
2 Jewish Marriage as an Expression of Israel's Conflicted Identity

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Introduction

Marriage, according to the laws of Israel, is an exclusively religious institution; there is no civil marriage. There are Jewish, Muslim, Christian, Baha'i, and Druze institutions designated to administer marriage laws for their own religious groups.¹ Although Israel is a secular democracy, it does not maintain full separation of religion and state. Israel largely identifies itself as a Jewish *and* secular democratic state. For reasons to be explored later, however, Israel has accepted the Orthodox Rabbinat's exclusive control of Jewish marriage. The question is whether such a connection between religion and state is compatible with a democracy in the area of marriage law. For example, a couple consisting of one partner who is Jewish and the other non-Jewish may not marry in Israel (religious law endorsed by state law); they may, however, marry abroad and have their marriage registered in Israel (state law). The non-Jewish spouse may immigrate and be granted automatic Israeli citizenship under Israel's "Law of Return" (state law), but would not be entitled to status as a Jew (religious law).² The Israeli legal system is considered to be "unique among modern legal systems" in its delegation of marriage to religious courts (Zamir & Zysblat, 1996, pp. 12–13).

A study of the institution of Jewish marriage and its place in Israel's conflicted identity may generate insights that can be applied to broader issues of inequality, such as the situation of Israeli Arabs, a sizable minority who face issues in some ways analogous to those of non-Orthodox Jews and

¹There are 14 religious communities in Israel: Jewish, Muslim, Druze, Baha'i and 10 Christian denominations (Freudenheim, 1967, pp. 86–87).

²The Law of Return, approved on July 5, 1950, "gave all Jews everywhere the legal right to immigrate to Israel and receive Israeli citizenship" (Isaac, 1981, p. 73). The law did not define the word *Jew*. As a result of the 1970 Shalit Supreme Court case, the meaning of *Jew* in the Law of Return follows the Orthodox definition for both religious and national identification (p. 75).

other non-Jews in Israel. An interdisciplinary approach to the institution of Jewish marriage is necessary because no single discipline is able to provide a comprehensive understanding of its complex and emblematic role in Israeli democracy. The interdisciplinary research process offers the most effective way to consider each contributing discipline's perspective, find common ground between conflicting insights, integrate these insights, and apply the resulting understanding to broader issues in Israel as a Jewish and democratic state.

Drawing On Disciplinary Insights

Step 1: State the Focus Question³

The overall question of how Israel can be both a Jewish and a democratic state at the same time is one of the most actively debated by Israel Studies scholars. Former Israeli Supreme Court Justice Barak (2002), for example, notes the “duality” of a state that characterizes itself as both Jewish and democratic. Mazie (2006) points out that most commentators tend to regard “‘Jewish’ as a code word for limitation and ‘democratic’ as an indicator of freedom” (p. 94). The meanings of *Jewish*, *democratic*, and *Jewish and democratic* are unclear because the terms have multiple definitions, depending on their context. The tension between the terms creates problems for the institution of Jewish marriage in Israel and, more broadly, for Israel's conflicted identity.

The categorization of Israel as a Jewish state is rooted in religion, ethnicity, and national identity. The religious meaning of Judaism has its origins in the Bible and includes Jews professing religious beliefs from ultra-Orthodox to atheist (Sharkansky, 1999, p. 61). Jewish ethnicity was forged in the historical isolation and marginalization of Jewish communities over many centuries, as a byproduct of anti-Semitism, especially in Europe (Berlin, 1978). Zionism, a primarily secular movement, effectively made Judaism a national identity, in addition to a religious and ethnic identity. Despite being a “Jewish State,” Israel is not a theocracy, nor is Judaism the official state religion (Edelman, 1994, pp. 50–51). The institution of Jewish marriage exemplifies the complex relationship between religion and the state in Israel.

The roots of democracy in Israel predate the establishment of the state. They are found in the European-based Zionist movement and the *Yishuv*, the

³Each of the steps refers to the research process model presented in Repko (2008). Because the approach is iterative and nonlinear, the division of a fluid process into steps may give the misleading impression of a unidirectional sequence. The steps are sequenced by Repko to describe the overall progression of the process. In this chapter, all future subtitles enumerating the 10 steps in the two parts of the interdisciplinary research process will not be separately footnoted. See Repko, p. 142, for an integral model of the process that includes an enumeration of the two parts with the 10 constituent steps.

term used to describe the pre-1948 Jewish society of Palestine (Sheffer, 1996, p. 21). Israel meets the broad criteria for a democratic state: providing opportunities for effective participation, equality of voting, gaining enlightened understanding, exercising final control over the public agenda, and including adults in its governmental institutions (Dahl, 1998, pp. 38, 85). Democracy may also be viewed as an ideal and, as such, not fully attainable in practice (Gavison, 2007, p. 98). Democracy requires a sense of shared purpose or identity, as does religion.

An important consideration in the protection of civil rights, such as the right to marry, is constitutional protections. Israel does not have a formal written constitution. Rather, over the years, the Knesset—the Israeli Parliament—has developed a series of Basic Laws that provide the equivalent of constitutional guidance in particular areas. In 1992, the Knesset passed two Basic Laws, Freedom of Occupation and Human Dignity and Liberty. These laws are particularly important for several reasons:

- the phrase “Jewish and democratic state” is first formally used explicitly,
- the laws constitute the beginning of a formal Israeli Bill of Rights, and
- there is implicit authority for judicial review.

Judicial review, the power of the Supreme Court to declare legislation unconstitutional, is viewed by many as a “constitutional revolution” under the leadership of former Chief Justice Barak (Barak, in Arian, 2005, pp. 310–311). Judicial review empowers the Court to intervene in marriage laws and resulting civil rights violations, where previously the ultimate authority would have rested with the legislature.

Thus, Israel's identity as a secular yet Jewish democratic state is clearly conflicted. The topic may be stated as a focus question: How does the institution of Jewish marriage express Israel's conflicted identity as a Jewish and democratic state? The broader ramifications of this question for Israel as a Jewish and democratic state, extrapolated from exploration of Jewish marriage through the interdisciplinary research process, will, in Step 10 of the process, be applied to the situation of Israeli Arabs.

Step 2: Justify Using an Interdisciplinary Approach

There are several justifications for using an interdisciplinary approach in the present study. One justification flows from the complexity of the question posed. Klein and Newell's (Newell, 1998) classic definition states,

Interdisciplinary studies may be defined as a process of answering a question, solving a problem or addressing a topic that is too broad or complex to be dealt with adequately by a single discipline or profession. . . . IDS draws on disciplinary perspectives and integrates their insights through construction of a more comprehensive perspective. (p. 245)

This definition highlights the two parts of the interdisciplinary process: disciplinary insights and integration. To be truly interdisciplinary, research “is not just pasting two disciplines together to create one product but rather is an integration and a synthesis of ideas and methods” (National Academy of Sciences, 2005, p. 27).

A second justification typically used for an interdisciplinary approach occurs when essential phenomena, which are part of the research problem, are examined by more than one discipline. The two main approaches to interdisciplinary research are perspectival and classification (Repko, 2008, p. 84). The perspectival approach begins by identifying the relevant disciplines. The classification approach, developed by Rick Szostak (2000), begins with a schema that organizes phenomena in the human world, moving from broad, general, more abstract categories to the more specific in levels of phenomena; the phenomena are then linked to particular disciplines. Szostak defines phenomena as “any identifiable entities, concrete or abstract, individual or collective. . . . ongoing, indeed eternal, characteristics of human society” (p. 118). Although the present study essentially follows the perspectival approach, Szostak’s classification of phenomena is also utilized because more possible linkages are discovered than by relying solely on the perspectival approach.

