risk.” Nitzan Rimon-Zarfaty & Aviad Raz, Abortion Committees as Agents of Eugenics: Medical and Public Views on Selective Abortion Following Mild or Likely Fetal Pathology, in KIN, GENE, COMMUNITY, supra note 5, at 202, 208.

138 RIMON-ZARFATY, supra note 14, at 51; WEISS, supra note 53, at 2 (“Israeli women hold the world record for fetal diagnostics.”).

139 Birenbaum-Carmeli & Carmeli, supra note 32, at 25 (“Jewish Israelis are avid consumers of pre-marital, pre-pregnancy, and prenatal screening tests, many of which are also state funded.”); WEISS, supra note 53, at 2; see also Birenbaum-Carmeli & Carmeli, supra note 32, at 26 (“Prior to pregnancy, Jewish Israeli women and couples generally embark on a series of screening tests, proactively encouraged by the local HMOs [Health Maintenance Organizations]. Clalit, for instance, declares on its pregnancy website that ‘modern pregnancy lasts 12 months, the first three being devoted to preparations and consultations.’”).

140 See, e.g., Birenbaum-Carmeli & Carmeli, supra note 32, at 27; RIMON-ZARFATY, supra note 14, at 19; Larissa Remennick, The Quest for the Perfect Baby: Why Do Israeli Women Seek Prenatal Genetic Testing?, 28 SOC. HEALTH & ILLNESS 21, 44 (2006) [hereinafter Remennick, The Quest for the Perfect Baby] (Medical professionals in Israel “control every breath of pregnant women and push on them more tests and procedures every year, some of purely experimental nature.”).

141 See Remennick, The Quest for the Perfect Baby, supra note 140, at 26, 34.
from deformed children. Social scientists have tellingly found no other place where a woman's failure to undergo prenatal screening tests and to abort a possibly defective fetus has been conceptualized as a betrayal of 'good and responsible motherhood' and labeled as "irresponsible," "crazy," and "deviant."

In short, Israel embraces a variety of practices intensely criticized in Western thought as a kind of "backdoor eugenics." The bioethical critique and public moral discourse prevalent elsewhere (e.g., a discourse deeply disturbed by the prospect of "designer babies" and the devaluing of disabled lives) was virtually absent in Israel until recently. In fact, even Israeli disability organizations tend to be supportive of prenatal diagnosis and eugenic abortions, viewing the prevention of life with disability as an improvement in the health of the next generation in service of the common good.

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142 See Rimon-Zarfat & Raz, supra note 1, at 211 (observing that Israeli parents "construct prenatal diagnosis as an important and taken-for-granted part of 'responsible parenthood.'"); Remennick, The Quest for the Perfect Baby, supra note 140, at 35 ("[W]omen ... saw it as their 'duty before their future children and the family' to clarify whether they carried potentially 'bad genes' in order to screen out problematic pregnancies."); id. at 37 ("Preventing disability was perceived as an indispensable part of good motherhood, an expression of responsibility towards one's own future, existing children and other family, as well as society at large.").

143 See RIMON-ZARFAT, supra note 14, at 52–55 (discussing the phenomenon of prenatal diagnosis as a manifestation of "responsible parenthood" and explaining that submission to prenatal diagnosis represents what Israeli society constructs as the dictates of responsible parenthood); cf. Hashiloni-Dolev, Between Mothers, supra note 14, at 134 (discussing how Israeli beliefs on prenatal testing are unique).

144 RIMON-ZARFATY, supra note 14, at 49 (noting the "tendency in Israel to see a woman who doesn't use prenatal diagnosis as primitive, and a woman who does not want to abort a fetus with malformation as 'crazy'") (translation by author); id. at 54 (noting that the stigmatization that results is unique to Israel); Remennick, The Quest for the Perfect Baby, supra note 140, at 34, 45–46 (identifying peer groups as an important source of normative pressure to undergo elective screening testing and finding that most women who decided not to take such tests or criticized prenatal screening faced social disapproval and negative stereotyping as "irresponsible mothers" who are "not caring enough about their future babies"); id. at 49 ("Women who did not comply with excessive medical surveillance often faced the disapproval of their social network and negative labelling [sic] as 'backward' and/or 'irresponsible' ... ").

145 See, e.g., Hashiloni-Dolev, Between Mothers, supra note 14, at 130; Rimon-Zarfaty & Jotkowitz, supra note 104, at 27. For an important recent critique examining wrongful life and wrongful birth lawsuits in Israel, see generally Sagit Mor, The Dialectics of Wrongful Life and Wrongful Birth Claims in Israel: A Disability Critique, 63 STUD. L. POL. & SOC'y 113 (2014).

146 See RIMON-ZARFATY, supra note 14, at 11; see also id. at 80 (noting the central place that the harsh criticism of reproductive genetics occupies all over the Western world; this criticism is totally absent in Israel).

147 See, e.g., Hashiloni-Dolev, Between Mothers, supra note 14, at 130; Rimon-Zarfaty & Jotkowitz, supra note 104, at 27. For an important recent critique examining wrongful life and wrongful birth lawsuits in Israel, see generally Sagit Mor, The Dialectics of Wrongful Life and Wrongful Birth Claims in Israel: A Disability Critique, 63 STUD. L. POL. & SOC'y 113 (2014).
The fetal defect clause, then, shows us that while Israel’s abortion policy is on the one hand extremely restrictive (in that it generally prohibits, delegitimized, and stigmatizes abortion), it is on the other hand, in case of fetal abnormality, most prescriptive (in that it practically coerces abortion).\(^4\) It is telling that at the same time that the Israeli legislature reformed abortion law, the government created a free-of-charge service for the prevention of inborn abnormalities\(^4\) and committed to providing women free access to abortion facilities.\(^5\) In sum, once the state characterizes a particular fetus as worthy of termination, the legal regime becomes enabling, actively supporting abortion by providing women with the facilities and funding necessary to terminate their pregnancy.\(^5\)

(c) The ‘Chosen People’ Clause

While the fetal defect clause regulates genetically ‘unworthy’ lives, the now-repealed socioeconomic clause monitored the reproduction of ethnic groups socially viewed as inferior. It aimed to increase the birth rate of the ‘right’ demographic (Ashkenazi or Occidental Jews of European and American origin) while controlling the population of the relatively poor and underprivileged (Mizrahi or Sephardic Jews of Afro-Asian origin).\(^5\) The Zionist project, keenly aware that Jews would always remain a quantitative minority

\(^4\) See Ronit D. Leichtentritt, Silenced Voices: Israeli Mothers‘ Experience of Feticide, 72 Soc. Sci. & Med. 747, 752–53 (2011) (“[The] strong emphasis on the child’s health and normalcy resulted in the informants‘ conclusion that they ‘could not reach any other decision than to end the pregnancy.’”). Israeli society sends a clear message to pregnant women concerning their responsibility to give birth to a healthy child. See id. at 749–50.

\(^5\) See Ivry, supra note 27, at 177.

\(^6\) See Yishai, Public Ideas, supra note 72, at 214–15.

\(^7\) See, e.g., Rimon-Zarfaty, supra note 14, at 20 (noting that Israel encourages the birth of healthy children only: the state will provide women with all the necessary resources to abort a fetus with genetic abnormality, but the state will not provide even the most basic needs required for a dignified existence of the disabled); Yishai, Public Ideas, supra note 72, at 214–15 (observing that once the committee approves abortion, “the Israeli state provides a woman with the necessary facilities to terminate her pregnancy. She pays a sum equivalent to the cost of one day’s hospitalization, but even that is reimbursed by the public health authorities... The state is thus committed to providing women with adequate access to abortion facilities, but only after it ensures comprehensive control of the authorization process.”).
in the Arab East, was primarily concerned with the quality of human capital available to the Jewish state. The ultimate goal was to establish technological, organizational, and military superiority over the Arab world. Consequently, Mizrahi Jews, associated with backwardness and "Arabness," were perceived as a threat to the quality of future generations and the development of the Jewish state.

When it became clear that Mizrahi Jews were beginning to form a demographic majority within the Jewish population, Ashkenazi state officials warned that most children in Israel were being born to "un-educated and culturally inferior mothers." The hegemonic Ashkenazi government thus came to realize that "[e]ncouraging fertility of all Israelis, regardless of their socio-economic status [might lead] to a widening of the demographic gap between Jews and Arabs, as well as to the perpetuation of distress among the Jewish poor." The socioeconomic clause hence became a unique mechanism for both gender and class discrimination. The socioeconomic clause captured the abortion regime's distinct, though carefully disguised, political conviction that the "[s]ymbolic reproduction of the Israeli Jewish national collective depends on the availability of people 'of the right kind' to 'man' it." It should come as little surprise, then, that the repeal of the socioeconomic clause, passed by an overwhelmingly Ashkenazi legislature, was the consequence of considerable political upheaval: the election of a right-wing party.

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153 See, e.g., Yuval-Davis, Woman/Nation/State, supra note 9, at 53, 55; see also Hashash, supra note , at 291 n.12 (quoting a member of the Israeli Demographic Center's Council as having given the following warning: "If we push the public to create larger families to solve the demographic problem we will entrust our existence to a public that may be bigger but lower in quality, much like that of the countries that surround us"); Hashiloni-Dolev, Between Mothers, supra note 14, at 139-40 (noting that the very survival of Israel in a hostile, Arab-dominated Middle East is perceived to be "dependent on its modernity—that is, on its scientific and technological superiority"); Yishai, Hidden Agenda, supra note 21, at 196 (noting the general state interest in "encouraging a higher birth rate among the more affluent social sectors and restricting fertility among deprived groups").

154 Birenbaum-Carmeli & Carmeli, supra note 32, at 12 (noting the depiction of Mizrahi Jews and their large families as "a symbol of backwardness and 'Arabness,' to be presumably 'rectified' by (Ashkenazi) Zionism"); see also Yishai, Hidden Agenda, supra note 21, at 199; Yuval-Davis, Woman/Nation/State, supra note 9, at 52 (noting studies concluding that "class differentiation between Ashkenazi and Oriental Jews in Israel had grown rather than shrunk in the course of the 1960s").

155 Hashash, supra note 152, at 290–91 n.8 (quoting Professor Roberto Bachi, then-chief demographer); see also id. at 276 ("The [Demographic] Center's active committee members frequently referred to the national threat of burdening the public with population growth in the lower strata."). The former head of Israel's largest Health Fund and the general director of the Ministry of Health in the 1940s, Joseph Meir, stated that the State has "no interest" in the large "poor Mizrahi families" and "must pray" for the children of "the intelligentsia.") Birenbaum-Carmeli & Carmeli, supra note 32, at 12.

156 Yishai, Hidden Agenda, supra note 21, at 199.

157 Yuval-Davis, Woman/Nation/State, supra note 9, at 38.
serving the interests of Mizrahi Jews, for the first time in Israel’s history.\textsuperscript{158} Even then, the abortion clause giving birth to ethnic discrimination was aborted following powerful public protests—unusual given the general absence of public abortion debate in Israel.\textsuperscript{159} From now on, all Jews—of all origins—belong to the ‘chosen people.’\textsuperscript{160}

\textit{(d) The ‘Missing’ Clause}

We’ve seen what terms of termination the 1977 amendment lists for ‘necessary’ abortions, but just as interesting are the criteria missing from the list of permissible factors. Israeli law ignores the main points of controversy in other abortion regimes: fetal age, viability, and the stage of the pregnancy.\textsuperscript{161} Protecting the fetus is largely viewed as “virtually a non-issue”; the fetus is not considered a proper or even legitimate stakeholder in the debate.\textsuperscript{162} As such, pregnancy termination may be performed even in the fortieth week of pregnancy, and when the woman is experiencing contractions, with indifference to the possibility of saving a viable fetus.\textsuperscript{163} Consequently, late-term abortions are more common in Israel than anywhere else

\textsuperscript{158} Yishai, Hidden Agenda, supra note 21, at 200–01; Yuval-Davis, Woman/Nation/ State, supra note 9, at 43–44.
\textsuperscript{159} Amir & Shoshi, Feminism and Empowerment, supra note 98, at 309 (noting that as opposed to the passivity and large acceptance of the original law, the debate over the abolishment of the socioeconomic clause aroused fierce controversy).
\textsuperscript{161} See, e.g., Hashiloni-Dolev & Weiner, supra note 20, at 1059 (noting that the lack of a time limit for abortions in Israeli law is “very uncommon among other Western countries”); Rimon-Zarfaty & Jotkowitz, supra note 104, at 26 (“Israeli law is an exception as it allows late-term abortions (at all stages of pregnancy.”)); see also Leichtentritt, supra note 148, at 747 (“Israeli policies and social norms concerning TOP [termination of pregnancy] and feticide differ from those in other Western societies.”). A December 2007 directive, issued by the Ministry of Health, requires a stricter approval process for late-term abortions: past the twenty-fourth week, an abortion-candidate must present her case before a high-level five-person committee. Dan Even, Late-Term Abortions on the Rise in Israel, Despite Tougher Approval Process, HAARETZ (Mar. 28, 2013, 6:29 PM), http://www.haaretz.com/news/national/late-term-abortions-on-the-rise-in-israel-despite-tougher-approval-process-premium-1.512274 [http://perma.cc/F4SC-BRQX]. However, the legality of this directive is highly dubious since it was issued \textit{ultra vires} the Minstry’s jurisdiction (in the sense that its subject matter calls for primary legislation). See Yossi Grin, Pregnancy Termination and Public Policy, 39 Med. & L. 187, 197–98 (2008) (in Hebrew).
\textsuperscript{162} Hashiloni-Dolev, Between Mothers, supra note 14, at 135; \textit{see also} id. at 136 (“[T]he Israeli fetus has no legal standing whatsoever and is not recognized as an autonomous being.”); Leichtentritt, supra note 148, at 749 (finding that all the participants in her study on feticide did not focus on fetal life but rather on “quality of life, eugenics and health”).
\textsuperscript{163} \textit{See} Rimon-Zarfaty, supra note 14, at 45 (discussing the practice of late-term abortions); Rimon-Zarfaty & Raz, supra note 137, at 209 (reporting on “extreme cases of women undergoing abortion in a very late stage” and a committee advisor likening the practice to “delivering the newborn and then hitting him with a big stick on the head”); \textit{see also} Ivry, supra note 27, at 179 (“[E]ven minor abnormalities detected in the latest stages of gestation may still have a practical solution sanctioned by law—abortion.”);
in the Western world. Moreover, abortion is induced by an injection of potassium chloride that ensures fetal death, prompting bioethics scholars to characterize Israel's policies as feticide-like.

