

## **LS190.4: Law and Social Change: The Case of Israel**

Prof. Masua Sagiv

Fall 2021, TuTh 8-9:30am  
Social Sciences Building 155

### ***Course Description***

The question of law's role in promoting social change has engaged research and practice for decades. However, the main focus in this area was given to changing distributive and class structures, while maintaining conceptual fixation regarding the nature of social change and the ways to promote it. The course will examine the scope and limits of promoting social change through law in the cultural, religious and communal spheres in Israel, in those areas where the "status quo" dominates: the different conflicts of state and religion in Israel. Issues to be covered include religion-induced segregations, religious marriage and divorce, gender equality and religions, conversion, and free exercise of religion in different sites (such as the Western Wall and the Temple Mount). While the question of law and social change arise in any contemporary democracy, the Israeli experience provides unique perspectives and illustrations, which will be explored critically, throughout the course.

By the end of this course, you will be able to:

1. Understand law's role in promoting social change;
2. Recognize the different types of social change and different strategies and fields for promoting it; and
3. Evaluate the criteria for success or failure of both strategies and struggles for social change.

### ***Requirements***

Students will be asked to (1) attend all classes and engage in informed discussion, (2) submit two response papers, two pages long each, during the term, (3) be prepared to lead a class discussion based on their response papers, and (4) submit a short research paper, ten pages long, on a topic to be chosen in consultation with the instructor. Requirements (1)-(3) represent 50% of the final grade, and the final research paper (4) accounts for the other 50%.

**Students must adhere to the current campus directives related to COVID-19 and refusal to do so may result in the student being asked to leave.**

Office hours: after class, or by appointment (to be conducted via Zoom). Depending on public health directives and situation, outdoor meetings can be scheduled later in the semester.

Prof. Sagiv can be reached at [masua.sagiv@berkeley.edu](mailto:masua.sagiv@berkeley.edu).

## SYLLABUS

[Items marked by \* are optional reading]

All materials can be found in the course website on bCourses

### PART I: INTRODUCTION

#### ***I. A Jewish and democratic state***

Thu. Aug. 26, Tue Aug. 31, Thu. Sep. 2, Thu. Sep. 9

Tue. Sep. 7 Rosh HaShanna – NO CLASS

- 1) MENACHEM MAUTNER, LAW AND THE CULTURE OF ISRAEL (OUP 2011), *ch. 7: Israel as a Multicultural State*
- 2) Shimon Shetreet, *State and Religion: Funding of Religious Institutions – The Case of Israel in Comparative Perspective*, NOTRE DAME J.L. ETHICS & PUB. POL'Y Vol. 13 (1999), pp. 421-435
- 3) Basic Law: Human Dignity and Liberty [1992, amended 1994]
- 4) Nadiv Mordechai & Yaniv Roznai, A Jewish and (Declining) Democratic State: Constitutional Retrogression in Israel, 77 MD. L. REV. 244 (2017)
- 5) Shahar Lifshitz and Ori Aronson, "*Jewish and Democratic*" as Methodology (2019)
- 6) Ayelet Blecher-Prigat & Benjamin Shmueli, *The Interplay Between Tort Law and Religious Family Law: The Israeli Case*, 26 ARIZ. J. INT'L COMP. L. Vol. 26 (2009), pp. 279-302
- 7) Michael Karayanni, *Multiculturalism as Covering: On the Accommodation of Minority Religions in Israel*, AMERICAN J. COMP. L., Vol. 66(4) (2018), pp. 831-875

### PART II: LAW AND SOCIAL CHANGE

#### ***II. Social criticism***

Tue. Sep. 14

Thu. Sep. 16 – Yom Kippur – NO CLASS

- 1) MICHAEL WALZER, INTERPRETATION AND SOCIAL CRITICISM (1987), pp. 30-57
- 2) Jonathan Allen, *The Situated Critic or the Loyal Critic? Rorty and Walzer on Social Criticism*, PHYL. & SOC. CRITICISM, Vol. 24(6) (1998), pp. 25-42

## Tue. Sep. 21 – ASYNCHRONOUS CLASS

Watch and answer questions in bCourses:

A Conversation on “Jewish and Democratic/Democratic and Muslim: Israel and Tunisia in Perspective” Ruth Gavison and Malika Zeghal, Harvard Law School, Nov. 8, 2016, [https://www.youtube.com/watch?v=tRqxIH3Vm4o&ab\\_channel=HarvardLawSchool](https://www.youtube.com/watch?v=tRqxIH3Vm4o&ab_channel=HarvardLawSchool)

### ***III. Strategies for social change***

#### Thu. Sep. 23

- 1) Nancy Fraser, *From Redistribution to Recognition? Dilemmas of Justice in a “Postsocialist” Age*, NEW LEFT REVIEW (1995), *excerpts*