A third justification for an interdisciplinary approach occurs when the problem requires the researcher to draw upon an interdisciplinary field. An analysis of the institution of Jewish marriage falls within the field of Israel Studies, whose signal journal, *Israel Studies*, presents scholarship in fields such as the history, politics, society, and culture of Israel. The present integrative study, then, falls broadly within the emergent interdisciplinary field of Israel Studies.

Steps 3 and 4: Identify Relevant Disciplines and Conduct a Literature Search

The term *discipline*, in the context of interdisciplinary research, encompasses subdisciplines, schools of thought, and interdisciplinary fields (Repko, 2008, pp. 52, 101). What they all have in common is that each is characterized by its own perspective or worldview (Newell, 2006, p. 251). The potentially relevant fields for this study include religion, religious studies, political science, law, history, sociology, and cultural studies.

In several cases, there is an overlapping of different disciplinary perspectives. Klein (1996) says that disciplinary boundary crossing most frequently occurs at the level of subdisciplines, rather than entire disciplines (p. 42), and that the interactions among these disciplinary “neighbors” may result in boundary blurring (p. 70). These effects must be taken into account in determining which disciplines and their insights are essential to a focused analysis of the topic.

Through an in-depth literature search, the list of selected possible disciplines is reduced to the *most* relevant disciplines. There are several criteria that inter-disciplinarians typically apply to this selection process:

- to narrow the topic, sharply focus the research question, and state the problem clearly;
- to understand the background of the problem;
- to situate or contextualize the problem;
- to identify the concepts, assumptions, theories, methods, and data used by each discipline's experts in their writing on the problem. (Repko, 2008, pp. 176–177)

In the present study, several disciplines are eliminated through the literature search. Cultural studies, an interdiscipline, is eliminated because its insights are encompassed within some of its constituent disciplines, which are among the other disciplines selected. Sociology is eliminated because its contribution through research on Israeli society would de-focus the research question due to its emphasis upon groups within the society rather than governing structures. History is eliminated because it essentially provides background to contextualize other disciplines' perspectives. To be included as a discipline, history would have to be considered in terms of patterns, contexts, and causal links, which are not the primary focus of the present study. Religious studies is eliminated because it is the academic study of religion from external perspectives. In contrast, religion, which is one of the essential disciplines for this study, refers to the theological belief system internal to Judaism; in Israel, this is generally equated with the Orthodox denomination of Judaism.

The essential disciplines for this study, then, are religion, political science, and law. The literature search is particularly challenging because of the diverse nature of the disciplines. Due in part to the multiple meanings of the terms *Jewish* and *democratic* as well as the way in which an aspect of one discipline becomes embedded in a perspective of another, the literature search reveals some problems of boundary blurring, as defined by Klein (1996, p. 70). For example, as a discipline, law deals with the application of case, statutory, and regulatory law by courts, the political branches of government, and the private sector. Law within political science refers to the politics of lawmaking and legal decision making. Further, the fact that "Israel Studies" is itself an interdisciplinary field complicates the process of attributing particular insights, theories, concepts, and assumptions to constituent disciplines.

During the literature search, a useful approach is to develop a data management table, an important organizing tool that prevents the accumulation of masses of unprocessed information and facilitates easy access to critical pieces of information later in the research process (Repko, 2008, pp. 281–282). Several examples are found in Step 6, below.

Step 5: Develop Adequacy in Each Relevant Discipline

Newell (1998) confirms the emerging consensus “that interdisciplinary study should build explicitly and directly upon the work of the disciplines” (p. 542). He terms the required adequacy in each discipline as “quite modest,” consisting of a basic understanding of how the discipline approaches a question such as the one under consideration together with the applicable insights, theories, concepts, and assumptions (Newell, 2006, p. 253). He observes that, in the interdisciplinary process, it is not the disciplines themselves but the insights provided by disciplinary perspectives that are compared (Newell, 1998, pp. 543–546).

The overall perspectives of the most relevant disciplines on Jewish marriage are stated below:

- Religion views the world in terms of transcendent beliefs whose source is divine revelation, usually expressed through organized forms of worship. Religion may include laws or guidance governing various aspects of human life, as there is no separation between what is valid for the religious life and for human conduct. Religion, as theology, views the world through the eyes of believers, while religious studies additionally draws upon other disciplines for understanding. The religious perspective, as applied to Jewish marriage, is theological and views halakhic law (Torah and subsequent Jewish religious law) interpreted by the Orthodox Rabbinate as the sole valid basis for marriage. This perspective finds the exclusive delegation of the institution of marriage by the state to religious authorities to be consistent with religious law.
- Political science views the world in terms of relationships of power. The perspective of political science provides motivations and explanations for choices made in developing law and policies for the Jewish and democratic State of Israel, whose founding and governing ideology is Secular Zionism. The political perspective views the exclusive delegation of Jewish marriage to religious authorities as consistent with Zionism, politically pragmatic, and important for the preservation of power.
- Law “refers to a set of rules and regulations *and* to the social institution that creates, implements, and enforces these rules and regulations” (Barkan, 2009, p. 21). Law is created by the judicial branch as well as by the political branches of government—executive and legislative. The state generally provides the mechanisms of enforcement for the legal system to function. The legal perspective views Jewish marriage as an institution whose function the democratic State of Israel has delegated exclusively to religious authorities. In this regard, the legal perspective must take into account the complex relationships between religious (Jewish) law and state (secular) law and, more broadly, between religion and state.

Overall, the disciplinary perspectives most relevant to an analysis of the factors in Israel's conflicted identity that relate to Jewish marriage hew closer to the humanities than to the social sciences. In humanities disciplines, there is an emphasis on qualitative research methods. Religion is generally viewed as a humanities discipline. Law, here, hews closer to the humanities while in other instances it partakes of the social sciences as well as the humanities.⁴ Although political science, as a social science, employs both quantitative and qualitative empirical research methods, most sources relevant to the present study rely upon the methodologies of qualitative research.

In humanities disciplines, the "data" are generally the literature of the discipline, which may include its primary source material but also rely heavily upon secondary authority, such as critical commentary and analysis. Research, then, consists primarily of an analysis of the literature rather than an analysis of empirical data. In political science, some qualitative studies are empirical while others, such as those dealing with institutions, often work with "data" in the humanistic sense. Because the disciplinary perspectives most relevant to this study are not as theory-laden as is typical in the social sciences, it will be important to analyze the phenomena, concepts, and assumptions as well as relevant theories of the disciplines in order to evaluate disciplinary insights.

Step 6: Analyze the Problem and Evaluate Each Insight Into It

There are two parts to Step 6: "analyze the problem from the perspective of each relevant discipline, and evaluate each relevant insight into the problem . . . identifying strengths and weaknesses" (Repko, 2008, p. 217). As the perspective of each discipline contributes only a part of the integrated whole, it is important to view the research question from each relevant discipline's perspective, as illustrated in Table 2.1.

The second part of Step 6 focuses on evaluating disciplinary insights. By focusing on each discipline's insights into the question through its phenomena, assumptions, concepts, and theories, strengths and weaknesses are revealed.