A policy permitting late-term abortions derives from the same driving principle as Israel's general abortion legislation, which carefully sets down criteria for future citizens worthy of representing the nation. Consequently, the timing of the abortion is relatively inconsequential; it is mainly the nature of both the woman and the pregnancy that the state cares about.

Altogether, abortion policy promotes the selective reproduction of mature, capable, healthy, lawfully married women who carry the 'New Jew,' that is, perfectly normal and strictly legitimate Jewish children. In this way, the abortion regime monopolizes the authority to define what constitutes a normatively desirable family structure. This policy also explains why the implementing mechanism of abortion law—the abortion committees, discussed next—approve, almost with no exception, all requests for legally justified abortions.

2. Abortion Committees as the Gatekeepers of Normative Womanhood

In contradiction to the numerous liberalized abortion regimes acknowledging female autonomy, Israeli women are disallowed the choice of whether or not to become a mother. Instead, they must submit to an official assessment by an abortion committee to determine their eligibility. The committee's procedures are designed to discourage abortions as well as to


Rimon-Zarfaty & Raz, supra note 137, at 209; Rimon-Zarfaty & Jotkowitz, supra note 104, at 26 ("[S]tatistical data show that late abortions are far more common in Israel (five to ten times) than in the USA and western Europe.").

See, e.g., Gross, supra note 163, at 454.

Id. at 454-55.

See HALPERIN-KADDARI, supra note 122, at 77; Amir & Benjamin, *Defining Encounters*, supra note 8, at 644.

See, e.g., Gross, supra note 163, at 454 (noting that in most of the Western world abortions are "the sole purview of the pregnant woman"); see also Boland & Katzive, supra note 107, at 117 (observing a worldwide trend towards the liberalization of abortion laws, motivated greatly by an awareness of the impact of restrictive abortion regimes on women's human rights).

The committee is comprised of two doctors—a gynecologist and a doctor specializing in psychiatry, public health, internal medicine, or family medicine—and a social worker. Interestingly, one member of the committee must be a woman. Penal Law, 5737-1977, § 315, 1 Special Volume LSI 94 (1977). The female member of the committee is always the social worker, not either of the doctors; in a comprehensive study examining the composition of committees, not one female doctor formed part of a committee. Delila Amir & Orli Benjamin, *Abortion Approval as a Ritual of Symbolic Control, in The Criminalization of a Women's Body*, 5, 17 (Clarice Feinmann ed., 1992) [hereinafter Amir & Benjamin, *Abortion Approval*].

Amir & Benjamin, *Abortion Approval*, supra note 170, at 13 ("The committee members are very much in favor of continuing pregnancies."); see also id. at 15.
discipline ‘deviant’ women whose choices diverge from collective sexual and reproductive norms.  

In common practice, a woman seeking an abortion must complete a comprehensive questionnaire, in which she must detail her social and medical history, including previous applications for abortions, ethnic background, marital status, education, occupation, living conditions, past and present use of contraceptives, as well as her reasons for termination. The woman must then meet for a preliminary session with the social worker on the committee who questions her orally about her written answers, and with a physician who educates her about the possible physical and psychological price of abortion. The social worker, by virtue of Ministry of Health instructions, is required to make efforts to persuade the woman to choose motherhood. In an important sociological study exploring the operation of the abortion committees, Delila Amir and Orly Benjamin found that in most cases, the abortion-seeking woman is also subject to a hearing before the whole committee, notwithstanding the law’s explicit command to require appearances only when the initial application was denied. In this formal forum, the woman is again made to reveal extremely personal and embarrassing details of her intimate life, including her commitment to motherhood.

The humiliating committee hearing is used more often than legally required as an opportunity to ‘discipline’ abortion-seeking women for betraying both their ‘natural’ and national role. Women are expected to pledge allegiance to the norm of compulsory motherhood or otherwise cover up the very existence of unwanted pregnancies through the responsible use of contraceptives. She who dares challenge this categorical imperative is

171 See the enlightening empirical study of Amir & Benjamin, Abortion Approval, supra note 170, at 10 (describing the committee as a “micro mechanism of power’ in which nurturance and care professionals participate, bringing with them their professional ethics and knowledge about the ‘subject’ and hence of what is good or bad for her, and exerting power to rehabilitate her behavior”).

172 Id. at 12–13. The following analysis is based on Amir and Benjamin’s 1990s findings, and as such the research is somewhat outdated. The fact that there are no new data pointing to contrary results, however, may attest to the continuing validity of the available findings.

173 Id. at 13–14.

174 See, e.g., Halperin-Kaddari, supra note 122, at 76.

175 Amir & Benjamin, Abortion Approval, supra note 170, at 17; see also Falk, supra note 114, at 105 (noting that when the decision is in favor of abortion, “there need be no contact between the woman and the members of the committee,” and that while the medical aspects should be explained to the woman, there is no authorization to discuss with her the social and moral implications of her decision).

176 See Amir & Benjamin, Abortion Approval, supra note 170, at 14; see also id. at 13 (noting that the committee “checks the situation as deeply as possible”); Amir & Benjamin, Defining Encounters, supra note 8, at 643-44 (emphasizing the educational and controlling functions of the committee).

177 Amir & Benjamin, Abortion Approval, supra note 170, at 16–17; see also Amir & Benjamin, Defining Encounters, supra note 8, at 644.

178 See Amir & Benjamin, Abortion Approval, supra note 170, at 22–23; Amir & Benjamin, Defining Encounters, supra note 8, at 648.
treated as a deviant sinner, a delinquent in need of re-education, someone whose ‘otherness’ needs to be corrected.179

In short, abortion policy and procedures effectively force women to choose between their bodily integrity, their personal privacy, and their human dignity. It should come as little surprise, then, that the abortion committee process turns women into true delinquents: about fifty percent of abortion-seeking women resort to the black market for private abortions,180 rendering the Israeli ratio of illegal to legal abortions the highest in the Western world.181

C. Motherhood Trumps All: Reproduction and the Constitution

In many constitutional democracies, abortion legislation underwent a major liberalization once the fundamental status of reproductive freedom had been established. The constitutional dimensions of abortion law in Israeli progressive jurisprudence, however, have been underdeveloped and embryonic. While the Israeli Supreme Court has drawn an impressive catalog of unenumerated fundamental rights from the sparse text of the Israeli Constitution, a right to abortion is glaringly absent.182

There are two main reasons for this constitutional lacuna. First, the sociopolitical milieu in Israel is one in which women cannot legitimately and overtly challenge the rigid normative regime of compulsory motherhood.183 Second, Israel suffers from what I would call a ‘crippled Constitution,’ a higher law whose normative power can be activated only prospectively. One of the Constitution’s elemental structural features is a Savings Clause that

179 Amir & Benjamin, Abortion Approval, supra note 170, at 23; Amir & Benjamin, Defining Encounters, supra note 8, at 648.
180 A 2013 report highlighted the startlingly high number of abortions performed in unsupervised environments, by untrained providers, and in unsanitary conditions. See Shosh Mulla, Aborted Under the Table, YEDOOTH AHRONOTH (Feb. 1, 2013) (in Hebrew), http://www.slideshare.net/newfamily/1213-16399437 [http://perma.cc/6F7X-JY78].
181 Yishai, Hidden Agenda, supra note 21, at 207.
183 Instead, women must cope with the rigid abortion regime covertly by resorting to a thriving black market for private illegal abortions. Israeli women perform illegal abortion more than any other place in the western world. See Yishai, Hidden Agenda, supra note 21, at 207.
immunizes from judicial invalidation all legislation enacted prior to the 1992 passing of Israel’s Basic Law: Human Dignity and Liberty.\textsuperscript{184} The Supreme Court has so far creatively overcome this otherwise formidable obstacle, mandating that even pre-existing legislation must be construed in the spirit of the Basic Law, so as to enhance fundamental rights and broaden their application.\textsuperscript{185}

Yet the Israeli Court has failed to follow its own directive in the context of abortion law. The Court has never directly ruled on the validity of government intervention in conscripting women to serve as mothers. However, we may discern the Court’s stance on abortion-restrictive legislation from the opinions of two female members of the Court. These female justices invoked abortion law, by way of analogical reasoning, in what is undoubtedly one of the most celebrated cases in Israeli jurisprudence: \textit{Nahamani v. Nahamani}.\textsuperscript{186}

\textit{Nahamani} involved a dispute over the use of frozen, fertilized embryos intended for implantation in a surrogate mother. After the couple separated, the husband objected to his ex-wife’s use of the fertilized embryos.\textsuperscript{187} The appellate majority decided that to continue without the ongoing consent of the partner would be a violation of his fundamental right to reproductive autonomy.\textsuperscript{188} Writing for the majority, Justice Strasberg-Cohen misconstrued abortion law. Stating that Israeli women had the right to freely terminate their pregnancies, even in the face of a husband’s objection, Justice Strasberg-Cohen concluded that, by analogy and as a matter of gender equality, parenthood could not be legally forced on a man.\textsuperscript{189} But since women’s abortion rights are in fact strictly limited in Israel, this decision created a disparity in gender rights: motherhood is forced on women, while fatherhood is voluntary for men. The \textit{Nahamani} case thus enforced the very stereotypes the Court’s gender-equality jurisprudence sought to uproot.\textsuperscript{190}

Many hailed the decision as a feminist achievement; the Court was commended for seeing past societal ideas about the existential role of motherhood on female self-definition.\textsuperscript{191} It was also commended for equalizing fathers and mothers, and therefore recognizing that parenting is powerfully

\textsuperscript{184} See Basic Law: Human Dignity and Liberty, 5752, § 10, 1391 LSI 150, (1992), as amended.

\textsuperscript{185} See generally, e.g., HCJ 4562/92 Zandberg v. Broadcasting Auths. 50(2) lsrSC 793 [1996] (in Hebrew) (radically reinterpreting a new law to make it compatible with the Basic Law); CrimA 2316/95 Genimat v. Israel 49(4) IsrSC 589 (1996) (in Hebrew) (holding that the meaning of the 'arrest law,' as well as the process of weighing the competing governmental and liberty interests, were changed).


\textsuperscript{188} \textit{Nahamani}, 49(1) PD at 504–05.

\textsuperscript{189} \textit{Id}.

\textsuperscript{190} See the cogent analysis of Rimalt, \textit{supra} note 11, at 573, 619.

life-altering for men, too—economically, emotionally, morally, and socially.\textsuperscript{192}

The bold ideological statement embedded in the decision was short-lived, however. While there is no appeal on a Supreme Court decision, a constitutional rule allows for a further hearing of the Court's decision in extraordinary circumstances and provided that the Court hears the case as a bench of three.\textsuperscript{193} For the first \textit{Nahamani} hearing, the Court sat as an enlarged bench of five, but, notwithstanding this fact, the Court deviated from the explicit directives of Basic Law: The Judiciary and voted for a further hearing.\textsuperscript{194} This case represents the first and only instance in which the Court was willing to transgress the constitutional rule—all for the purpose of emphasizing the legitimacy of women's yearning for motherhood.\textsuperscript{195} This implies that motherhood in the Israeli system itself constitutes a supreme law whose power is even higher in magnitude than the Constitution.\textsuperscript{196}

At the further hearing of \textit{Nahamani}, the Court sat in a grand chamber of eleven justices and voted seven to four in favor of the proposition that women's "right to motherhood" outweighed men's "right to avoid fatherhood."\textsuperscript{197} Consequently, the ex-wife was allowed to have the frozen embryos implanted into a surrogate despite her ex-husband's vehement opposition.\textsuperscript{198} Justice Dorner, the other female justice who authored a key opinion in the \textit{Nahamani} context, sought to bolster her legal analysis by drawing inspiration from abortion law. Rather than exposing abortion-restrictive regulations for what they are—caste legislation dictating women's entire life plans—the female Justice invoked the anti-abortion regime as a kind of model legislation, suggesting that its principles should be applied to the present case.\textsuperscript{199}

\textsuperscript{192} \textit{See id.} at 236–37 (describing such views and rejecting them because the neutral rhetoric hides the gendered reality of major difference between mothers and fathers, which must not be ignored).