## Tue. Sep. 28 – ASYNCHRONOUS CLASS

Watch and answer questions in bCourses:

*GETT* (Ronit Elkabetz & Shlomi Elkabetz dirs., Israel 2014)

### ***IV. Law and social change***

#### Thu. Sep. 30, Tue. Oct. 5, Thu. Oct. 7

- 1) Chai R. Feldblum, *The Art of Legislative Lawyering and the Six Circles Theory of Advocacy*, 34 MCGEORGE L. REV., VOL. 34 (2003), pp. 785-787, 803-815
- 2) The Dayanim Bill (Amendment No. 26) (Adequate representation for women in the Dayanim Appointment Committee), 5773 – 2013
- 3) Orly Lobel, *The Paradox of Extralegal Activism: Critical Legal Consciousness and Transformative Politics*, HARV. L. REV., Vol. 120(4) (2007), pp. 938-988
- 4) Noya Rimalt, *From Law to Politics: The Path to Gender Equality*, Isr. Stud. Vol. 18(3) (2013), pp. 5-13
- 5) Yousef T. Jabareen, *The Politics of Equality: The Limits of Collective Rights Litigation and the Case of the Palestinian-Arab Minority in Israel*, COLUM. J. RACE & L., Vol. 4(1) (2013), pp. 24-25, 33-54
- 6) MICHAEL KARAYANNI, A MULTICULTURAL ENTRAPMENT: RELIGION AND STATE AMONG THE PALESTINIAN-ARABS IN ISRAEL (2020), *ch. 6: The voice of no exit: on reforming family religious law among the palestinian-arabs*, pp. 241-271
- 7) Afif Abu Much, *Arab Legislator’s Speech Marks Historic Moment in Israeli Politics*, AL-MONITOR, Apr. 5, 2021, <https://www.al-monitor.com/originals/2021/04/arab-legislators-speech-marks-historic-moment-israeli-politics>.

- 8) \* Ben Caspit, *Netanyahu's Fans Hail Historic Speech by Israeli Arab Legislator*, AL-MONITOR, Apr. 2, 2021, <https://www.al-monitor.com/originals/2021/04/netanyahus-fans-hail-historic-speech-israeli-arab-legislator>

## **V. Courts' role in interpreting religion/culture**

Tue. Oct. 12

- 1) Madhavi Sunder, *Cultural Dissent*, Stan. L. Rev. 495 Vol. 54(3) (2001), *excerpts*
- 2) HCJ 7150/16 – The Israel Religious Action Committee (IRAC) v. the Justice Ministry, [Stein ¶¶ 39, 66, 70-78; Amit]

## **VI. Extra-legal activism**

Thu. Oct. 14

- 1) Evgeny Morozov, *The Brave New World of Slacktivism*, FOREIGN POL'Y, May 19, 2009
- 2) "Ravgoni'yut" [diversity]: On Community Spiritual Leadership in Israel (The Honey Foundation for Israel), [https://www.youtube.com/playlist?list=PLBvWXVThJky\\_q2JojqI17KVsurB3UC8X](https://www.youtube.com/playlist?list=PLBvWXVThJky_q2JojqI17KVsurB3UC8X)

## **VII. Legal pluralism and social change**

Tue. Oct. 19, Thu. Oct. 21

- 1) Sally Engle Merry, *Legal Pluralism*, LAW & SOC'Y REV., Vol. 22(5) (1988), pp. 869-896
- 2) Yedidia Z. Stern, "And Your Camp Shall be Holy" – The Case of the Takana Forum, TRADITION Vol. 50(2) (2017), pp. 107-122
- 3) Daniel Sperber, *Why Did I Establish A Private Rabbinical Court?* (July 31, 2018)
- 4) \* Ido Shahar, *Forum Shopping Between Civil and Shari'a Courts*, in RELIGION IN DISPUTES (2013), pp. 147-164

PART III: LAW AND SOCIAL CHANGE: PERSPECTIVES FROM ISRAELI LAW

**VIII. Gender equality in the religious establishment**

Tue. Oct. 26, Thu. Oct. 28

- 1) Tanya Zion-Waldoks, Ronit Irshai, and Bana Shoughry, *The First Female Qadi in Israel's Shari'a (Muslim) Courts: Nomos and Narrative*, SHOFAR: AN INTERDISCIPLINARY JOURNAL OF JEWISH STUDIES, Vol. 38(2) (2020), pp. 229-261
- 2) HCJ 8213/14 Dror v. Minister of Religious Services (2017)
- 3) Jeremy Sharon, *High Court Gives Rabbinate 90 Days for Solution to Women's Halacha Exams*, The JERUSALEM POST, Aug. 6, 2020, <https://www.jpost.com/israel-news/high-court-gives-rabbinate-90-days-for-solution-to-womens-torah-exams-637696>