In evaluating disciplinary insights, it is essential to refine the data management tables developed in Step 4, the literature search. The most relevant insights of each discipline are identified, some theory-based and others not. Underlying disciplinary assumptions and key concepts are also included in the tables. More information is included in the table than may be necessary because it is not possible to know until the later steps of the process exactly which insights will prove essential to the process of integration. The discovery

⁴Law has been categorized as both a humanities discipline and a social science discipline. Donald (2002) categorizes law as an applied social science (p. 30). See generally Sarat (2004) for a discussion of law as a liberal arts discipline, both humanities and social science.

Table 2.1 Identification of Disciplinary Perspectives on the Problem

Most Relevant Disciplines	Perspective on the Question Stated in General Terms
Religion	Sees Jewish marriage theologically, governed exclusively by Torah and other religious law and therefore validly delegated by the state and available only to those deemed to have the status of Jews according to Orthodox Judaism.
Political science	Sees marriage in Israel as delegated exclusively to religious authorities to accommodate the balance of power among Jewish groups in the state and to preserve the Jewish nature of the democratic state against threats from Arab minorities.
Law	Sees the legal question of the delegation of Jewish marriage to the Orthodox Rabbinate as consistent with a democratic society that is not characterized by the separation of religion and state. Finds pragmatic solutions to issues such as the absence of civil marriage without directly addressing civil rights violations.

of comparable elements among the insights of the different disciplines prepares for the second part of the process, integrating insights and producing an interdisciplinary understanding.

The Insights of Religion

Religion typically sees the ultimate source of laws governing human behavior as divine revelation. The discipline of “religion,” as it refers to Judaism in Israel, is limited to the Orthodox denomination because it is the only one that enjoys any official recognition by the state.⁵ Conservative and Reform Judaism never developed a strong following in Israel, where most non-Orthodox Jews consider themselves to be secular.⁶

The perspective of religion on Jewish marriage in Israel has its roots in the role of religion in European Jewish life over the centuries. The insight termed *halakhah governing human conduct* derives from the Orthodox Jewish notion that there is no distinction made between laws governing religious life and human conduct. Historically, Jewish law has both a religious and a national character: religious because its ultimate source is divine revelation, and national because it is an essential part of the life of the Jewish people throughout its history. *Halakhah* denotes Jewish law as derived from the

⁵In 1982, Reform rabbis were unsuccessful in petitioning the Supreme Court of Israel to recognize marriages performed by them (Rebhun & Waxman, 2004, p. 295).

⁶According to Shetreet (1997), the personal attitude of Israelis toward religion and tradition is 4% ultra-Orthodox, 12% religious, and almost 40% traditional (modern/moderate orthodox). This leaves more than 40% secular and less than 5% Reform or Conservative (p. 194).

Torah and ancient scholarly works as interpreted by modern Orthodox Jewish rabbinical authorities. Halakhah developed as a binding form of communal law that created ethnic cohesiveness among European Jews, prior to the rise of the Zionist movement at the end of the 19th century (Berlin, 1978, p. 16). As a living legal system, it has evolved through the work of scholars, whose duty it was and is to preserve its spirit and purpose while continuing its evolution (Elon, 1967a, pp. 517–518, 561).

How does the religious perspective allow for engagement in civic life? Elazar's (1998) *covenant theory* provides a theo-political rationale, emanating from the original covenant of biblical Israel:

A covenant is a morally informed agreement or pact based upon voluntary consent and mutual oaths or promises, witnessed by the relevant higher authority. . . . Most are meant to be of unlimited duration, if not perpetual. (p. 8)

The Bible describes how God sets Israel aside for His religio-political purposes through covenant. Covenant is not just a device but shapes the whole worldview of the Jewish people. (p. 375)

Elazar (1998) finds that the ancient biblical covenant could be disconnected from direct reliance upon God, thereby providing a foundation for civic obligations (p. 19). The biblical covenant tradition provided the earliest evidence of “a religion of ethical nationalism” (p. 33), which Elazar characterizes as not an “ancient traditional constitution” (p. 210) retained through the centuries “as part of the deep structure of Jewish life, both religious and political” (p. 318).

How, then, was the present system of Jewish marriage developed? The *religious communal continuity* insight provides a historical rationale for the institution. According to Elon (1967b), the Jews who lived in Palestine during the Ottoman Empire—until 1917—were ruled under the “millet system,” in which each minority religious group had its own community and some autonomy and protection regarding marriage laws (p. 425). In the matter of Jewish marriage, exclusive authority was granted to the Rabbinical Courts. This system continued under the British Mandate, from 1920 to 1948, the period when the British ruled Palestine after the partition of the Ottoman Empire. Subsequent to Israeli independence in 1948, the millet system was carried over and remains to the present day with regard to marriage law. The religious communal continuity insight fails to account for the differences in the structure between a monolithic pre-state all-Jewish Orthodox minority community and the religiously and ethnically diverse populace of the sovereign State of Israel.

A complete understanding of the religious insights relating to Jewish marriage must consider the views of those who object to Orthodox monopoly of the institution. Batkay's (1989) *Orthodox hegemony theory* finds its basis in the political arena: the retention of power. The exclusivity of the Orthodox establishment justifies itself in the name of the values of “unity” and “authenticity” (p. 126). Batkay continues,

By refusing to legitimate the ritual acts of non-Orthodox religious authorities, the Orthodox rabbinate insures that *it* retains the power of approving the choice of marriage partners for Jews. From the perspective of the Orthodox leadership in Israel, the goal is to protect Jewish peoplehood; from the viewpoint of non-Orthodox movements, however, the main objective of the Orthodox leaders is the consolidation of their own power. (p. 126)

The same conclusions that Batkay (1989) draws with regard to the role of different Jewish denominations occur in the violation of the rights of the nonreligious and those desiring civil marriage.

The major religious insights are set forth in Table 2.2.

The Orthodox religious assumption that halakhic law governs both religious and human conduct is the underpinning of most religious insights. Religious insights may be grouped into sets of assumptions. Both the *halakhic law governing human conduct* and the *religious communal continuity* insights provide religious justification for the delegation of Jewish marriage to

Table 2.2 Religious Insights

General Insight	Insight Into the Question (Scholarly Opinion)	Assumption(s)	Concepts
Halakhah governing human conduct	Jewish marriage is determined according to the rules of Torah (Barak, 2002). Jewish law has both a religious and a national character (Elon, 1967a, pp. 517–518).	Jewish law (halakhah) governs both religious life and human conduct.	Halakhah (Elon, 1967a, pp. 517–518); Torah, values of Jewish tradition (Barak, 2002).
Covenant theory (theo-political)	The biblical covenant between God and the Jewish people provides the foundation for civic responsibility (Elazar, 1998, p. 19).	Covenant tradition binds the deep structure of Jewish religious and political life.	Covenant (Elazar, 1998, p. 8).
Religious communal continuity	The system of Jewish marriage, as continued by the State of Israel, has its roots in the Ottoman millet system (Elon, 1967b, p. 425).	Same.	Millet system (Elon, 1967b, p. 425).
Orthodox hegemony theory (theo-political)	Jewish marriage provides unlimited hegemony for the Orthodox in order to preserve power (Batkay, 1989, pp. 119, 126).	Jewish law (halakhah) binds religious and political life.	Reform Judaism, Conservative Judaism (Batkay, 1989, pp. 119, 126).

the Orthodox Rabbinate. In contrast, the assumptions of both *covenant theory* and *Orthodox hegemony theory* are theo-political. *Both theories explicitly extend halakhah governing human conduct to the political sphere.* All of the religious insights share the emphasis upon “Jewish” in the conflicted nature of Israel as a Jewish and democratic state.