\textsuperscript{193} The authority to do so, established in the Courts of Law Act, 5744–1984, SH No. 1123 p. 198 (in Hebrew), is rarely exercised by the Supreme Court, as it must be applied to decisions which are extremely innovative and important. \textit{See} CFH 7962/12 Kibbutz Magal v. Isr. Land Auth., 5773 § 6 (2012) (unpublished decision) (in Hebrew).

\textsuperscript{194} \textit{See Basic Law: The Judiciary}, 5744–1984, SH No. 1110, p. 78.

\textsuperscript{195} \textit{See Chen, supra} note 187, at 335 ("Never before had a subsequent hearing been granted in the Supreme Court on a case originally heard by more than three judges."); \textit{see also} \textit{KAHN, supra} note 7, at 68 (acknowledging the "unprecedented" nature of the decision).

\textsuperscript{196} \textit{See Chen, supra} note 187, at 352 (noting that, by virtue of the \textit{Nahamani} case, the Court "ushered in a vision of reproductive rights so paramount as to override the intrinsic right of personal autonomy"); \textit{Shalev, supra} note 46, at 77 ("Generally, constitutional theory and jurisprudence adhere to the view that it is always necessary to balance conflicting interests, and emphasize strongly that no value is absolute. It seems, however, that motherhood comes up trump in all cases . . . .").


\textsuperscript{198} \textit{Id.} at 707–08 (Or, J.); \textit{id.} at 717–18 (Dorner, J.).

\textsuperscript{199} \textit{See Rhona Schuz, The Right to Parenthood: Surrogacy and Frozen Embryos, in INTERNATIONAL SURVEY OF FAMILY LAW} 237, 251–252 (Andrew Bainham ed., 1996) (arguing that the Court took liberty to adjudicate the case based on its own principles and feelings once it reached a conclusion that was not covered under any legal framework).
Just as neither a woman nor her husband had the right to terminate a pregnancy, Justice Dormer reasoned, so was a man precluded from terminating the fertilization and implementation process. Put differently, that women are forced to become mothers by virtue of restrictive abortion legislation justifies the forced fatherhood in the name of egalitarian justice.

This kind of legal reasoning is untenable. ‘Learning’ from Israel’s anti-abortion law and extending its principles to other legal terrains bestows normative status on an already oppressive regime, dignifies its patriarchal mandates, and infuses them with renewed validity. The abortion-restrictive regulations are so flagrantly in violation of fundamental rights that they cannot withstand even the most lenient constitutional scrutiny. Recall that according to well-established doctrine, pre-existing laws must be construed in the spirit of the Basic Law so as to minimize, if not neutralize, their offending impact. To this effect, the very reference to abortion law is not simply fundamentally flawed: it is purely unconstitutional.

Chief Justice Barak poignantly accused his brethren in the majority of gender bias. As he saw it, if the roles were reversed and the man was the one seeking to be a father in the face of the woman’s opposition, the majority would have decided the case differently. For Barak, the majority in its “deepest feelings” did not treat motherhood and fatherhood equally precisely because of inappropriate stereotypes about the centrality of motherhood to womanhood. Indeed, when an opposite scenario recently reached the Appellate Court—a father’s application to implant his and his ex-wife’s fertilized embryos in a surrogate mother over his ex-wife’s objections—the application was unanimously denied.

200 See Nahamani, 50(4) PD at 716.
201 For a thoughtful critique of Justice Dorner’s legal reasoning, see Rimalt, supra note 11, at 619–20 (finding fault not only with the uncritical endorsement of Israeli abortion law, but also with the false symmetry between the unique burdens of pregnancy on women vis-a-vis men’s right not to be a parent).
205 See Nahamani, 50(4) PD at 787 (Barak, C.J., dissenting) (translation by author); see also Rimalt, supra note 11, at 579, 612–14 (arguing that the Nahamani majority was guided and influenced by the mother ideology); id. at 612 (“It is hard to avoid the conclusion that at the end of the day the yearning for motherhood and the identification of the justices with it were what nailed the case in favor of Ruth Nahamani.”) (translation by author).
While other Western constitutional democracies have resolved similar legal conflicts in favor of the personal autonomy of the unwilling father, cognizant of the "anguish of a lifetime of unwanted parenthood," the Israeli Court held that motherhood trumped all. In doing so, it presupposed maternal yearning as "axiomatic" and as giving rise to a preeminent individual and social value, the deprivation of which amounted to the "loss of a person's soul." Both the legislature and the Court, it seems, are unequivocally establishing the categorical imperative of Israeli women as mothers first and foremost. In other words, the ideology of compulsory motherhood is so deeply ingrained in Israeli society that even the highest judicial body in the country is not immune to its powerful normative force.

* * *

For Israeli women, full, substantive citizenship status may be accorded only to those who obey the institutional imperatives of reproductive behavior. Yet abortion law not only conscripts women's bodies into the service of ensuring the continuous survival of the Jewish people. It also charges them with the responsibility of terminating socially or genetically defective offspring. In other words, women are entitled admission to the Jewish-Israeli collective only if they fulfill their national reproductive commitment in the context of legitimate motherhood. Women, for their part, have internalized the duty to produce healthy, strong, and intelligent 'New Jews.' This is likely the reason that a manifestly patriarchal law has remained largely immune to feminist attack, and why the constitutional dimensions of abortion are both under-developed and under-theorized in Israel.

Anti-abortion discourse in the Jewish state has indeed always been dominated by the language of national obligation and collective responsibilities—in sharp contrast to the United States and its overarching claim of the sacredness of potential life. I submit that this kind of abortion rhetoric

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207 See Chen, supra note 187, at 331 (naming Australia, Canada, England, and the United States as examples of countries which require both parties' consent at every phase of the IVF process); Adrienne D. Gross, A Man's Right to Choose: Searching for Remedies in the Face of Unplanned Fatherhood, 55 DRAKE L. REV. 1015, 1037-41 (2007) [hereinafter, A Man's Right] (providing a detailed account of Tennessee law on the issue). See generally the famous case of Evans v. United Kingdom, 43 Eur. Ct. H.R. 409, § 90 (2007) (holding that the mother's right to respect for her decision to become a parent should not be given greater weight than the father's right to respect for his decision not to have a child with her).

208 Davis v. Davis, 842 S.W.2d 588, 602 (Tenn. 1992).

209 Chen, supra note 187, at 341; see also Schuz, supra note 199, at 245-47.

210 See, e.g., Sperling, supra note 9, at 364 ("Israeli women accept this order of priorities in which security, nationalism, and demographic superiority over enemies outweigh women's issues, and they adhere to policy constraining their own choices and preferences.").

211 See, e.g., Amir & Shoshi, Israeli Abortion Law, supra note 89, at 799.

212 See Levine, supra note 99, at 319 (also discussing the newsletter of Efrat, the primary anti-abortion movement in Israel, which focused in the 1960s on creating a cul-
constitutes a tactical choice designed to suppress women’s rights discourse and problematize attacks on the nationalist rhetoric. Under this framing, individual rights discourse is national betrayal, and feminists who advocate abortion are selfish, disloyal citizens who jeopardize the very survival of Israel as a nation-state. For all these reasons, women have failed to challenge abortion policy for fear of forfeiting their legitimate place in the Jewish collective.

While abortion law ensures numerical quantity and genetic quality, the child support and custody scheme ensures social quality. Women socialize children while men provide for them. The next Part explores how law and policy render female citizenship dependent not only on childbearing, but also on quality childrearing.

IV. Embedded Gendered Parenting Roles: Deconstructing Child Support Law in Israel

As we saw, preoccupation with the ‘quality’ of offspring in Israeli-Jewish society dictates the normative conduct of expectant mothers. Once the children are born, a woman’s responsibility for ‘genetic quality’ is replaced by another set of expectations: to educate and train her children, shape their moral choices, and guide them in the paths of morality and civic participation.

As we shall see, while anti-abortion law coerces motherhood, child custody law forces women to perform the work of motherhood, and child support law coerces traditional fatherhood in the form of breadwinning. These legally embedded gender roles in turn work to relegate women to the margins of the public sphere as secondary citizens.

See also Amir & Benjamin, Defining Encounters, supra note 8, at 642 (“Israeli [abortion law] differs considerably from most other societies, where the rationale of abortion laws is linked to a broader socio-ethical principle, and where the state’s position regarding the legitimacy of pregnancy termination and entitlement to privacy is clearly expressed.”); Levine, supra note , at 335 (noting that the two abortion narratives in Israel and the United States are “the product of distinct understandings of the mutual obligations between citizens and their state and of the relationship between individual and collective rights and duties” and that while anti-abortion American discourse concentrated on fetal rights, in the Israeli case it focused on demography and collective identity).

See, e.g., Levine, supra note 99, at 321 (“Few claims are grounded in reproductive freedoms and a right to choose . . . . The result has been an abortion services movement largely devoid of rights discourse and characterized by a significant amount of sympathy for the demographic concerns of the other side.”). No wonder that “[s]upporters of legal access to abortion generally avoid public and media attention and rarely try to interfere with the abortion picture its opponents create. They shirk ideological confrontations and make little effort to initiate legal and political change in the abortion sphere.” Id. at 332; see also Rapoport & El-Or, supra note 6, at 575 (“[I]n a place where the public sphere is dedicated to national tasks, it is hard to gain legitimacy for individual and collective demands. Any attempt on the part of women to sound their voice is hushed and scorned in the name of the national collective’s existential needs.”).
The traditional sexual division of labor has forcefully shaped the Israeli child support system. Ever since its inception, Israel has adhered to gender-based, patriarchal religious rules envisioning men as the sole possible bearers of child support obligations, and women as the sole caretakers. While breadwinning is mandatory, fathers are under no legal obligation to craft more meaningful social relationships with their children. Under the law, fathers exist only to ensure that mothers are not economically obligated to seek work that might divert them away from their caretaking duties at home.

So well-entrenched is the paradigmatic figure of the father as provider that Israeli law imposes child support obligations even when the father has no available income to meet them, when he is denied visitations, and when he gains sole or joint physical custody over his children. Such a system

Under Israel's personal status laws, the father alone is responsible for child support and must satisfy his children's 'essential needs,' regardless of his or the mother's economic situation. Yet once the child reaches the age of fifteen, courts tend to employ religious doctrines that allow them to impose some responsibility on mothers. See, e.g., FA (TA) 21376/09 M.S. v. G.S., at § 3 (2013) (unpublished decision) (in Hebrew); Anat Herbst, Discourse of Need: The Case of Child Support (Payment Assurance), 35 WOMEN'S STUD. INT'L F. 214, 216 (2012) (the structure of child support payments stems from the traditional gendered family roles of religious law (the Jewish Halakha and the Islamic Sharia)); Yoav Mazeh, 'Child Custody': A Substantive Term or a Hollow Title? 28 BARILAN L. STUD. 207, 236-37 (2012) (in Hebrew) (the patriarchal conception underlying Israeli child support law is based on the 'separate spheres' tradition, in which mothers are caretakers and fathers are breadwinners; this is the root of men's categorical child support obligations).

As I will show in the next two sections IV.A–B, infra, Israeli law reinforces the gendered perceptions of parenthood as two different essences that entail different parental roles for mothers and fathers. See also Nancy E. Dowd, Rethinking Fatherhood, 48 FLA. L. REV. 523, 526 (1996) [hereinafter Dowd, Rethinking Fatherhood] (the law embeds biological and economic gender divisions, essentially divorcing fatherhood from nurturing); Solangel Maldonado, Beyond Economic Fatherhood: Encouraging Divorced Fathers to Parent, 153 U. PA. L. REV. 921, 941 (2005) (such law fails to require fathers to parent their children, effectively telling them their presence is unimportant in their children's lives).

See, e.g., FA (Jer) 787/05 Abel v. Babel, at §§ 1, 5 (2006) (unpublished decision) (in Hebrew) (a disabled father whose entire earnings were 2000 shekels in the form of a disability stipend from Social Security was ordered to pay 3000 shekels; when he appealed, the appellate court remarked that the amount of child support was on the lower side of the norm, and that he should be made to pay more); CA 130/83 Price v. Price 38(1) PD 721, 728 (1984) (in Hebrew) (the Court ordered a disabled person who was unable to work to sell his house and rent an apartment so that he could meet his child support obligations); ISR. MINISTRY OF JUSTICE, THE REPORT OF THE COMMITTEE FOR THE EXAMINATION OF CHILD SUPPORT IN ISRAEL 11 (2012) (in Hebrew) [hereinafter Shifman Report] (pointing to the argument of men's rights organizations that high child support payments harm Israeli men and deny them “dignitary existence”) (translation by author).

See Mazeh, supra note 214, at 232–34 (Israeli child support law is manifestly patriarchal, reflecting an essentialist perception of the man's role as a man, that is, as breadwinner. For this reason, the law is applied in all circumstances, regardless of the father's economic situation, even when the mother is financially better off, regardless of his contributions as caretaker, and even if he shares equal (or more) joint physical cus-
portrays carework as women's work and in fact stigmatizes fathers as compromising their masculinity if they attempt to change the sexual division of labor.