**IX. Membership/citizenship/immigration: "Who is a Jew?"**

Tue. Nov. 2, Thu. Nov. 4

- 1) The Law of Return, 1950 [as amended, 1970]
- 2) Daphne Barak-Erez, *Who Is a Jew and the Law: Between London and Jerusalem*, in MAPPING THE LEGAL BOUNDARIES OF BELONGING: RELIGION AND MULTICULTURALISM FROM ISRAEL TO CANADA (Rene Provost ed., OUP 2014), pp. 143-151
- 3) Gideon Sapir, *How Should a Court Deal with a Primary Question That the Legislature Seeks to Avoid? The Israeli Controversy over Who Is a Jew as an Illustration*, VANDERBILT JOURNAL OF TRANSNATIONAL LAW, vol. 39 (2006), pp. 1239-1250
- 4) HCJ 7625/06 Rogachova v. Ministry of the Interior (2016)
- 5) *High Court Recognizes Reform, Conservative Conversions Carried Out in Israel*, TIMES OF ISRAEL, March 1, 2021, <https://www.timesofisrael.com/israels-top-court-recognizes-reform-conservative-conversions/>
- 6) \* Asher Cohen & Bernard Susser, *Jews and Others: Non-Jewish Jews in Israel*, ISRAEL AFFAIRS, vol. 15(1) (2009), pp. 52-65

**X. Membership/citizenship/immigration II: Who is an Israeli?**

Tue. Nov. 9

Thu. Nov. 11, Veterans Day – NO CLASS

- 1) Basic Law: Israel – the Nation State of the Jewish People

- 2) Barak Corren, Netta and Gidron, Noam and Feldman, Yuval, *Majority Nationalism Laws and the Equal Protection of Minorities: Experimental and Observational Evidence from Israel* (March 31, 2021). Hebrew University of Jerusalem Legal Research Paper No. 21-13, Bar Ilan University Faculty of Law Research Paper No. 21-14
- 3) *Israel: Supreme Court Affirms Constitutionality of Basic Law: Israel – Nation State of the Jewish People*, Library of Congress, <https://www.loc.gov/item/global-legal-monitor/2021-07-27/israel-supreme-court-affirms-constitutionality-of-basic-law-israel-nation-state-of-the-jewish-people/>

## ***XI. Free exercise of religion***

Tue. Nov. 16

- 1) Pnina Lahav, *The women of the wall: a metaphor for national and religious identity*, ISRAEL STUDIES REVIEW, Vol. 30(2) (2015), pp. 50-67
- 2) Stuart Winer, *Using his Immunity, Labor MK Delivers Torah for Women to Read at Western Wall*, TIMES OF ISRAEL, Apr. 13, 2021, <https://www.timesofisrael.com/using-his-immunity-labor-mk-smuggles-torah-for-women-to-read-at-western-wall/>
- 3) HCJ 292/83 Temple Mount Loyalists Society v. Police Commander of the Jerusalem Region (1984)

## ***XII. Traditional practices and the state***

Thu. Nov. 18

- 1) Ido Shahaar, *Diversity in Sulha Practices among Arab-Palestinians in Israel and Its Implications for State–Minority Relations: A Pluri-Legal Perspective* (2021)
- 2) Manar Hasan, *The politics of honor: patriarchy, the state and the murder of women in the name of family honor*, J. ISRAELI HISTORY, Vol. 21(1-2) (2002), pp. 1-37

## ***XIII. Segregation in education***

Tue. Nov. 23, Tue. Nov. 30

Thu. Nov. 25 Thanksgiving – NO CLASS

- 1) Masua Sagiv, *Controlling the Education of Children in a Liberal Multicultural State - Religious Education in Israel: A Case Study*, CHILD. LEGAL RTS. J., Vol. 31(4) (2011), pp. 56-61 (*The Israel Educational System*)
- 2) HCJ 1067/08 No'ar KeHalacha v. Ministry of Education (2009)

- 3) \* Menachem Mautner, *A Dialogue between a Liberal and an Ultra-Orthodox on the Exclusion of Women from Torah Study* (2013)
- 4) Lotem Perry-Hazan, *Court-Led Educational Reforms in Political Third-Rails: Lessons from the Litigation over Ultra-Religious Jewish Schools in Israel*, J. EDUC. POL'Y, Vol. 30(5) (2015), pp. 713-737
- 5) Yofi Tirosh, *The Future of Sex Segregation in Israel Following the Supreme Court Ruling on Segregated Academia*, Aug. 3, 2021, [https://www.youtube.com/watch?v=ICzyTVCCv8g&ab\\_channel=HiddushIsrael](https://www.youtube.com/watch?v=ICzyTVCCv8g&ab_channel=HiddushIsrael) excerpts

#### PART IV: CONCLUSION

#### ***XIV. Mapping the way/Moving Forward***

Thu. Dec. 2

TBD