The Insights of Political Science

Political science emphasizes relationships of power and the legitimacy of power. Traditional political science includes an analysis of regime types or forms of government as well as the influence of political principles in shaping these realms (Ceaser, 1990, pp. 42, 73). As applied to Israel, this includes debates over the classification of its democracy, its institutions of government, and the resulting laws and policies.

An exploration of the perspective of political science on Jewish marriage must begin with an understanding of the political circumstances leading to the current formulation of the institution. Its antecedents are found among the Jews in both Europe and pre-state Palestine. The insight termed *communal-based (non-state) politics* refers to the historical marginalization of European Jews in earlier centuries. This was a consequence of anti-Semitism, which bred a sense of Jewish alienation from politics (Berlin, 1978, p. 16). Berlin's theory is that the core of Jewish life, formed through continuity from European roots of prior centuries, is the Jewish religion (p. 10). In the Palestinian pre-state period, communal-based (non-state) politics was exercised through partial communal self-government under both the Ottoman Empire and the British Mandate. Thus, the essential political elements of a Jewish nation were honed during that time. The political system of the late 1940s has been described as a “Republican Democratic model . . . applied . . . to the Jewish sector” (Peled, cited in Sheffer, 1996, p. 33).

A complete history of the political dynamic must consider the political effects of statehood in 1948. Zionism,⁷ according to Peretz and Doron (1999), was Israel's “propelling national ideology” (p. 2), whose essential elements are as follows:

1. Jews are a separate people, and their common religious and cultural characteristics qualify them to be perceived as a national entity;
2. Because of the prevailing anti-Semitism rooted in Gentile society, Jews cannot expect to be treated as equals by their European “host” nations; and
3. The only solution to Jews' aspirations to equality and normalcy is to establish . . . a national homeland. (p. 22)

⁷Isaac (1981) notes that of the three Zionist ideas—religious, socialist, and Zion as refuge—the secular socialist vision came to dominate (pp. 2–4). Secular Zionism has also been called Labor Zionism and Socialist Zionism.

The policies of David Ben-Gurion, Israel's first prime minister, epitomized secular Zionism's conciliation and accommodation, termed *mamlachtiut*. They were intended to reconcile the Jewish traditional past with the needs of a contemporary civic state (Dowty, 1998, p. 62). This is termed the *secular Zionist religious-political accommodation* insight. The position of Judaism in the state was defined by a series of political arrangements, with freedom of religion in the private sphere and traditional Judaism in the public sphere (Horowitz & Lissak, 1989, p. 228). One result was the retention of "the status quo in synagogue-state affairs (meaning arrangements in effect during the pre-state period regarding religion and religious practice would be extended into the state period), and by affording monopoly status to Orthodox Judaism . . . on matters . . . such as marriage" (Arian, 2005, pp. 10–11). For a Jewish marriage to take place, both parties must be recognized as Jewish by the Orthodox Rabbinate. The Orthodox definition of "Who is a Jew?" recognizes only maternal Jewish lineage and, further, only recognizes conversions to Judaism in Israel conducted by Orthodox rabbis.

Orthodox Jews had wanted to create a state founded upon Jewish law, halakhah. When that failed, they joined with secular Zionists to preserve and maximize the role of religious law within the State of Israel. This is termed the *halakhic politics* insight. The Orthodox, politically well-organized and well-represented, "regard the prevalence of religious law as a vested right and existing religious tribunals as strongholds of the faith" (Shiloh, 1970, p. 480). Religious primacy inherently creates political tensions in a democracy because adherents are loyal to a power that they believe is greater than any state.

To understand fully the political insights relating to Jewish marriage, consideration must be given to significant segments of Israeli society who are affected by the current status of the institution. This is termed the *religious-political coercion* insight. Since the Rabbinical Courts apply rules to the entire Jewish population that are subscribed to by only a minority, the result is animosity that deters the development of a common political culture even among the Jews of Israel (Arian, 2005, pp. 61, 72). The non-Orthodox Jewish majority has had its rights sacrificed in the name of accommodation and appeasement in halakhic politics. One explanation for this acquiescence is that, as a group, Israelis are less enthusiastic about individualism than about the maintenance of the Jewish State (Jacobsohn, 1993, p. 5).

The major political insights are set forth in Table 2.3.

Three of the political insights build upon an understanding of the role of Orthodox Judaism in the State of Israel. The *communal-based (non-state) politics* insight provides a historical basis for the non-state government in the pre-state Jewish community, many of whose practices were carried over when Jews became the majority population in the State of Israel. The *secular Zionist religious-political accommodation* insight attempts to reconcile the competing interests of the state and the Orthodox community, though

Table 2.3 Political Insights

General Insight	Insight Into the Question (Scholarly Opinion)	Assumption(s)	Concepts
Communal-based (non-state) politics	The marginalization of Jews in European politics prior to the 20th century (Berlin, 1978, p. 10) led to legitimacy without sovereignty in Palestine (Arian, 2005, p. 6).	Historical alienation produced an insular homogeneous religious-based Jewish political structure.	Anti-Semitism, pogroms (Berlin, 1978, p. 16); legitimacy, sovereignty (Arian, 2005, p. 6).
Secular Zionist religious-political accommodation	By preserving the status quo of pre-state arrangements, Zionists retained the monopoly of Orthodox Judaism in matters of Jewish marriage (Arian, 2005, pp. 10–11).	Politics is a struggle over whose values and interests will prevail (Repko, 2008, p. 60).	Political culture (Edelman, 1994, p. 55); <i>mamlachtiut</i> (Dowty, 1998, p. 62).
Halakhic politics	Halakhic politics are designed to maximize the role of religious law within the state (Horowitz & Lissak, 1989, pp. 142–143).	Same.	Accommodation (Dowty, 1998, p. 168).
Religious-political coercion	Conservative, Reform and secular Jews, as well as non-Jews, view the existing arrangements applying the religious laws of marriage as religious coercion (Dowty, 1998, p. 161).	Same.	Secular Israelis (Dowty, 1998, p. 161).

compromise sometimes comes at the expense of democratic practices. The *halakhic politics* insight demonstrates the Orthodox community's political agenda of furthering the role of halakhic law in the state. In contrast, the *religious-political coercion* insight is the political expression of the religious *Orthodox hegemony theory*, in which accommodation functions at the expense of democracy. While all of these insights share the emphasis upon the "democratic" elements in the insights regarding Israel as a Jewish and democratic state, some support and others conflict with the democratic vision of the state.

The Insights of Law

Law focuses upon rules of the state. Jurisprudence focuses upon the sources and functions of law within the social context. Laws originate in the political branches of government—the legislative and executive branches—and are interpreted by the judiciary. Edelman (1994) distinguishes law and politics: “In politics, values and principles are perceived as instrumental tools for achieving certain results. Law, on the other hand, is perceived as flowing from an impartial, objective analysis of rules and principles” (p. 33). Law, thus, represents the codification of policy shaped through politics.

An understanding of the legal perspective on Jewish marriage must begin with the precursors of Israel’s present legal institutions in the Yishuv (pre-state Palestine). This is termed the *secular pre-state legal antecedents* insight. It refers to informal consensual non-halakhic-based court systems set up at several periods during the British Mandate, thereby creating the secular basis for the current Israeli court system.