Keeping with these rigid gender definitions, financial independence is legally foreign to the parenting role assigned to Israeli women, lest it compromise their capacity to provide unlimited childcare. According to these definitions, women are only rarely ordered to provide economically for their children, no matter how well-off the mother, how poor the father, and how involved each in the child’s upbringing. The reluctance to view women as legitimate wage earners is vividly embodied in the legal enforcement mechanisms of child support obligations. Under the Child Support (Payment Assurance) Law, when delinquent fathers fail to provide for their children, women may be eligible for child support payments of $840 per month from the National Insurance Institute, so long as they earn less than $1,630 per month. Tellingly, the very language of the statute is gendered—Hebrew has grammatical genders—one of only a handful of Israeli laws written in the feminine form. Israel’s ‘back-up’ arrangement of state substitution for fathers’ support may be motivated in part by the realization that women will give up wage labor to stay at home with children only if they can safely rely on a guaranteed state support mechanism taking the place of deadbeat fathers. In the United States, for example, research indicates that women’s growing realization that child support is hardly sufficient keeps many of them in the labor
tody with the mother). Courts either impose full financial responsibility on the custodial father, see e.g., FC (TA) 004869/99 A.S. v. A.D. (2007) (unpublished decision) (in Hebrew); FC (TA) 033690/02 Ploni v. Almoni (2004) (unpublished decision) (in Hebrew), or ask the nonresidential mother to shoulder only a minimal amount of child support, see, e.g., FC (BS) 34894/08 G. v. G. (2011) (unpublished decision) (in Hebrew); see also FC (Hi) 010218/02 A.V. v. C.V., at § 11 (2006) (unpublished decision) (in Hebrew) (“It must be stated at the outset that the duty of child support is incumbent upon the father... even when the minor is in his custody.”) (translation by author).

The stereotype of the Jewish mother is one of ‘endless caretaking and boundless self-sacrifice’ by a mother who demonstrates her love by ‘constant overfeeding and unremitting solicitude about every aspect of her children’s and husband’s welfare[s].’ Stereotypes of Jews, WIKIPEDIA, https://en.wikipedia.org/wiki/Stereotypes_of_Jews (last updated Oct. 13, 2015) [http://perma.cc/WH3L-FUP8] (quoting Lisa Aronson Fontes); see also Shifman Report, supra note 216, at 21 (stating that father shoulders exclusive responsibility for the child’s necessities even when mother’s economic situation is good and she is fully capable of sharing the burden).

See, e.g., Shifman Report, supra note 216, at 21; see also FC (Hi) 17120/07 Plonit v. Ploni, at §§ 12–14 (2010) (unpublished decision) (in Hebrew) (refusing to modify or reduce the father’s child support payments after sole maternal custody changed the joint custody, viewing the change of custody as irrelevant for purposes of child support); FA (Hi) 318/05 Ploni v. Plonit, at § 14, (2006) (unpublished decision) (in Hebrew) (suggesting that the father’s economic burden may actually be higher in the case of joint physical custody than in the case of exclusive maternal custody).


Herbst, supra note 214, at 216.

See id. at 219.
market, even after motherhood. In contrast, Israel’s support is arguably said to be generous, even “higher than the realistic costs of childrearing.”

Importantly, if a mother earns more than the maximum $1,630 per month, she must choose between forfeiting the child support, finding a lower paying job, or quitting work altogether. Israel tells you: “guaranteed child support or career. Not both.” In the United States the situation is reversed. While Israeli women are expected to embody the ideal of the nurturing mother, American women are required to work as a condition to receiving state assistance in the case of the father’s abandonment or disability. Additionally, in some American states, custodial mothers who choose to be full-time caretakers for their children over the age of two, rather than engage in paid labor, face reduced child support through an imputation of income, meaning that the child support owed by the father is calculated as if the woman actually had income in the imputed amount. Whereas American law sometimes penalizes women who choose a traditionally designated gender role over labor-market participation, Israeli law hinders female economic independence and development. The choice for Israeli women between working or receiving government support pushes women to forego education and remain unable to support themselves in the workplace. On its list of countries by percentage of mothers who are employed, the OECD ranks Israel fifth from the bottom, with a fifty-five percent employment rate of

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224 Shifman Report, supra note 216, at 11, 29 (pointing to men’s rights organizations’ argument that the high sums of child support payments imposed on fathers harm Israeli men and denies them “dignitary existence”) (translation by author). Yet this is true only of the civil family court. The religious courts, on the other hand, tend to order rather modest sums of child support. See id. at 14–15; see also Herbst, supra note 214, at 215.
226 Id.; see also Herbst, supra note 214, at 216.
228 See, e.g., MD. CODE ANN., FAM. LAW § 12-204(b) (2010); see also Czapanskiy, supra note 223, at 1440 n.86.
229 See, e.g., Moscona-Lerman Maariv, supra note 225 (“Decide, says the country to a traumatized woman . . . left without child support—if you want child support, you are forbidden to study, to develop, to earn, to move up in life, to aspire to a better life. If you receive child support from the NII [National Insurance Institute], sit at home and do not move. Live a restricted life on the support you receive. In short, be punished for choosing to take the child support to which you and your children are entitled by law.”); see also New Bill Due to Raise the Ceiling on National Insurance Institute (NII) Child Support Aid, YEDID (Jan. 30, 2012), http://www.yedid.org.il/?id=4578 [http://perma.cc/NKN9-F6PZ] (noting the current child support policy “clearly functions as a barrier preventing women from involvement in the workplace for fear of losing the child support due them” and that single mothers should not be required to perform cost-benefit analyses on the decision to join the labor force).
working mothers (with sixty-six percent as the average, and seventy-three percent in the United States).  

In short, the social welfare apparatus functions normatively by punishing ‘bad’ mothers (those who take time away from their children by working) through disentitling them to state support in the absent father’s stead. Child support law signals to women that they must serve the nation not simply by childbearing, but more so by childrearing, and that the ‘good’ mother is one who must provide comprehensive care uninterrupted by income-generating activities.

Since child support is by Israeli legal definition a male responsibility, the law not only shunts men into the social role of wage earner, but also constructs childrearing as unmasculine. The very verb used to describe childrearing is gendered—it is called ‘mothering’ rather than ‘parenting’ because of the widespread stereotype that “fathers are a biological necessity but a social accident.” In ‘macho’ Israeli society, this legal construction of childrearing forces men to perceive their parenthood in predominantly economic terms, and to shy away from actively participating in raising their children. After all, the ‘New Jew’ as the antithesis of his anti-Semitic European image, possesses traditionally male characteristics strongly associated with masculine norms, the highlight of which is the renouncement of carework.


231 See, e.g., Rimalt, supra note 11, at 581 (noting that the Israeli Zionist woman has been historically perceived first and foremost as a wife and a mother who is responsible not merely for childbearing but also for childrearing and education).

232 See, e.g., Dowd, Rethinking Fatherhood, supra note 215, at 533 (noting the “evident lack of value attached to nurturing in concepts of masculinity”).


234 As Nancy Dowd so eloquently encapsulated it, “Men’s socialization continues to emphasize qualities in conflict with good parenting, and parenting challenges men to adopt characteristics traditionally viewed as unmanly. The combination of socialization and structural constraints on fathers makes it seem ‘natural’ that mothering and fathering are substantively different, gender specialized and differentiated . . . .” Dowd, Rethinking Fatherhood, supra note 215, at 533; see also Jessica L. Roberts, Conclusions from the Body: Coerced Fatherhood and Caregiving as Child Support, 17 YALE J.L. & FEMINISM 501, 506 (2005) (“Because of the association of child rearing with women, men frequently avoid this form of labor.”).

235 See Dowd, Rethinking Fatherhood, supra note 215, at 535 (explaining that homophobia is a significant driving force discouraging men from nurturing children by labeling childrearing “women’s work” and somehow inferior to breadwinning); McCant, supra note 233, at 139–40 (observing that boys “are taught to be macho, real he-men—the strong silent type” and are seldom encouraged to be nurturing “in a society that is shocked and embarrassed when a man cries”); id. at 142 (noting that “[m]en are socialized to be providers and protectors of their wives (i.e., the weaker sex) and their dependent children” and observing that the model of a man is one “who is quite simply a nonparenting father”).
Child support law, then, must be exposed as the backbone of the
gendered formation of masculine and feminine identities: the
breadwinning father and the caregiving mother. The result is the well-researched sexual
stratification of labor and persistent segregation of childrearing work.236

B. Child Custody Law: A Legal Regime of Caregiving Femininity

Child custody law complements child support law in the construction of
motherhood and fatherhood as gendered categories. Well into the twenty-
first century, and long after the Western world has modernized its thinking,
the Israeli custody scheme still adheres to the tender years maternal
presumption.237

Probing the politics of gender stereotyping in Israeli custody law is
somewhat tricky, partly because future reform is anticipated in this area,238
but also because regardless of statutory wording, in operation Western wo-
men remain custodial parents almost as often as their Israeli sisters.239 Still,
one cannot disregard the official ideological message embedded in Israeli
law, which intractably pressures women to play their designated parenting
role lest they be deemed deviant.240

Israeli law is so fixated on the vision of compulsory motherhood that
women are almost always considered naturally superior to men as custodial

236 See, e.g., Hacker, Motherhood, supra note 22, at 425.
237 See Capacity and Guardianship Law, 5722–1962, SH No. 380 p.120, §§ 24, 25; see also Hacker, Motherhood, supra note 22, at 412, 413 (“[E]ven in countries where
the law that governs parent-child relations upon divorce is formally gender neutral, sole
maternal custody still remains the dominant model . . . .”). While according to the tender
years doctrine the legislature designates the woman as the custodial mother for children
until the age of six, Israeli courts are still engrossed with the vision of mothers, not
fathers, as natural custodians for children of all ages. Id. at 412.
238 There is a currently a widely supported bill pending to reform the law in accor-
dance with the egalitarian recommendation of the Shnit Committee, a state-appointed
committee charged with reexamining child custody law. The committee’s report recom-
mends that the “Tender Years Clause” be replaced by a “Parental Responsibility Clause”
which would declare that “it is every child’s right that both his parents be responsible for
his safety and welfare.” Gil Ronen, Committee Recommends Equality in Custody After
Divorce, ARUTZ SHEVA (Apr. 27, 2008, 10:51 PM), www.israelnationalnews.com/News/
News.aspx/125984#.UfqDPZKnA20 [http://perma.cc/65TH-V3VD]. The committee fur-
ther recommended that couples in the process of separation work out an agreed ‘parent-
ing plan’” under which both parents would be involved in childcare. See id.
239 See, e.g., Nancy E. Dowd, Law, Culture, and Family: The Transformative Power
of Culture and the Limits of Law, 78 CHI.-KENT L. REV. 785, 791 n.27 (2003) (approxi-
mately ninety percent of children live with their mothers following divorce); Maldonado,
supra note 215, at 965 (“[T]he best interests standard as applied is no different from the
maternal preference . . . .”).
240 See Hacker, Motherhood, supra note 22, at 416 (finding that the current system
discourages men from assuming expansive parental roles and highlighting the contribu-
tion of law to the gendered social expectations and coercions that control Israeli women’s
and men’s ability to shape their parental roles and identities); see also Maldonado, supra
note 213, at 984 (noting in the context of American law that “[t]he societal pressure on
women to have residential custody is so great that mothers who may not want custody
may seek it to avoid social stigma”).
The "good mother myth" is still profoundly sewn into the fabric of Israeli law and culture, and demands more from mothers by virtue of their 'natural' nurturing capabilities. To use Karen Czapanskiy's terms, fathers are "volunteers"; mothers are "draftees." The military metaphor is particularly apt in the Israeli context; in Israel, fatherhood takes a backseat to the ethos of the man-as-warrior and men's definition of substantive citizenship is dependent on their identity as draftee soldiers.

While a man who provides economically for his family, by virtue of child support law, is deemed a 'good' normative father, the Jewish-Israeli woman is expected to relate to motherhood as a central part of her identity and as the embodiment of her national mission. The child custody regime refines this role description and collaborates with the anti-abortion law: it demands that Israeli women produce the 'New Jew' not only in terms of ensuring children with healthy, fit, and whole bodies, but also in terms of nurturing "proud, rooted and 'normal' children," whose defining characteristics are "'earthiness', military strength, and, of course, the 'Jewish genius.'"

241 See FA 1858/14 Ploni v. Plonit, at §§ 32-35 (2014) (unpublished decision) (in Hebrew) (refusing to ignore the tender years presumption). Curiously, there are some legal signs for a slow change heralded by some lower courts, perhaps in response to the slow development of the 'new father,' that is, fathers who renounce the bio-economic model in pursuit of a more meaningful role in their children's lives. Yefet, supra note 54, at 86-87. For example, notwithstanding Supreme Court admonitions to the contrary, some family courts have invested judicial energy in inventing creative strategies to impose child support obligations on women, while others resist the legal presumption that maternal custody serves the best interests of children. Recently, one district court even adopted the controversial Parental Alienation Syndrome as a basis for removing custody from mother to father. FA (TA) 60592/03 K.L. v. Y.P., at §§ 24-27 (2015) (unpublished decision) (in Hebrew); see also FC (TA) 17174/11 R.B. v. A.A., at §§ 19-27 (2011) (unpublished decision) (in Hebrew) (discussing the importance of fathers to children's lives and highlighting how father-child social relationships are in children's best interest).