During the same pre-state period in the Yishuv, the Orthodox Rabbinate attempted to sow the seeds of a dominant role for religious law. This insight is termed *halakhic pre-state legal antecedents*. Whatever the potential role for halakhic law as national law, Jewish religious law did not assume such a role in the State of Israel except in the area of personal status law, which includes Jewish marriage (Elon, 1967c, p.102; Elon, 1967b, pp. 442, 454).

With the advent of statehood, religious institutions were accorded special status to “exercise State functions according to their Religious Law, and their activities are recognized by, and are binding upon, the State, as if carried out by its own authorities and officials and in conformity with its laws” (Freudenheim, 1967, p. 87). In the case of the Orthodox Rabbinate’s monopoly on Jewish marriage law, religious law was thereby converted into state law. The Rabbinical Court system became a public institution whose structure and jurisdiction were determined by state authority (Edelman, 1994, pp. 52–53, 61). This structure makes Israel “the only modern state in the world lacking a territorial law of marriage and divorce” (Shachar, in Shapira & DeWitt-Arar, 1995, p. 3). This is termed the *interrelationship of religion and state* insight.

The Israeli legal system, therefore, is basically secular but has adopted religious norms in particular arenas—such as Jewish marriage—in order to arrive at legal solutions without challenging the overall Jewishness of the state. This insight is termed *legal pragmatism theory*. Barak-Erez (2007) describes the model of legal accommodation, in which “many legal arrangements reflect pragmatic compromises rather than doctrinal decisions” (p. 118). For example, Sharkansky (1999) points out the incongruities between religious law and the rules followed by state authorities regarding Jewish marriage, in that couples who cannot or who choose not to be married by the Orthodox Rabbinate can marry overseas (p. 66). Mazie (2006) terms the option of civil marriage abroad the “exit option” (p. 165). Thus, legal

pragmatism effectively erodes the exclusivity of the power of the Orthodox Rabbinate to dictate who can marry.

In maintaining the current marriage laws, the avoidance of conflicts with one group, the Orthodox Rabbinate, only sows the seeds of conflict with others, particularly in civil rights violations. The *freedom of religion and freedom from religion* insight has particular impact in the area of Jewish marriage. The effect of the current system, according to Mazie (2006), is that

it makes citizens subject to a religious authority whether or not they accept its legitimacy or believe the religious truths it represents. Israel's delegation of authority to Jewish religious courts requires a large group of citizens (secular and other non-Orthodox Jews) to adhere to the comprehensive religious doctrine of a minority (ultra-Orthodox Jews) when participating in major life events such as marriage and divorce. (p. 183)

Mazie (2006) concludes that in the classification of relationships between religion and democracy, imposing religion—including the determination of what is or is not proper in Judaism—would not survive the legal test of “strict scrutiny” (pp. 258–259).

The major legal insights are set forth in Table 2.4.

Table 2.4 Legal Insights

General Insight	Insight Into the Question (Scholarly Opinion)	Assumption(s)	Concepts
Secular pre-state legal antecedents	Jewish legal institutions were developed during the pre-state period (Shamir, 2000, pp. 30–33; Shetreet, 1994, p. 30).	The rule of law in Israel has developed in the absence of separation between religion and state.	Hebrew Law of Peace; Hebrew Courts of Peace (Shamir, 2000, pp. 30–33).
Halakhic pre-state legal antecedents	Halakhic law scholars in Europe and Palestine in the early 20th century worked for the renewal of halakhic law as national law for the future state (Elon, 1967b, p. 419).	Same.	HaMishpat Ha'Ivri Society (Elon, 1967b, p. 419).

(Continued)

Table 2.4 (Continued)

General Insight	Insight Into the Question (Scholarly Opinion)	Assumption(s)	Concepts
Interrelationship of religion and state (contrast: separation of church and state)	In areas such as Jewish marriage, religious institutions exercise state functions according to religious law, and their activities are binding as if carried out by state authorities (Freudenheim, 1967, p. 87).	Same.	[Absence of] territorial law of marriage and divorce (Shachar, in Shapira & DeWitt-Arar, 1995, p. 3).
Legal pragmatism theory	According to the model of legal accommodation, "many legal arrangements reflect pragmatic compromises rather than doctrinal decisions" (Barak-Erez, 2007, p. 118).	Same.	Accommodation (Barak-Erez, 2007, p. 118).
Freedom of and from religion	The Rabbinical Courts, as the exclusive legal authority on marriage, subject the majority of Israelis to the religious doctrine of the Orthodox minority. Imposing religion does not survive strict scrutiny (Mazie, 2006, pp. 183, 259).	Same.	Human rights issue (Gavison, 2007, p. 137).

All the legal insights share a common assumption that the rule of law has developed in Israeli democracy in the absence of separation of religion and state. Although the *secular pre-state legal antecedents* insight and the *halakhic pre-state legal antecedents* insight are mutually exclusive, Jewish marriage under the millet system applied in both cases because the Ottoman law was both religious and communal. Even after statehood was achieved in 1948, the vestigial legal structure of Jewish marriage remained as it had previously been under the millet system.

According to the *interrelationship of religion and state* insight, the state delegates, designates, validates, and provides exclusive authority to the Orthodox Rabbinate in the matter of Jewish marriage. Legal pragmatism theory illustrates how the institution of Jewish marriage is able to function in Israel's heterogeneous society: It relies upon legal accommodation

to meet the needs of the secular majority while maintaining the unity of the Jewish state.

The *freedom of and from religion* insight illustrates that the accommodation of the Orthodox community's interests violates the civil rights of the secular majority. This occurs particularly in the absence of civil marriage. All of these insights demonstrate the competing interests of "Jewish" and "democratic" in legal considerations of Israel's conflicted nature as a Jewish and democratic state.

Integrating Insights and Producing an Interdisciplinary Understanding

The first part of the interdisciplinary research process set forth the main disciplinary insights regarding Jewish marriage that express Israel's conflicted nature as a Jewish and democratic state. Each disciplinary perspective provided only a partial explanation.

The primary focus of the second part of the research process is to utilize the contributions of the disciplines to create common ground between these insights, integrate them, produce a new understanding, and test it. Newell (1998) describes integration as

essentially holistic thinking, in which the different facets of a complex reality exposed through different disciplinary lenses are combined into a new whole that is larger than its constituent parts, that cannot be reduced to the separate disciplinary insights from which it emerged. . . . It requires an act of creative imagination, a leap from the simplified perspectives that give the disciplines their power to a more holistic perspective of a richer more complex whole. (p. 55)

In other words, "the interdisciplinarian needs to contextualize the contribution of each discipline within the overall complex system" (Newell, 2006, p. 250).

Step 7: Identify Conflicts Between Insights and Their Sources

Conflicts occur between insights within a discipline and between disciplines. Possible sources of conflict are the underlying assumptions, constituent concepts, and theories that are expressed as disciplinary insights (Repko, 2008, pp. 248–255). Because each discipline has its own worldview, insights of different disciplines may not simply be combined; rather, they must be evaluated first in the context of the specific question (Newell, 1998, p. 110). The differences in disciplinary assumptions provide greater likelihood

for conflicts between, rather than within, disciplines. The scholarly insights of religion, political science, and law, as described earlier, are explored in Step 7 to highlight conflicts within each discipline and between them.

Sources of Conflict Within the Same Discipline

Some conflicts within the same discipline simply present alternative views, while others represent diametric opposition. The sources of conflict within each discipline—religion, political science, and law—are discussed in Step 6 above.

Sources of Conflict Between Disciplines

Having identified sources of conflict within the same discipline, it is now necessary to identify sources of conflict between the disciplines. This process is not clear cut because many of the disciplinary insights have embedded within them elements of other disciplines. One source of conflict between disciplines involves insights in support of the primacy of religion, religious politics, and laws favoring religion. These are termed *religious-based insights*. The other source of conflict involves insights that arise because of the effects of religious-based insights upon the civil rights of those affected by decisions made on a religious basis. These are termed *civil rights violation insights*. Once these sources of conflict are identified and clarified, the process of creating or discovering common ground can proceed.

Religious-Based Insights. A contrastive study of religious-based insights reveals conflicts between groups of insights across disciplines. The halakhah governing human conduct insight is viewed from the standpoint of Orthodox Judaism as the role of divine revelation in human affairs. The legal application of the religious insight is the halakhic pre-law legal antecedents insight, which represents the efforts of halakhic scholars in the pre-state era to develop halakhic law as the national law for the future state of Israel.

These insights conflict with the political reality of the creation of the pluralistic yet Jewish State of Israel. The secular Zionist religious-political accommodation insight demonstrates compromises to retain the status quo of the Orthodox Jewish pre-state monopoly in matters of Jewish marriage. In other words, a secular Zionist government adopted a purely religious solution to Jewish marriage for reasons of political accommodation. At the same time, the Orthodox Rabbinate joined with the secular Zionists to play halakhic politics in order to maximize the role of the Orthodox in the non-halakhic State of Israel.

Civil Rights Violation Insights. From the legal perspective, the interrelationship of religion and state insight demonstrates the embedded role of religion

within the legal system. Yet, it is not the interrelationship itself that causes problems but the violations of civil rights that result from the impermissible imposition of religion.

Each of the disciplines deals with individuals and groups whose civil rights are denied due to the monopoly of the Orthodox Rabbinate in matters of Jewish marriage. Some of the insights are theory-based, while others are not. Religion's Orthodox hegemony theory attributes the motivations of the Orthodox to the preservation of power rather than to a desire for doctrinal purity. Political science's religious-political coercion insight recognizes that the Zionist accommodation of the Orthodox monopoly in matters of Jewish marriage results in religious coercion exercised against secular Jews, among others. Law's freedom of and from religion insight recognizes that the status quo results in a lack of equal protection for the majority, which must function under the religious dictates of a minority. Although most Israelis recognize the legitimate interest of maintaining a Jewish majority in Israel, they acknowledge that the present approach to Jewish marriage imperils the civil rights of citizens.

Religious-Based Insights and Civil Rights Violation Insights. Barak-Erez's (2007) legal pragmatism theory describes legal accommodation as a matter of "pragmatic compromises rather than doctrinal decisions" (p. 118). It is reflective of an effort to seek functional legal solutions that do not necessarily follow religious doctrine. In her book *Outlawed Pigs: Law, Religion and Culture in Israel* (2007), Barak-Erez recounts the story of the Israeli legislative prohibitions against pig breeding and pork sales, from the original religious prohibitions to the present situation, in which pork is available almost everywhere that a demand exists (p. 102). The death knell for pork-trading prohibitions came in the 2004 Israeli Supreme Court *Solodkin* case, when Chief Justice Barak wrote a unanimous decision for the court. The decision regulated the pork trade on the basis of the characteristics of each local community, its needs, and the availability of the product nearby. The compromise reflected a completely secular view, respectful of the wishes of the majority secular constituency in each community and without religious consideration of the Jewish character of the state (pp. 97–99). Barak-Erez applies legal pragmatism theory to Jewish marriage, describing the current situation that permits the registration in Israel of marriages performed abroad, thereby effectively providing a legal alternative for those who cannot or choose not to marry under the strictures of current law. However, this theory does not address questions of civil rights violations.

Barak-Erez (2007) indicates that the success of legal pragmatism theory has become more problematic. In the past, the secular and religious factions would each assume that their compromises and accommodations were temporary and that the other side would eventually cease to oppose them. Now positions are hardening as both sides realize that everyone is here to stay. Therefore, opponents are poised to launch frontal assaults on previously

inviolable agreements such as religious marriage law and the absence of civil marriage in Israel (p. 120).

By fostering civic engagement from a religious basis, theo-political covenant theory provides an opening to take advantage of the situation created by the increasing difficulties in applying legal pragmatism theory. Because covenant theory binds the deep structure of Jewish religious and political life, it provides a justification for the Orthodox to build effective solutions grounded in a sound religious foundation.

Step 8: Create or Discover Common Ground

Step 8, the creation or discovery of common ground, is the essential prerequisite to integration. Common ground is created by modifying the concepts, assumptions, or theories that produce disciplinary insights. It is not created by modifying the insights themselves or by modifying the overall disciplinary perspectives (Repko, 2008, pp. 279–280). Newell (2006) speaks of bringing out “latent” or “potential” commonalities (p. 257), an allusion to the intuitive, nonlinear, and challenging nature of this step. Both Repko (2008, p. 281) and Newell (2006, p. 258) describe the nature and extent of the conflicts that will, in turn, determine the techniques to be used in creating common ground. Below, the conflicts are grouped according to their nature and extent.

Nature and Extent of Conflicts

- A. No actual conflict in insights but commonality is obscured by discipline-specific terminology or context.
 - Religion, law—Halakhah governing human conduct insight and halakhic pre-state legal antecedents insight.
 - Religion, political science, law—Orthodox hegemony theory; secular Zionist religious-political accommodation; halakhic politics; and interrelationship of religion and state.
 - Religion, political science, law—Religious communal continuity insight; communal-based (non-state) politics insight; and secular pre-state legal antecedents insight.
- B. Insights that are different, rather than opposing; they present alternatives.
 - Religion, law—Halakhah governing human law; covenant theory; and halakhic pre-state legal antecedents vs. political science, law—secular Zionist religious-political accommodation; halakhic politics; and “interrelationship of religion and state.
 - Religion, law—Religious communal continuity insight and halakhic pre-state legal antecedents insight.

- Law, political science, religion—Covenant theory lays a foundation for legal pragmatism. Legal pragmatism theory places more weight on compromise in seeking legal solutions than on doctrinal considerations and thereby demonstrates a willingness to de-emphasize the dictates of religious principles in order to achieve pragmatic ends.
- C. Insights that are diametrically opposed.
- Law—Secular pre-state legal antecedents insight and the halakhic pre-state legal antecedents insight present diametrically opposed visions of legal institutions for the future State of Israel.
 - Religion, political science, law—Orthodox hegemony theory; religious political coercion; freedom of and from religion. From different disciplinary perspectives, each of these insights demonstrates opposition to the insights of accommodation, whose effect is to ignore the rights of significant portions of the population. These are diametrically opposed to the insights of accommodation, political science, law—secular Zionist religious-political accommodation; halakhic politics; and interrelationship of religion and state.