242 See, e.g., Rimalt, supra note 11, at 579 (the Israeli judicial discourse in practice still clings to stereotypical, gender-biased perceptions and holds women to higher and distinct expectations about what is required from a good mother vis-a-vis a good father); Hacker, Motherhood, supra note 22, at 415 (noting the "ongoing existence and vitality of the good mother myth" in Israel, even while in other countries this myth is overcome by "normative cultural ideas of gender neutrality and parental equality").

243 See Hacker, Motherhood, supra note 22, at 425 ("In the vast majority of cases, divorced mothers are expected to assume full daily responsibility for their children and to perform according to hegemonic social norms. Fathers, on the other hand, are not exposed to any clear and shared social scripts regarding fatherhood and are not guided by any binding norms in respect to their caring role as divorced parents.").

244 Czapanskiy, supra note 223, at 1449.


246 See, e.g., Rimalt, supra note 11, at 616-17 (noting that Israeli women are socialized to view motherhood as central to their identity and self-definition).

247 Yuval-Davis, Woman/Nation/State, supra note 9, at 55; see also RIMON-ZARFATY, supra note 14, at 60 (quoting the medical professional's impression that "Jews in general
Child support law enforces this ideology, and under it men are essentially, but for their sperm and their checkbooks, a 'disposable' parent.\textsuperscript{248} As of today, there is no clear indication in the law that men are required, expected, or even able to help with carework.\textsuperscript{249} Even when Israeli parents agree themselves upon joint physical custody, legal actors as well as the helping professions may collaborate to actively frustrate this option. Judges often order such parents to undergo scrutiny by psychologists and evaluation of their 'parental capabilities' by social workers.\textsuperscript{250} Israeli men have internalized this standard; one study comparing the paternal involvement of Israeli versus American noncustodial fathers hypothesized that "the cultural ideal for fathers in Israel regardless of their marital status is more accepting of distant or traditional behavior. That is, they represent a father model that is more passive, less involved in activities, and less assuming of parental responsibility."\textsuperscript{251} When men do take a more active role in parenting, it remains invisible to the law. Their caregiving efforts do not translate into an economic reduction of their support obligations. In this way, child custody law in conjunction with support law discourages fathers from taking a significant role in their children's lives.

Exacerbating the gendered ideology of parenting, legal enforcement authorities employ a double standard in enforcing visitation agreements: when a father fails to return a child on time after a visitation, Israeli law enforcement comes emphatically to the mother's aid and initiates criminal proceedings against the father.\textsuperscript{252} Yet when a mother frustrates a visitation agreement, police quite consistently refuse to interfere.\textsuperscript{253} In some cases courts may go further than rejecting the father's petition to enforce visitation agreements: when Israelis in particular want their child to be no less than potentially an Albert Einstein\textsuperscript{248}) (translation by author).

\textsuperscript{248} See, e.g., Maldonado, supra note 215, at 939 ("Society treats a divorced father as less of a father."); McCant, supra note 233, at 137 (noting that under child support law "the cultural discrimination continues and the mother is considered to be the parent and the father the provider").


\textsuperscript{251} Pauline I. Erera et al., Fathering After Divorce in Israel and the U.S., 3 J. Divorce & Remarriage 55, 74 (2008).

\textsuperscript{252} See Mazeh, supra note 214, at 244.

\textsuperscript{253} See id. at 244–45. In contrast to other countries as varied as France, Australia, and the United States, Israeli enforcement authorities treat a mother's breach of father's visitation privileges forgivingly, even when the violation is systematic. At the same time, while transgressing women face "institutional tolerance," fathers who spend more time with children than agreed will encounter "active and intensive" police and prosecutorial involvement (translation by author). See id. at 244–45.
tions and even readjust the arrangement *in favor* of the transgressor mother.²⁵⁴ Such a gender bias wrongfully suggests that good parenting is sex-specific and that men cannot (or should not) nurture their children as mothers do.

Finally, the state also interferes with decision-making about parental roles during the life of the ongoing marriage. When a man does want to assume primary responsibility for childcare, the law sabotages his efforts. As noted previously, where men in broken families gain full custody, child support law still makes them pay, in the form of support for their children.²⁵⁵ Similarly, the National Insurance Act severely fines men in intact families who reverse roles and forgo employment in order to stay home and raise their children.²⁵⁶ The law explicitly disqualifies men from the occupation of "homemaker"—the legal terminology itself is not gender neutral, opting for the term "housewife"—rendering only women eligible for a series of benefits and protections from which men are excluded.²⁵⁷

In this way the law effectively ensures that in an economically efficient family unit, it will always be logical to designate the woman to stay at home, and that nonconformist couples will literally pay for pursuing an aberrant life course.²⁵⁸

This gendered ideology of parenthood has recently been forcefully shaped by new developments in child support case law, the subject of our next inquiry.

²⁵⁴ See, e.g., FC (TA) 40865/98 Y.A. v. N.A., (2005) (unpublished decision) (in Hebrew); File No. 011536307532 Rabbincial Court (Jer) M.D. v. B.D., (2007) (unpublished decision) (in Hebrew); see also Yoav D. Mazeh, *Enforcement of Parenting Time*, 51 *ISRAEL BAR L. REV.* 227, 262-63 (2011) (criticizing such cases and remarking that not only did breaching mothers go unpunished for their repeated violations, but they were actually incentivized to frustrate the visitation agreement in the hope of further limiting the father's access to his children).

²⁵⁵ See supra Part IV.A. It should be noted, however, that this trend is slowly beginning to change. There are some sporadic family court decisions that take into calculation the fact that the father retains sole or shared custody over the children. See, e.g., FA (TA) 41769/10 Ploni v. Plonit, at §§ 23, 30-32 (2015) (unpublished decision) (in Hebrew).


²⁵⁷ *Id.*

²⁵⁸ When a nonconformist husband who sought to stay home challenged the archaic exclusion of the law and asked to be recognized as a homemaker, the Court turned him down. In the face of blatant discrimination, all the Court was willing to concede was that it is merely "possible that this law, applying a different arrangement for man and woman, somewhat affects equality." HCJ 1046/09 Senia v. Soc. Sec. Institute, at § 5 (2010) (opinion pending) (in Hebrew) (translation by author) (emphasis added). The Court went on to say that even if there were discrimination, the law was valid since it was a long-standing piece of legislation and protected by the Savings Clause. *Id.* But the Court could have easily avoided the constitutional immunity if it so desired—the law was reenacted in 1995 and as such could have been properly viewed as lying outside the umbrella of constitutional protection.
C. Involuntary Fathers: The Strict Liability Theory of the Sperm

As we have seen, Israeli women participate in the state by birthing and raising its future participants. In exchange, mothers are guaranteed child support. Reliable financial support is essential if the state wants women to stay home with their children instead of joining the workforce. The case law seems to be informed by this insight: men are made to pay child support regardless of their economic situation, even, as we shall now see, in unusual instances of pregnancy.

The cases of ‘involuntary fatherhood’ are sometimes so extraordinary that they resemble episodes of Ripley’s Believe It or Not! more than legal jurisprudence. In these cases, men claim to have become fathers “against their will,” usually by deceitful women who “stole” their sperm through sexual intercourse under the pretense that they were “protected” or infertile. Given the Israeli categorical imperative of motherhood, the phenomenon dubbed “sperm theft” has been coined as “the Israeli thing to do” and described by men’s rights activists as “a national epidemic.” While American courts may censure the practice and the women who engage in it—

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259 See generally the many graphic cases described in the comprehensive book of Shmuel Beniel & Moshe Ronen, Fathers Against Their Wills (1992).
260 See generally Pinhas Shifman, Involuntary Parenthood: Misrepresentation as to the Use of Contraceptives, 4 INT’L J.L. & FAM. 279 (1990) (discussing cases in which women lied to their male partners about their use of contraceptives).
261 Kahn, supra note 7, at 21.
262 Sperm Theft and Fathers Against Their Will, COALITION FOR THE CHILDREN & FAMILY, http://ccfisrael.org/%D7%A1%D7%A4%D7%A8%D7%99%D7%94%D7%90%D7%91%D7%95%D7%AA-%D7%91%D7%A2%D7%9C-%D7%9B%D7%95%D7%A8%D7%97%D7%9D-%D7%95%D7%92%D7%A0%D7%91%D7%95%D7%AA-%D7%96%D7%A8%D7%A2 (in Hebrew) (reporting statistics that indicate that ‘sperm theft’ has become a “national epidemic”) (translation by author).
264 S.F. v. State ex rel. T.M., 695 So. 2d 1186, 1191 (Ala. Civ. App. 1996) (Crawley, J., concurring in part and dissenting in part). The judge further proposed to order reduced child support, for the reason that the “mother’s ingenuity strongly indicates her ability to earn an adequate living for herself and her child.” Id.
265 Men are usually rebuked for invoking the term ‘sperm theft,’ which according to Israeli courts “must be evaporated from the lexicon.” File No. 2470/05 FA (Jer.), S. v. Anonymous, at § 3 (Oct. 4, 2006), Nevo Legal Database (by subscription, in Hebrew) (translation by author); see also Beniel & Ronen, supra note 259, at 149 (finding that in fraudulent conception cases the court and general public sympathize with the “poor woman’s motives,” while no one shows concern for the victim of deception, the involuntary father) (translation by author).
The ‘you play, you pay’ philosophy or ‘caveat copulator’ has quickly become the rule of the day.\textsuperscript{266} Even male victims of statutory rape; men who were intoxicated and coerced into the sexual act that caused the pregnancy; or men who never even engaged in vaginal sex, only in oral sex, and became fathers after their sperm were stolen and used in self-insemination, are all indiscriminately liable for the support of the resulting child.\textsuperscript{267} In this sense, child support has essentially collapsed into a form of “strict liability,”\textsuperscript{268} stripping a man of his right of procreational autonomy.\textsuperscript{269} Indeed, a person has no right not to be a parent in Israel’s procreation empire.\textsuperscript{270}

The strict liability of the sperm approach must be driven by more than the desire to secure child support payments for needy children; recall the state-funded ‘back-up’ system when fathers are absent.\textsuperscript{271} The question we should ask, then, is not whether receiving support is in the child’s best interest, but whether the child’s best interest is served by having the involuntary father reimburse the state for payments made on his behalf.\textsuperscript{272} As such, the courts cannot hide behind the rhetoric of protecting children. Critical think-

\textsuperscript{266} See, e.g., the often-quoted passages of Chief Justice Shamgar in CA 5942/92 Ploni v. Almonit, 48(3) PD 837, 844 (1994) (in Hebrew); see also CA 5464/93 Ploni v. Almonit 48(3) PD 857, 861 (1994) (in Hebrew).

\textsuperscript{267} See, e.g., FC (Hi) 10708/02 S.A. v. S.M., at §§ 5, 22 (2009) (unpublished decision) (in Hebrew) (the man claimed that the woman, a divorcee with two children, “stole his sperm” by seducing him while he was under the influence of alcohol and further alleged that she assured him she was using birth control pills) (translation by author); see also BENIEL & RONEN, supra note 259, at 8 (noting the unbroken legal trend of ignoring the circumstances of conception and holding the father responsible in all cases); Shifman, supra note 260, at 279–80, 286–88 (criticizing this legal trend and contending that the differences between the sexes with respect to family planning justify legal remedies for breach of trust in the form of a child support waiver as well as compensation for the emotional injury resulting from involuntary fatherhood); Globes Service, Had Sex With a Stripper, and Sued After Nine Years, GLOBES (June 30, 2013, 12:44 PM) (in Hebrew), http://www.globes.co.il/news/article.aspx?did=1000858072 [http://perma.cc/Y32Y-CSKC] (ordering an unemployed father to pay child support in case of a man who became a father after serving as a stripper in a bachelorette party and having what he thought was protected sex with one of the attendees).

\textsuperscript{268} This term was coined by Laura Wish Morgan, It’s Ten O’Clock: Do You Know Where Your Sperm Are? Toward a Strict Liability Theory of Parentage, 11 DIVORCE LITIG. 1, 10 (1999) (proposing the legal policy of uniformly holding fathers responsible for child support as cases of a “strict liability theory of sperm”).

\textsuperscript{269} See Erika M. Hiester, Child Support Statutes and the Father’s Right Not to Procreate, 2 AVE MARIA L. REV. 213, 232 (2004) (“[B]ecause child-support statutes force recognition of parental relationships and responsibilities, such statutes also implicate the right of procreational autonomy.”); id. at 233 (“[W]hen the law recognizes a parental obligation against the will of the ‘parent,’ it forces procreation on that individual and infringes on the fundamental right of procreational autonomy.”).

\textsuperscript{270} As the Israeli Supreme Court articulated, “The interest in parenthood is a basic and existential value, both for the individual and for society as a whole. In contrast, there is no value to the absence of parenthood.” KAHN, supra note 7, at 68 (quoting CA 2401/95 Nahamani v. Nahamani 50(4) PD 661, 695 (1996) (in Hebrew)).

\textsuperscript{271} See supra Part IV.A.