The Discovery/Creation of Common Ground

Having examined the nature and extent of conflicts, the techniques described by Newell (2006) and Repko (2008) will be used to discover or create common ground. Four techniques are described by Newell (2006):

1. *Redefinition* “reveal[s] commonalities in concepts or assumptions that may be obscured by discipline-specific terminology.”
2. *Extension* “extends the meaning of an idea beyond the domain of the discipline into the domain of another discipline.”
3. *Organization* “identifies a latent commonality in meaning,” redefines, and then “arrays the redefined insights or assumptions to bring out a relationship among them.”
4. *Transformation* is used for dichotomous concepts, to change dualistic either/or thinking into both/and thinking. (pp. 258–260)
5. Repko (2008) adds a fifth technique, *theory expansion*, which is “used to modify a theory so that it can address all of the causation insights pertaining to a problem.” (p. 281)

With regard to the term *Jewish*, only in the area of personal status laws such as Jewish marriage does the word have the same meaning in religion, politics, and law because, in this one area, the Knesset has by explicit legislative enactment delegated and validated the exclusive role of the Orthodox Rabbinate. Any *redefinition* of *Jewish* must take into account the preservation

of the Jewish character of the State of Israel. Because integration involves change, the redefinition of *Jewish* would encompass cultural and national identity definitions, in order to take into account civil rights violation insights and religious-based insights.

Because the State of Israel is a democracy rather than a Jewish theocracy, it must be responsive to the needs of its pluralistic society. A *redefinition of democratic* in the context of *Jewish and democratic* requires recognition of the civil rights of all within a heterogeneous society. It requires distinguishing among the different types of religion-state connections and excluding those that are incompatible with a democracy.

Using the technique of *organization*, historical continuity provides political and legal justification for maintaining the status quo in the Orthodox Rabbinate's monopoly on the institution of Jewish marriage in the State of Israel. Ben-Gurion's secular Zionist religious-political accommodation insight resulted in the acceptance of the status quo regarding the institution of Jewish marriage in order to placate the Orthodox constituency and solidify a unified base against Arab threats. From the legal perspective, the politics of *mamlachtiut* are memorialized as the laws of accommodation and compromise in the interrelationship of religion and state insight.

The technique of *extension* relates the insights from religion, political science, and law that are grouped as religious-based insights. The underlying assumption of an unquestioned divine source does not negate the possibility of human action, but rather provides guidance through halakhah governing human conduct. Covenant theory encourages more active civic engagement by structuring civic responsibility as a part of religious covenant. The religious-based society envisioned in the pre-state Yishuv was homogeneous and Orthodox. Through halakhic politics, the Orthodox Rabbinate maximizes its influence within the present-day pluralistic sovereign state. The Rabbinate's interactions and compromises may be viewed as an Orthodox adaptation to a heterogeneous society. Thus, the original description of Orthodox hegemony theory as unlimited supremacy of the Orthodox Rabbinate to the detriment of all other Jewish denominations in order to preserve power must be extended beyond the theo-political to the legal sphere to encompass the best tool available to the Orthodox to maximize the presence and influence of halakhah in the state. Covenant theory serves as a rationale for this extension.

The technique of *extension* also explains the opposition to accommodation in civil rights violation insights. From a political perspective, the religious-political coercion insight, and from a legal perspective, the freedom of and from religion insight both underscore constitutional deficiencies in terms of the lack of civil liberties for non-Orthodox denominations, the Jewish secular majority, and Jews wishing to marry non-Jews. From a religious perspective, civil rights violations are a consequence of the Orthodox hegemony theory. From the historical evidence of the religious communal continuity insight in the pre-state Yishuv, it can be seen that the same regulations were applied to all designated minority religious groups under the millet system, with a designated religious body in charge of marriage laws for each group.

Thus, historically, there was not a model for civil marriage overseen by the state. In contrast to its historical antecedents, the State of Israel is a pluralistic democracy and, as such, has responsibility to protect the civil liberties of all its citizens. Due to the absence of separation between religion and state, theological issues are woven into the very framework of the legitimacy of the state (Lorberbaum, 2007, pp. 160–161).

The preceding two examples demonstrate the conflicts between religious-based insights and civil rights violation insights, as expressed through the insights of religion, political science, and law. The technique of extension helps us to understand these conflicts but does not move sufficiently toward integration. In order for these conflicts to be reconciled, the technique of *transformation* will be needed “to replace the either/or [dualistic] thinking, which is characteristic of the disciplines, with both/and [inclusive] thinking” (Newell, 2006, p. 260).

The technique of *theory expansion* provides the best method for creating common ground in preparation for integration. This technique is used to expand a theory's focus to include additional insights without distorting the theory (Repko, 2008, pp. 281–283). The theory of legal pragmatism prioritizes compromise in seeking legal solutions over doctrinal considerations. Religious-based insights and political insights are taken into account in the calculus of compromise, in order to arrive at legally pragmatic solutions. However, the recognition by each faction that the other side is not going away has hardened positions. Compromise between the factions has become more difficult because the right to marry civilly, outside a prescribed religious setting, is viewed by one faction as a civil right and by the other faction as antagonistic to the continuity of the Jewish identity of the state.

Legal pragmatism theory must be expanded to take into account the concerns of the Orthodox in order to make possible a more comprehensive vision. Covenant theory affords an opportunity to expand legal pragmatism theory by appealing to, and more actively engaging, the political interests of the Orthodox. Covenant theory accomplishes this expansion by incorporating the rationale that a theo-political covenant can be disconnected from direct reliance upon God to promote civic engagement in a political structure. It would enable the Orthodox to retain their own *religious* doctrinal purity while not violating the *civil rights* of citizens.

Step 9: Integrate Insights

Performing Step 8 makes it possible to create common ground. In Step 9, this common ground is used to integrate the various conflicting insights under discussion. Newell (2006) describes integration in the following way: “once common ground has been constructed, the modified insights can be integrated into a more comprehensive understanding of the complex problem . . . [which] should be responsive to each disciplinary perspective but beholden to none of them” (pp. 257, 261).

The process of integrating insights proceeds from our original question: How does the institution of Jewish marriage express Israel's conflicted identity as a Jewish and democratic state? The insights clearly cannot be viewed in disciplinary isolation, as each requires an understanding of the others for a complete picture.

Regarding religious-based insights, Newell's (2006) either/or to both/and transformation begins with the evolution of a homogeneous isolated Jewish community into a heterogeneous sovereign Jewish state. Integration can build upon the Orthodox Rabbinat's pragmatic impetus to compromise. Legal pragmatism theory, as applied to Jewish marriage, provides a sound basis to reconcile competing disciplinary insights and accomplish integration.

Covenant theory encompasses the respect for human rights. This may help to effectuate a mindset change among the Orthodox, through the realization that a monopoly over an unwilling populace in Jewish marriage is neither in their best interests nor necessarily representative of the fruits of their religious tradition. Rabbi Isaac Halevi Herzog, the first chief Rabbi of the State of Israel, maintained that "the State of Israel is not charged with the implementation of the Torah's vision of a political society but it is, however, obliged not to openly legislate against Torah law" (cited in Lorberbaum, 2007, p. 160). Legal pragmatism theory, supported by covenant theory, demonstrates the opportunity to go beyond the limitations of religious-based insights.