\textsuperscript{272} See Hiester, supra note 269, at 235 (“The child may have a right to support, but he does not necessarily have a specific interest in any particular person paying the support.”).
ers must challenge the ‘best interests of the child’ standard, a simplistic rhetoric obscuring the underlying conservative vision of gender and the family.\textsuperscript{273}

I argue that this body of ‘involuntary fatherhood’ rulings echoes the larger cultural imperative to reproduce. What may subconsciously be at work here is the judges’ own socialization in light of the “deep cultural beliefs that motherhood is the most primal and natural goal for women.”\textsuperscript{274} This cultural script is coded in legal doctrine; courts facilitate ‘sperm theft’ as a legitimate pathway to motherhood by assuring those women unconditional child support. In this way, the pronatalist state may recruit the maximum number of wombs into the project of reproducing Jewish citizens. Correspondingly, each and every Israeli court that has adjudicated a so-called ‘sperm theft’ claim—except for a recent case discussed in detail shortly—flatly rejected it, ordering the ‘involuntary’ father to provide for the child until the age of twenty-one.\textsuperscript{275}

This strict liability of the sperm theory is also part of the Israeli model of fatherhood as bio-economic, that is, genetic and monetary, and not relational. The law denies that the social relationship between father and child is an essential component of fatherhood.\textsuperscript{276} Israel’s one-dimensional message to fathers is also evident in its differing treatment of sperm and egg donors. If the identity of an anonymous sperm donor is somehow discovered, then

\textsuperscript{273} For a critique in this spirit in the context of American law, see London, supra note 264, at 1959 (“The purported ‘best interests of the child’ objective of this strict liability standard is a simplistic phrase employed uncritically by courts that do not want to involve themselves in the dynamics of gender and sex in the cases before them.”); id. at 1987 (“The rhetoric of the ‘best interest of the child’ is certainly compelling, and it is easy to see why policymakers, courts, and theorists often accept it as the only equitable solution to complicated family situations. As many scholars have illustrated, however, on closer examination this rhetoric proves to be simplistic and even anathema to many leftist ideals; it is deeply intertwined with conservative moral notions of family and gender.”).

\textsuperscript{274} Cf. KHAN, supra note 7, at 11; Pnina Lahav, Raising the Status of Women Through Law: The Case of Israel, 3 SIGNS 193, 208 (1977) (“[T]he majority of Israel’s decision makers cannot free themselves of the traditional concept of sex roles.”). Indeed, judges, like the rest of us, “draw on embedded knowledge structures, and they tend to turn first to whatever ‘commonsense background theory [is] prevalent in the legal culture of their era.’” Berger, supra note 245, at 284.

\textsuperscript{275} For the landmark case regarding fathers’ child support payments to their children serving in the military, see generally CA 4480/92 Ploni v. Plonit 48(2) PD 416 (1993) (in Hebrew) (establishing that child support payments must continue while the children are in military service, albeit in reduced form).

\textsuperscript{276} A comparison to American law is illuminating. In the United States, the Uniform Parentage Act employs a social definition of fatherhood. UNIF. LAW COMM’N, UNIFORM PARENTAGE ACT §§ 201, 204 (2002). Thus, “[i]f a man and a child were to develop a relationship over a long period of time, that social father-child relationship could take priority over a biological father-child relationship.” Gross, A Man’s Right, supra note 207, at 1030–31; see also Ira Mark Ellman, Do Americans Play Football?, 19 INT’L. POL’Y & FAM. 257, 265–66 (2005) (discussing how the act gives rise to parentage through a durational relationship between the father and child, allowing “a child’s social father, with a relational status necessarily established over time, to supplant the biological father as the child’s legal father”).
under Israeli law, unlike the law in most other countries,\textsuperscript{277} that donor will be obliged to pay child support. A paternal genetic tie thus connotes monetary responsibility in the eyes of the law.\textsuperscript{278} In the case of an egg donor, however, the law specifically denies the donor’s maternity, thereby entrenching the view that motherhood is first and foremost about childcare.\textsuperscript{279} The woman who functions as the mother is the mother under the law.\textsuperscript{280} In other words, nurture can replace nature, but only for women.

Diverging from this monolithic vision of fatherhood as biological and motherhood as social, one family court recently handed down an unprecedented decision, acknowledging for the first time ‘sperm theft’ as a legitimate defense in a child support suit. The facts of this case, like so many others in this legal genre of fraudulent conception, are quite bizarre. A married couple decided to get divorced after they failed to conceive; as part of the divorce, the husband consented to the wife taking his sperm for what would be the last in a series of myriad attempts to conceive through IVF treatments.\textsuperscript{281} The woman then used the sperm not in order to fertilize her own ova, but to fertilize the egg of an out-of-country anonymous donor, resulting in a baby girl born exactly eleven months after the divorce. In the meantime, the father got remarried and had a boy. He later discovered what his ex-wife had done with his sperm since it so happened that his son went to the same kindergarten as his wife’s daughter. After this discovery, his ex-wife petitioned the court for child support.\textsuperscript{282}

In typical judicial narratives, we’ve seen that family courts disallow the ‘sperm theft’ defense in the strongest terms. Yet here, not only did the family court exempt the father from child support liability (that the father was

\textsuperscript{277} See, e.g., Gross, \textit{A Man’s Right}, supra note 207, at 1052 (“Most [American] states have statutes that protect sperm donors from facing the obligations of parenthood by excusing the donor from all rights and interests with respect to children born as a result of the donation. These statutes generally apply to both known and unknown consenting donors.”); Shifman, \textit{supra} note 260, at 281 (many countries do not view the sperm donor as a legal parent).

\textsuperscript{278} See an article written by Israel’s former Chief Justice Meir Shamgar, \textit{Issues in Procreation and Birth}, 50 HAPRAKULT 353, 368–73 (1993) (in Hebrew); \textit{see also} \textit{BENIEI \\& RONEN, supra note 259, at 211 (calling for reform of the Israeli law regarding the donor’s responsibility along the California model). Recently it has become crystal clear that a known sperm donor must pay child support despite any agreement to the contrary. See FC (Kiryat Gat) 40995-11-12 Plonit v. Almoni, at §§ 62–63 (2015) (agreement of a mother-to-be and a known donor to exempt him from child support obligations is invalid, but it may affect the amount of payments ordered) (in Hebrew); FC (Hadera) 44235-01-12 X v. X, at §§ 81–82, 89–90 (2015) (an agreement to exempt a known sperm donor from child support obligations is invalid, but it may result in reduced payments) (unpublished decision) (in Hebrew).

\textsuperscript{279} See Eggs Donation Act, 5770-2010, SH No. 2242 p. 520, § 42(c) (in Hebrew).

\textsuperscript{280} See id. § 42(a).

\textsuperscript{281} See FC (Jer.) 24281/06 M.V. v. C.S.V., at § 7 (2013) (unpublished decision) (in Hebrew).

\textsuperscript{282} See id. § 11–12.
wealthy and the mother indigent notwithstanding), but also ordered the mother to pay the father a very high compensation for violating his fundamental rights—an amount double what is typical for a violation of constitutional rights.

I suggest that in this case the court deviated from the norm of compulsory motherhood in order to signal to Israeli women that being a Jewish mother is about quality no less than it is about quantity. With this ruling, the court demarcated the outer boundaries of legitimate means to motherhood: a woman may become a parent in questionable moral circumstances, as long as the child is biologically related to her and his ‘Jewishness’ is not jeopardized. In my view, the woman in the case was penalized because her actions fragmented maternity into its genetic and gestational components, forced a rethinking of the conceptual underpinnings of motherhood, and profoundly destabilized the determination of maternity in a legal system where eggs and wombs determine religious and national identity.

While by Euro-American thinking “biogenetic material is the ultimate determinant” of kinship, notions of how motherhood is constituted and where it is located—in the genetic substance of the egg, the gestational environment of the womb, or both—is the subject of ongoing religious and folk-cultural contestation in Israel. Such questions have been confounded by the advent of a progressive surrogacy law that privileges a biogenetic basis over a gestational basis of maternity. In the eyes of the law, the genetic and intended mother, not the surrogate, is the legal mother. This is so also in the eyes of society: as sociological research has documented, Jewish-Israeli women are willing to carry embryos for others only because they are so-

283 See id. §§ 58–59. Because of the mother’s meager economic resources, the court devised a payment scheme by which the husband would carry the burden until the mother’s financial situation improved or until the child reached eighteen, at which time the mother would have a legal obligation to reimburse the father for all expenses. Id. § 62. For the proposal upon which the court relied, see Shifman, supra note 260, at 291–292.

284 See M.V. v. C.S.V. at § 59. The court ordered the mother to pay 100,000 NIS, while different legal schemes usually mandate 50,000 NIS for rights violations without proof of specific damage, as in violations of the right to privacy, sexual harassment, or damage to reputation, see Mazeh, supra note 254, at 261 n.122 (list of laws), and, recently, also the right to marital fidelity, see FC (Nz) 10541/03 MZ. v. A.Z., at §§ 36–37 (2010) (unpublished decision) (in Hebrew).

285 See KAHN, supra note 7, at 112.

286 See id. at 165–66.

287 See id. at 145–46 (“[T]here is an ongoing rabbinic debate about whether genetics, gestation, or parturition is the significant determinant of maternity; this question is obviously very important in Judaism, where identity is determined matrilineally.”); see also id. at 129 (describing the debate in greater detail).

288 See id. at 173 (“A range of contradictory beliefs about maternity exist in Israel today, beliefs that are appropriated and applied discriminately by various social actors in the overwhelming effort to reproduce Jews.”).
cially programmed to view the genetic mother as the ‘real’ mother. Moreover, the law emphatically demands that the surrogate and the contracting couple (the intended parents) be of the same religion; only in case of non-Jewish parties does the law lift this requirement, a telling manifestation of the Jewish state’s discriminate desire to maintain the ‘purity’ of its Jewish people alone.

This returns us to the ‘sperm theft’ case discussed above. As the court repeatedly underscored throughout its opinion, the woman used the egg of a non-Israeli gentile donor. This raised fundamental questions about whether the incorporation of non-Jewish genetic material into the body of a Jewish woman changes the meaning of what it means to be a Jew or an Israeli citizen. After all, “[o]ne would think that what goes into making the body is what goes into making the body politic.”

Jewish national ideology is indeed more engrossed with “the right ‘genetic’ origin than other national collectivities.” For some Jewish authorities, the use of a non-Jewish reproductive material is considered “an abomination,” an “impure” gamete in which “pollution resides eternally.” As one esteemed religious authority stated, referring to a set of fact patterns reminiscent of our story: “It is superfluous to describe the ugliness and pollution of this thing, in addition to the terrible destruction and the spiritual and frightening desolation that these creatures would introduce to the house of Israel.” This vision has left some revealing footprints in the law; Israel’s religion-based marriage code renders interfaith unions between Jews and Gentiles a legal impossibility. Even more telling is the new Eggs Donation Act, which imposes a strict donor-donee religious matching requirement, a legal arrangement that is unsurprisingly unique to Israeli law. In this view, the woman in our case was so blinded by her quest for motherhood that she mindlessly threatened to ‘corrupt’ the ‘pure’ lineage of Jewish kinship. Even worse, she called into doubt the Jewish identity of her child in

289 See id. at 141 (arguing that the very participation of Israeli women in surrogacy was made possible by subscription to the cultural conviction that the embryos these women carry are not ‘theirs’); see also section entitled “It’s Not My Child,” id. at 152–58.
290 See id. at 142–43.
292 KAHN, supra note 7, at 138.
293 See Yuval-Davis, Woman/Nation/State, supra note 9, at 41.
294 KAHN, supra note 7, at 106.
295 Kahn, supra note 7, at 107 (quoting Rav Waldenburg).
a country in which Jewishness is the primary substance of Israeli citizenship and Jewish reproduction a central goal of the state.298

Conceptualized thus, we can better understand the response of the court to this transgressing woman. By withholding child support and further burdening the woman with paying damages to the father, the court most assuredly deterred others from such a pathway to motherhood. It did its part to ensure that ‘Jewish heritage’ remains effectively preserved and the boundaries of the Israeli collectivity watchfully policed. In this way, the court regulates ‘legitimate’ reproduction, adding yet another nuance to the definition of motherhood as a precondition for substantive citizenship in Israel.

D. Fatherhood By Conscription

One of the most powerful manifestations of the binary association of manhood with breadwinning and womanhood with nurturing is the phenomenon of legal conscription of nonbiological men as primary providers for children. Under Israeli law, a stepfather is duty-bound—by virtue of his relationship with the mother—to support his stepchildren when their biological father is unavailable to do so.299 While statutory law imposes this obligation only for the duration of the stepfather’s marriage to the mother, judicial ruling recently extended economic liability even past divorce and until the ex-stepchild concludes military service.300

Recent precedential judicial ruling also extended the paternal child support duty to the case of a man merely cohabiting with a mother. The live-in boyfriend was ordered to pay child support for the twins that his ex-girlfriend adopted during their intermittent, unsteady, and relatively short relationship.301 All three of the tribunals who heard the case ordered so even though it was clear that the ‘conscripted father’ refused to adopt the twins (he already had two biological children of his own) on one hand, and that the

298 See id. at 63 (noting that one of the state’s “central goals” is to increase the Jewish population). We also see this in the peculiarly detailed scheme of abortion law. See supra Part III.