Legal pragmatism theory also integrates the essential elements that can lead to transformation of the civil rights violation insights. The increasing difficulty of compromise under the old ways is what will make change possible. The introduction of civil marriage would equalize the situation for all religious groups as well as the nonreligious and those wishing to intermarry. Theo-political covenant theory provides a platform for potential Orthodox receptivity to change. This would produce both/and, rather than either/or, results per Newell. In order to deal with civil rights violation insights, a viable law permitting some kind of marriage for all in Israel is required. Civil marriage would provide the legal and political answer. "For many years, marriage and divorce laws were considered the ultimate symbol of preserving the ideal of a single Jewish nation. This is now being contested, with a clear tendency to prioritize personal liberties over symbols" (Barak-Erez, 2007, p. 120).

The original reason for rigidity in matters of halakhah was the threat to the very identity of the Jews, a posture which can be replaced with "elasticity in the interpretation and application of Halachic principles . . . where the great majority of the Jewish population, though appreciative of Jewish tradition and anxious to retain Jewish institutions in the field of family law, is far removed from Orthodox thought" (Shiloh, 1970, p. 492).

Legal Pragmatism Theory Supported by Covenant Theory as the Basis for Integration

A comprehensive statement of legal pragmatism theory, as expanded through covenant theory, recognizes the following concerning Jewish marriage:

If the institution of Jewish marriage is to be responsive to the religious, political, and legal concerns of Israeli society and the State of Israel, it must take into account the civil rights of all the citizens of the state. The Orthodox Rabbinat's monopoly on Jewish marriage is inconsistent with the civil rights of groups constituting the majority of the population; nonetheless, the interests of the Orthodox must also be taken into account if the result is to be a win-win solution. Legal pragmatism theory demonstrates a willingness to go beyond political accommodation rooted in historical circumstances that date to the founding of the State of Israel. Covenant theory provides a theological basis for the Orthodox to move beyond traditional positions.

In its current form, Jewish marriage in Israel is a vestige of historical circumstance and religious symbolism. Orthodox Jews have pragmatically agreed to other compromises in the secular State of Israel. Because Israel is not and has never been a theocracy, civil marriage would not undermine its democratic underpinnings. Civil marriage would not change the nature of religious Jewish marriage, and therefore it finds support in covenant theory. The current exclusively religious marriage laws are no longer essential to the preservation of the Jewish state, as is proven in current practice by the "exit option" of marrying abroad and then having the marriage recorded in Israel.

To offer a win-win situation for the Orthodox in implementation of civil marriage, it is necessary to assure the preservation of religious principles. The alternative of a legally valid nonreligious ceremony need not eschew religious values. For example, one element of Orthodox Jewish marriage that can be incorporated into civil marriage is that the state can develop and make available to the Orthodox Rabbinat a registry of all those who marry civilly, in order to keep track of unions that may be forbidden under Jewish law (Mazie, 2006, p. 185). Orthodox Jewish marriage also requires premarital counseling, which is instruction on morality; civil marriage could encompass this dimension by including required moral counseling. Additionally, Mazie (2006) notes that many Jews want to retain a religious ceremony in addition to a civil ceremony (p. 168). The civil marriage option would also remove an important source of secular resentment. The Orthodox Rabbinat would no longer be required to perform marriage ceremonies for non-Orthodox couples, which dilutes the religious content and significance of the ceremony. The civil marriage option thus has benefits to the Orthodox community, which makes possible the transformation from either/or thinking to both/and thinking.

It is only through the process of constructing a more comprehensive understanding that the descriptive nature of the original question is transformed into one of policy: How *should* the institution of Jewish marriage express Israel's conflicted identity as a Jewish and democratic state? No single discipline could produce this understanding. It is only by integrating the insights of religion, political science, and law at the level of their theories, concepts, and assumptions that a more complete understanding of the question can be achieved.

Step 10: Produce an Interdisciplinary Understanding of the Problem and Test It

Through an interdisciplinary understanding of the insights in Jewish marriage, there is a cognitive advancement in the comprehension of Israel's conflicted identity as a Jewish and democratic state. The final step in the interdisciplinary process is testing the understanding gained with regard to Jewish marriage in a more general context. While a full exposition of such a test is beyond the scope of this chapter, possible directions for further study are noted.

One of the most prominent areas to which the religious, political, and legal insights may be expanded is the treatment of the Arab citizens of Israel. Israeli Arabs face issues of inclusiveness, civil rights, and religious equality that, in some ways, are analogous to the civil rights violations found in the institution of Jewish marriage. Cultural diversity and cultural conflicts provide challenges in a democracy, but they are manageable when other conditions for democracy are present (Dahl, 1998, pp. 149–151, 183–185). Rebhun and Waxman (2004) conclude that “in the treatment of its Arab citizens, Israel's democracy is flawed, just as racism is a blight on American democracy. . . . For many, Zionism has not yet fully achieved its mission and will not do so until Israel becomes a fully developed Jewish democracy” (p. 472).

In the debate over Israel as a democratic state, scholars have applied a variety of sometimes conflicting characterizations. Whatever the formal characterization of its democracy, Israel is a pluralistic society. Israeli Arab citizens generally do not consider themselves equal stakeholders with Israeli Jewish citizens in the society as it is presently structured. Gavison (2007) suggests that “Israeliness,” the common citizenship and culture of Jews and non-Jews, holds the promise to express the kind of secular unity that can integrate the Arab population. This requires changes in the present conception of “Jewishness” in the national culture (p. 91).

Israeli Arabs are citizens of a country whose first language is Hebrew, whose flag is a Jewish star, and whose national anthem declares the hopes of the Jewish people. Just as the Orthodox Rabbinate fears the consequences if they lose their monopoly over Jewish marriage, so the broader Jewish population fears the consequences if Israel provides increased rights to its Arab minority. Yet, the respect for the civil rights of all that is inherent in civil marriage provides an instructive paradigm for the use of compromise in seeking solutions to the dilemma of the civil rights of Arab Israelis and their inclusion in the national culture. As with the issue of marriage discussed in this chapter, the issue of Israeli Arabs may be addressed in a win-win manner through recognition of the increasing difficulty of compromise under the old ways; the recognition that pragmatic elasticity in matters of halakhah balanced by preservation of underlying religious principles may lead to increased empathy for the Israeli Arab situation among non-Orthodox and secular Jews, respect for the civil rights and human rights of Arab Israelis, and greater equality between Arab Israelis and Jewish Israelis.

The flaws and conflicts in Israel as a Jewish and democratic state do not negate its characterization as such. Rather, democracy requires adherence to core values and ideals toward which the society moves but which may elude complete realization.

Conclusion

The integrative process provides a paradigm for producing an interdisciplinary understanding of the institution of Jewish marriage, reflecting Israel's conflicted identity as a Jewish and democratic state. The problem is complex and cannot be comprehended without taking into account the perspectives and insights of different disciplines. The unique contribution of the interdisciplinary approach is found in the second part of the process, through the achievement of integration. Here, conflicts were found between religious-based insights and civil rights violation insights. Because Israel does not have separation of religion and state, the situation is complex. Creating common ground bridges the perspectives of religion, politics, and law to achieve an understanding that no one discipline could produce. Integration builds upon the secular nature of the state, the need to ensure the civil liberties of all citizens, and the deference to be paid to religion in certain aspects of Israeli life. The possibility of fruitful compromise through the introduction of civil marriage does not impede religious marriage, but it does provide an alternative. The present study lays the foundation for the application of its process and findings to another great problem of civic inequality: the situation of Israeli Arabs. Thus, the institution of Jewish marriage provides a model for an interdisciplinary approach to other aspects of Israel's conflicted identity as a Jewish and democratic state.

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