300 See File No. 47454/01, FA (Jer), T.S. v. A.S., at § 15 (Apr. 5, 2012), Nevo Legal Database (by subscription, in Hebrew). In her child support suit, the mother in turn stressed to the court that the caretaking responsibilities fell exclusively on her shoulders. Id. § 2.

301 See File No. 22050/06, FA (Hi), R. S. v. A. R., at §§ 6, 12, 16 (May 13, 2012), Nevo Legal Database (by subscription, in Hebrew). While the mother paid for the adoption by herself (her boyfriend helped her only after she ran out of money), her boyfriend did support her through the adoption process, after she clarified that failing to do so would be a deal-breaker. Id. § 3.
couple did not want to formalize their relationship and had taken substantial steps to avoid it, on the other.302

One cannot escape the feeling that the court burdened the man with unwanted paternal status because it sought to impose the traditional family structure of a breadwinning father and homemaking mother. It also sought to reward the mother for obeying the categorical imperative of motherhood—first by resorting to adoption to overcome her infertility, and second by quitting her job to provide quality care for the children. Moreover, in keeping with the well-entrenched ideals of gendered family roles, the court did not even bother to stipulate visitation, noting that if the man desired to remain involved in the twins' lives, then he could separately petition to do so.303

The transfer of parental economic obligation from the child’s mother to a legal stranger reveals the law’s ceaseless preoccupation with rigid gender role assignment: since wage-earning activity does not conform with the traditional definition of a ‘good mother,’ the law insists on tracking down an approximate father figure to fill the role exclusively assigned to the ‘man’ in the family: bringing home, in this case, the ‘kosher’ bacon.304

I argue that this legal regime is blinded by outmoded stereotypes and hurtful to both men and women. Such a practice of transforming partners into parents renders single mothers, especially widowers, into economic risks, and therefore may adversely affect their marriageability. Forcing a person to support children who are not his is no different than imposing a statutory fine on the exercise of the right to marry a mother. Would any constitutional democracy allow for a law that conditions a marriage license to a widowed mother on the payment of a marriage fee from which all other unions are exempt? Such a system inevitably relegates mothers to second-class status in the marriage market.

On a more profound level, this legal sabotage of women’s marriageability prospects may be driven by the desire to force women into the idealized definition of the self-sacrificing ‘good mother.’ The ‘normative’ Israeli mother does not take time away from her children for romance; she must not let her emotional needs stand in the way of fulfilling her motherly role with total devotion.305

302 This included a strict property division, separate bank accounts, and the man’s refusal to register their house (which he bought after the adoption and in which they resided) in his girlfriend’s name. Id. § 16.

303 Id. § 14. While writing these lines, this case was reaffirmed by the Israeli Supreme Court. See File No. 4751/12, FA, Almoni v. Almoni, at § 22 (June 10, 2013), Nevo Legal Database (by subscription, in Hebrew).

304 Tellingly, in the adoptive mother case, the court acknowledged that it was not duty-bound to follow the discriminatory religious law (inapplicable in this case), but nevertheless chose the gendered regime over an equitable formula. Almoni, at §§ 24, 28–29.

305 Even American family courts have been influenced by such reasoning. As one commentator explained of the double standard applied to single parents rehabilitating their romantic lives, “The court often views a mother’s new boyfriend suspiciously, perceiving him either as a possible danger to the children or as a distraction for the mother, diverting time and attention that she should devote to the children. By contrast, a court
Legal animosity towards mothers remarrying is nowhere more pronounced than in Israel’s Islamic custody law, which applies to the Muslim-Israeli population. In the Israeli family law structure, unique among western democracies, citizens are governed by the personal status law of their religious affiliation. Under this pluralist legal regime, a Muslim woman is doomed to lose custody of her children upon remarriage. The punitive nature of this rule is particularly evident where the father is deceased or otherwise absent. In such cases the remarried mother loses custody nonetheless—to a woman from the father’s kinship.

I argue that the same legal impulse may unduly direct child support policy, resulting in violations of fundamental rights and injury to the very children the state purports to protect. This is vividly apparent in both cases of conscripted fatherhood. In the stepfather case, the appellate court mentioned the husband’s generosity toward the child during the marriage and held it against him after divorce. In the live-in boyfriend case, the court found controlling the fact that the boyfriend helped out financially after the mother’s resources were depleted as a result of the highly expensive adoption process and after quitting the job market. These legal rulings warn partners against gratuitous expressions of altruism, lest their voluntary support become legal obligation. Attitudes of alienation and book-keeping toward stepchildren are unlikely to serve the best interests of the child, however, and are very likely to undermine the relationship between partner and mother. The child support regime thus paradoxically compromises both child welfare and family stability—two of the most sacred interests of the state.

E. Rethinking Child Support Law: An Outline For a Model Reform

Having established that there is no legal field in Israeli society that more effectively disenfranchises fathers as parents than does the child support system, in what follows, I seek to sketch a preliminary blueprint for a solution using child support law to restructure ideals of maleness and fatherhood. The law must reconceive of parenting roles, alter its outmoded views, and promote a nurturing model of fathering for Israeli men to follow. A system of child support incentivizing fathers to share childrearing responsibilities would go a long way in improving children’s development and well-

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306 For a discussion of this rule, see Yefet, supra note 296.
307 See generally id.
being\textsuperscript{310} and in stripping motherhood of its lethal impact on women’s gender equality and place in society.\textsuperscript{311}

To begin, the child support system must be restructured around gender neutrality. Parents should share equivalent child support duties, and both women and men should be able to serve as breadwinners.\textsuperscript{312} This could be a difficult change to effect, since the sex differentiation embedded in the child support scheme amounts to sex discrimination against men. Because making a legal change is materially painful, feminists may be seduced by the economic benefit to women while failing to comprehend the double-edged nature of this privilege as a concession to patriarchy and gender stereotyping.\textsuperscript{313}

Transforming financial support for children into a matter of co-equal parental responsibility is only one side of the egalitarian equation. As we have observed, Israeli law constructs fatherhood as an undefined, voluntary role, with no behavioral expectations post-divorce.\textsuperscript{314} It is high time that

\textsuperscript{310} See Sharona Mandel & Shlomo A. Sharlin, The Non-Custodial Father: His Involvement in His Children’s Lives and the Connection Between His Role and the Ex-Wife’s, Child’s and Father’s Perception of That Role, 45 J. Divorce & Remarriage 79, 80 (2006) (noting that children with unstable relationships with their noncustodial father are deprived of emotional and other support); McCant, supra note 233, at 132 (“Children need the nurturance provided by both fathering and mothering.”); Roberts, supra note 234, at 511–12 (noting the importance of active fathers to children); Hacker, Single and Married, supra note 6, at 37 (“Low quality fathering can negatively influence a child’s development.”).

\textsuperscript{311} Feminist scholars in all fields have emphasized the link between gender-based caregiving and the devalued status of women. As Nancy Chodorow aptly put it, “[W]omen’s motherhood and mothering role seem to be the most important features in accounting for the universal secondary status of women.” Nancy Chodorow, Family Structure and Feminine Personality, in Woman, Culture, and Society 43, 45 (Michelle Zimbalist Rosaldo & Louise Lamphere eds., 1974); see also Hacker & Halperin-Kaddari, supra note 238, at 349 (noting that paternal involvement is indispensable for the ability of women to lead independent lives); Roberts, supra note 234, at 511 (observing that women benefit by sharing caregiving responsibilities, as it allows them free time, prevents burnout, and enables participation in the workforce).

\textsuperscript{312} Indeed, there is some promising progression in the case law, in which lower family courts occasionally order non-custodial women to pay child support and generally resist the legal proposition that only men can be made obligors of child support. For the evolving trend toward relative equalization of child support obligation, see Shifman Report, supra note 216, at 13–14. Yet this is true only for the civil family court. The religious court still applies a strictly gendered child support regime, such that “the discrimination of litigant fathers remains as acute as it has been.” Id. at 22 (translation by author).

\textsuperscript{313} See, e.g., id. at 21 (viewing child support law as discriminatory against men); Yael Gil, Time to End Discrimination Against Men in Child Support: Update in Light of the New Ruling, 1, 10, Nevo Legal Database, (by subscription, in Hebrew); see also Lahav, supra note 274, at 201 (“The majority of persons do not consider the traditional pattern of sex roles as discrimination against women.”). The same is true with regard to the proposed gender-neutral reform in child custody law—all the women’s rights organizations that appeared before the Shnit Custody Law Committee strongly objected to the erasure of gender from child custody law. Rimalt, supra note 11, at 577. See generally Hacker & Halperin-Kaddari, supra note 238 (favoring maternal preference or a gender-neutral equivalent that awards custody to the “primary caretaker”).

\textsuperscript{314} See, e.g., Hacker, Motherhood, supra note 22, at 420 (noting “the contribution of the legal field to the construction of fatherhood as a vague and voluntary role”).
child support law reconsiders the role fathers play in the life of their children. The law can and should legitimately express expectations that a man maintain contact and care for his children. The law must withdraw its wholesale support for the gender split in caregiving and wage-earning by channeling men into at-home carework. I submit that the phenomena of gendered parenting may be ameliorated by reconstructing child support as what may be termed a “hybrid system.”

A hybrid system would take into account the wage-earning and caregiving activities of both parents, requiring them to divide up these responsibilities in a parenting plan, with the hopes of addressing the child’s interest in having contact with both parents. Nonfinancial care should be the equal responsibility of both mother and father to the extent of their abilities. Under this system, Israeli men would feel compelled to take on some carework in order to be ‘good fathers’ in the eyes of the law and of Israeli society. Further, fathers would be actively incentivized to take on carework by an important economic advantage: equitable apportionment of child support in light of shared caregiving responsibilities.

Monetizing parenting time may take many forms. A comparative gaze at American jurisdictions reveals that states vary considerably in their calculations. While some formulae are broad and painfully flexible, counting any actual parenting time against child support obligations, others are meticulously detailed, adjusting child support based on, for example, the exact number of nights the child spends with each parent per year. Still others allow for adjustment only when the obligor parent shares custody roughly equally.

Precise calculations aside, one fundamental premise must be clear in the hybrid system: carework that counts for purposes of child support reduction must be sufficiently intensive to justify shifting part of the monetary burden from fathers to mothers. Some evidence suggests a minimum stan-

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315 Roberts coined this expression, in the context of discussing the general scheme of American child support law. See Roberts, supra note 234, at 509–10.

316 See Maldonado, supra note 215, at 954 (noting that the quality of parenting is higher when both parents take part in care work); id. at 1002 (summarizing the empirical evidence that a father’s involvement in child-care benefits all members of the family and even society generally).

317 See Gaia Bernstein & Zvi Triger, Over-Parenting, 44 U.C. DAVIS L. REV. 1221, 1245–46 (2011) (noting that there is both a monetary rationale for balancing care with money as well as a social rationale of strengthening parental involvement). It is noteworthy that while these lines were written, the Shifman Committee, a public committee appointed by the Israeli Minister of Justice for the purpose of unifying the principles that guide the courts in ordering child support, submitted its recommendation to the ministry of law. Among its important recommendations, the committee suggested, along the lines of my proposal, to reward fathers who actively participate in carework by reducing their child support obligations, in the hope of getting Israeli fathers more involved in their children’s lives. See Shifman Report, supra note 216, at 63 (stating that reduction in child support is likely to provide a significant incentive for shared parental responsibility).

318 For a comprehensive list of child support statutory arrangements in the United States, see Bernstein & Triger, supra note 317, at 1246 n.113.
standard for a non-custodial parent might be that he takes care of the child at least five nights per two weeks, since only then does caregiving directly reduce the childcare expenses of the custodial parent in a way that equitably warrants legal recognition.\(^319\)

Since it would likely be imprudent to force unwilling parents to remain in close contact with their children,\(^320\) the hybrid system should make joint caretaking optional. At a minimum, though, fathers who voluntarily opt to share caretaking should have a legally enforceable responsibility to provide such nonfinancial care.\(^321\) Just as a father’s financial responsibility was converted from a once exclusively moral duty to a legal obligation,\(^322\) the same upgraded status should be accorded to emotional—not only economic—fatherhood. In this way, the system actively endorses a social norm in which caregiving is the cornerstone of good parenting.\(^323\)

In designing such a hybrid system, Israeli law should be wary of the problematic American “voluntary impoverishment” doctrine which penalizes custodial parents, usually mothers, for functioning as stay-at-home mothers by imputing income to hours at home and reducing required child support accordingly.\(^324\) This doctrine belies the public policy that young chi-

\(^319\) As the Shifman Committee suggests, if the child resides with the noncustodial father for more than four nights every two weeks (including taking the child to and from school) child support law is justified in reducing fatherly payment, beginning with a thirty-five reduction where the percentage grows, depending on the number of “parenting days” the father assumes. See Shifman Report, supra note 216, at 69–71 (translation by author). See also Hacker & Haperin-Kaddari, supra note 236, at 338.

\(^320\) See Bernstein & Triger, supra note 317, at 1248 (“[C]oerced enforcement of Intensive Parenting norms on those unwilling or unable to abide by them results in depriving children of the resources to which they are legally entitled.”).

\(^321\) See Czapanskiy, supra note 223, at 1473 (“[V]isitation would be a two-way street. Custodial parents would have to cooperate in permitting noncustodial parents access to a child in most situations, but the noncustodial parent also would have the duty to spend time with the child.”); Maldonado, supra note 215, at 995 (“[T]he law must stop treating visitation or parenting time as a right and treat it instead as a legally enforceable duty. . . . Judges can order nonresidential parents to comply with the physical custody plan they helped draft in the same manner they order them to pay a certain amount of child support each month.”).

\(^322\) Cf. WILLIAM BLACKSTONE, COMMENTARIES ON THE LAW OF ENGLAND 446–54 (John Wendell ed., 1859) (discussing moral duties and legal obligations generally).

\(^323\) See Judith A. Seltzer, Father by Law: Effects of Joint Legal Custody on Nonresident Fathers’ Involvement with Children, 35 DEMOGRAPHY 135, 145 (1998) (“By clarifying that divorced fathers are ‘by law’ still fathers, parents’ negotiations about fathers’ participation in childrearing after divorce may shift from trying to resolve whether fathers will be involved in childrearing to how fathers will be involved.”).
children's welfare is tied to the availability of at least one parent as an intensive caregiver. Further, since the higher the caretaker's potential income, the more pronounced the childcare penalty, and since Israeli men's earning capacity much exceeds that of women, the "voluntary impoverishment" doctrine would deter fathers from reducing their work schedule to help care for children. This would only further entrench the stereotype of fathers as natural breadwinners.

The voluntary impoverishment doctrine is certainly harmful so long as the children at home are young (that is, up to the age of twelve, the end of elementary school) or disabled. Beyond school-age, however, it makes sense for the law to assume that older children would benefit more from a parent's income than from that parent staying at home. Such a legal approach would mark an important step in making transparent the economic value of caregiving work for young children, and in fairly apportioning between parents the financial burdens of such caretaking.

While the hybrid system proposed is equitable and may encourage active parenting, the law must guard against possible abuses, such as strategic reduction of the economic burden of fatherhood. In order to minimize the risk of manipulation, the law should allow only for a retroactive adjustment in child support payment (perhaps at the end of each tax year), upon actual proof that the father shared carework. This way, the burden does not fall on the woman (usually the weaker economic party) to initiate costly court proceedings. A retroactive mechanism is an indispensable safeguard given ample experience elsewhere that even without malice and with the best of intentions, custody arrangements often collapse into traditional gendered parenting.


326 Murphy, supra note 227, at 728 n.209 ("The higher the mother's potential income, the greater the penalty, if her income is imputed to her while she is caring for children at home.").

327 See David Lipkin, Israel Fell to 56th Place in the Gender Equality Ranking, NRG (Oct. 25, 2012), http://www.nrg.co.il/online/16/ART2/411/172.html [http://perma.cc/E7XC-FESG] (in Hebrew) (reporting that the wage gap between Israeli men and women is enormous: while women earn on average $22,118 per year, men take home $34,047, and the gap is only increasing).

328 For the rationale for setting the child's age at twelve, see Shifman Report, supra note 216, at 69–70.

329 Indeed, many feminist scholars elsewhere have warned that fathers who struggle for joint physical custody are motivated by the desire to reduce their child support payments. See Hacker & Halperin-Kaddari, supra note 238, at 337.

330 See, e.g., Bernstein & Triger, supra note 317, at 1248 (finding that mothers rarely seek an adjustment of child support payment in court when fathers who request additional parenting time in order to reduce child support payments fail to fulfill their childcare obligation); Hacker & Halperin-Kaddari, supra note 238, at 339.

331 This is at least the case in Australia. For a summary of Australian findings on this point, see Hacker & Halperin-Kaddari, supra note 238, at 339.
Sanctions may provide a further safeguard. Some American jurisdictions already order financial compensation for the expenses incurred due to one parent’s failure to assume caretaking responsibility. The Shnit Committee, after examining legal aspects of parental responsibility in matters of divorce in Israel, proposed to impose sanctions against parents who violate agreed parenting arrangements. These sanctions include both facilitative tools (e.g., the appointment of a coordinator to enforce the parenting plan) and legal ‘teeth’ in the form of monetary compensation, readjustment of the visitation agreement, or actionable torts.

Commentators have also proposed an elaborate set of coercive consequences for a father’s failure to perform his own caregiving responsibilities. For example, courts may impose public sanctions designed to shame fathers into parenting their children. Some American jurisdictions already immobilize the cars of economic deadbeats by attaching pink or blue boots to the wheels. In the same spirit, courts could easily impose community service sentences to “alert the community that the person sweeping the park wearing a uniform with a photograph of a child is an ‘emotional deadbeat.’”

More than simply disciplining delinquent parents, the law might also create social norms of paternal involvement that themselves stimulate community enforcement and self-sanctioning. Indeed, a mounting body of scholarship has documented the influence of family law in crafting social norms, and other research supports the thesis that fathers become disengaged parents partly because “they have internalized the message that their role after divorce is primarily economic.”

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332 See, e.g., CAL. FAM. CODE § 3028(a)-(b) (1994); Czapanskiy, supra note 223, at 1475–76.

333 For an instructive analysis of the various remedies proposed by the Shnit Committee, see Mazeh, supra note 254, at 256–65. The author refines the proposals, for example, by suggesting a global and fixed sum of compensation without the debilitating need to prove actual damage, which according to the author, is the governing law in varied countries. Id. at 260–61; see also Hacker & Halperin-Kaddari, supra note 238, at 348 (proposing a mechanism of fixed and preordained compensation for breach of visitation agreements).

334 See, e.g., Czapanskiy, supra note 223, at 1476 (recommending “a system of progressively coercive consequences ... when a parent fails to engage responsibly in the work of parenthood”).


336 Maldonado, supra note 215, at 996.

337 See, e.g., Czapanskiy, supra note 223, at 1461 (“Fomenting change is an old and a legitimate role for law in the realm of family conduct as well as in the realm of other gendered relationships.”); id. at 1481 (“The potential of the law to express a social norm as well as to make a difference in people’s conduct is substantial.”); Scott, supra note 335, at 1926 (“[L]egal rules can clarify and announce the specific behavioral expectations embodied in social norms.”).

338 Maldonado, supra note 215, at 984; see also Cynthia A. McNeeley, Lagging Behind the Times: Parenthood, Custody, and Gender Bias in the Family Court, 25 Fl.A. St. U.L. Rev. 891, 895 (1998) (“The state’s treatment of divorced fathers has become a self-fulfilling prophecy. By sending a distinct message to divorced fathers that they are not
Born to Be a Mother

Drawing on the analysis of norms theorists, Professor Maldonado argues that once paternal contact is made mandatory, then "even with minimal legal enforcement . . . The desire to avoid societal disapproval, along with internalization of the norm of involved fatherhood, might lead fathers to better parent their children."339 By passing legislation requiring parents to spend time with their children, the law would express a consensus that failure to spend such time is contrary to minimally acceptable paternal behavior and carries the threat of community disapproval.340

All in all, the proposed hybrid legal scheme signals to fathers that they are full-fledged parents—not just checkbooks. Israeli parents of both genders henceforth would be caregivers and providers, educators and nurturers, all at the same time. This model of equality-based parenting is an important stepping stone on the legal road to redefining fatherhood, breaking down traditional gender roles, and eradicating the sex segregation of care work and its far-reaching consequences.

V. CODA: ANATOMY, AUTONOMY, AND CITIZENSHIP

This work seeks to deconstruct a pivotal socio-legal arena that perpetuates gendered power structures and constitutes the social contract for substantive female citizenship in Israel. The reproductive labor of women—both birthing and rearing children—is the entry-ticket to full membership in the Israeli collective.

The legal expression of reproductive citizenship starts with Israel’s abortion law. In this regime, Jewish-Israeli women are compelled to become mothers, and their wombs are enlisted for the purpose of ensuring the continuous survival of the Jewish people. Moreover, they are torn between competing concerns for the quantity and the ‘quality’ of children born. They take part in extreme medicalized self-sacrifice to ensure national belonging; they submit their bodies to state-sponsored prenatal genetic screening at unprecedented rates to ensure the perfect ‘chosen bodies’ of their offspring; they are subject to comprehensive social control through rituals of moral discipline; and their sexual behavior is restricted to preserve the Jewishness, legitimacy, and ‘purity’ of the citizens they produce.

Having pledged allegiance to the collective endeavor of state-building, Israeli women have played a very little role in shaping policy pertaining to the most intimate aspects of their lives. The individual reproductive rights of Israeli women are consistently subordinated to the larger interests of the nation. In Israel, unlike anywhere else in the Western world, abortion law and

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essential to the raising of children beyond supplying a percentage of their paychecks to the mother . . . and perhaps a couple of hours a week of ‘visitation’. . . . the state has encouraged divorced fathers to abandon true fatherhood.”)

339 See Maldonado, supra note 215, at 1001.
340 Id. at 1007–08.
its patriarchal ideology remain unchallenged, both by the otherwise activist and liberal Israeli Supreme Court, and by feminists who have long identified the right to abortion as a *sine qua non* to gender equality.

While abortion law coerces women into becoming mothers, child support law forces them to perform the caregiving work of motherhood. In other words, abortion law projects motherhood as compulsory, and child support law complements this by labeling fathers as exclusive breadwinners and women as exclusive nurturers. Child support law not only validates the gender power structure; it also adds another component—childrearing—to the substantive definition of female citizenship in Israel. In this way, the distinctive duties of Jewish-Israeli men and women are markedly gendered: men support the country by becoming soldiers, women by producing and nurturing those soldiers.

Yet if acquiescence to the categorical imperative of compulsory motherhood signifies substantive citizenship—as opposed to formal membership—then women are trapped between a rock and a hard place: the very status of mother has simultaneously worked to relegate them to a secondary position in the nation’s economic sphere. Put differently, fulfilling the expectations of motherhood is both the entry ticket into and the mechanism of exclusion from Israeli society.

The long-term solution to achieving equality-based citizenship for women is to gradually turn motherhood from prescriptive to voluntary, and to turn fatherhood into a more demanding legal and social status that involves not only a monetary obligation, but also a commitment to childcare. At the same time, whenever women do choose motherhood, the state should actively support childrearing in addition to childbearing.

The first goal requires that Israel liberalize abortion law with the recognition that women’s propensity for motherhood is as variable as any other personal trait. Granting women control over their own bodies through a right to reproductive freedom may yield substantive equality and help sever the Gordian knot between motherhood and female citizenship in Israel.

Reforming child support law is an important stepping stone to accomplishing the second policy goal. While norms of compulsory motherhood should be attenuated, norms of active fatherhood should be accentuated. Child support law can and should facilitate a robust norm of involved fatherhood that demands active, comprehensive paternal participation in the life of children. Defining a father as an active partner in childrearing—by including caregiving in the child support scheme—is a promising starting point in breaking down both gender roles and labor bifurcation in a way that will ultimately benefit society as a whole.

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341 See Lahav, *supra* note 274, at 207 (“The notions that the family unit in its traditional framework is a societal goal and that it affects positively national unity and cohesion militate against full and equal (as distinguished from partial) participation of women in public life and labor force.”); Peled, *supra* note 2, at 340 (noting that women’s motherly role in Israel “has had devastating effects on women’s struggle for equality”).
Going further, the state should encourage parenthood and childcare work not by limiting women's choices, but by facilitating their realization. Today, however, the Jewish state directs the crux of its subsidiary efforts almost exclusively to childbearing, while largely washing its hands of childrearing. A comprehensive study comparing state contributions to childrearing found that Israel offers among the lowest support for various child-related benefits of all the industrialized countries examined.\textsuperscript{342} In other words, the state that pushes women into compulsory motherhood does not account for the conditions that make this 'national service' a hallmark of women's marginalized social status.\textsuperscript{343} Since children constitute the greatest barrier to women's economic equality, "the fairest, most efficient, most effective way to help women is through their children."\textsuperscript{344} One strategy is to subsidize the demands of caregiving work. Child-centered policies of labor market intervention and broad-based taxes that cover the costs of child-centered benefits are among many legal arrangements used to guarantee that women who become mothers will not pay dearly for it in the labor market.\textsuperscript{345}

In the long run, both parents and children would benefit if the reproduction empire empowered childrearing, not only childbearing, and if one-parent mothering became two-parent parenting. All of society is better off when motherhood is voluntary, and the work of motherhood is chosen, rather than the result of a national imperative to substantive citizenship stature for women in the Jewish nation-state.


\textsuperscript{343} Reva Siegel put it best: "No modern legislature interested in adopting restrictions on abortion has, to my knowledge, offered to compensate women for this work; to protect women's employment and education opportunities while they perform the work of motherhood; or to provide women adequate childcare so that they are not pushed into dependency upon men or the state . . . . Thus, when the state enacts restrictions on abortion, it coerces women to perform the work of motherhood without altering the conditions that continue to make such work a principal cause of their secondary social status." Siegel, supra note 202, at 377.

\textsuperscript{344} Victor R. Fuchs, Women's Quest for Economic Equality 147 (1988).

\textsuperscript{345} See id. at 145-46.
ARTICLES

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