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Judaism in Motion

The Making of Same-Sex Parenthood in Israel

Sibylle Lustenberger

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Contemporary Anthropology of Religion

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Praise for *Judaism in Motion*

“A wonderful ethnography! Lustenberger’s comprehensive and powerful examination of the political, rabbinic, and cultural dynamics at play in the contemporary creation of gay and lesbian families shows us how much has changed in both orthodox Judaism and in the Israeli politics of reproduction twenty years after Kahn’s *Reproducing Jews* first got anthropologists thinking about kosher eggs and wombs. Drawing on fascinating fieldwork following the journeys of LGBT Jewish-Israelis on their path to parenthood at the interstices of the nation-state and the rabbinic establishment, *Judaism in Motion* expertly weaves together insightful analysis of the many actors in this tapestry: same-sex couples, their families, medical personnel in fertility clinics, state workers and rabbis.”

—Elly Teman, *Senior Lecturer in Cultural Anthropology at the Department of Behavioral Sciences, Ruppin Academic Center, Israel, and author of Birthing a Mother: The Surrogate Body and the Pregnant Self* (2010)

“In this splendid portrait of Israeli gay and lesbian couples seeking recognition as parents, Lustenberger shows how they deftly navigate the spaces defined by the tension between Rabbinic control over marriage and parenthood—the bedrock of Jewish nationalism—and the often contradictory rights granted by a maze of political, legal, and bureaucratic institutions. In the process, she brilliantly elucidates the complexities of the relationship between kinship and nation, religious and secular values, and social continuity and transformational change.”

—Susan McKinnon, *Professor Emerita, Department of Anthropology, University of Virginia, USA*

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CHAPTER 1

Orientations

1.1 MUMBAI, 25 MARCH 2013

I joined a group of Israelis, most of them gay couples, gathered together in a festively decorated room to celebrate the Passover Seder, the ritual feast that marks the beginning of Passover. They all brought along carry-cots with sleeping babies. The youngest were only two weeks old, and they were all born to Indian surrogate mothers, whom the couples had contracted through an Israeli agency. They all stayed in the same hotel, where I accompanied them for two months through their experiences with surrogacy and parenthood.

The preparation of the Passover Seder had raised many questions and discussions. A number of gay men objected to the celebration of this religious holiday and were not sure whether they would attend the dinner at all. Others found it important to mark the holiday, but did not agree as to what extent they should follow the religious rituals. After all, official Judaism in Israel, represented by the Rabbinate, which is Orthodox, had not made their lives easy. When Orthodox rabbis comment on homosexuality or same-sex parenthood in public, they often reject their claims for family rights or condemn their relationships as a threat to the Jewish family. Rabbinic control of marriage and divorce has so far thwarted an all-encompassing legal recognition of same-sex couples. The Rabbinate and hence Judaism, some men felt, was at least partly responsible for the fact that they were forced to travel abroad in order to fulfill their wish to become parents. Furthermore, with Judaism being the public religion in

Israel, the Passover Seder was also the beginning of a ten-day official holiday, during which the public authorities in Israel were shut down. My interlocutors depended on these authorities, since a long chain of bureaucratic procedures was necessary in order to have their fatherhood recognized and to have Israeli citizenship granted to their children. Every day lost to Passover was a day that prolonged their stay abroad. It is no surprise, then, that they had ambiguous feelings toward this celebration. At the end, however, everyone came.

The surrogacy agency sponsored the necessary equipment, obtained from the Israeli embassy and the local *Chabad* House in town: the traditional dishes of *matzo*¹ (an unleavened bread) and dumpling soup, as well as a set of copies of the *haggadah* (the text that structures the Seder). They also invited a number of guests who were not familiar with the holiday, for example, the surrogacy agency's local driver, as well as two gay fathers from Canada and the United States, who were staying in the same hotel. Before we started dinner, my research participants found it important to explain to their guests the meaning of the event. "This is the story of the Jews leaving Egypt, and we celebrate the Passover Seder to pass the story from generation to generation," a man sitting next to me explained. Then we sang the songs that form part of every Passover Seder. They sounded quite dreary and caused my friend Avner² to apologize: "This is the first time that we are celebrating this holiday without our parents. For the first time, we are the ones who are responsible for the songs, because now we are parents ourselves." Put this way, our gathering received a new meaning. It generated a chain of Passover celebrations that linked my research participants' path to parenthood to their own parents and even further, to a distant past as well as to the future of the Jewish people. While we ate dumpling soup together with chicken masala and paneer, the Rabbinat's opposition to same-sex parenthood drifted into the background; it was not important that according to Jewish law these men's children were not Jewish. Here we celebrated continuity and change at the same time.

Sharing this holiday was part of a long-term research on the formation of same-sex parenthood³ in Israel. Even though my stay in Mumbai constituted only a small part of the entire research, the events surrounding Passover exemplified the central concerns of this book in a nutshell. As these events brought together bureaucratic struggles, conflicting yet transforming norm systems, and aspirations for continuity, they highlighted how multifaceted the formation of same-sex parenthood is. Reproduction is understood here in Annette Weiner's sense as a cultural

achievement through which the foundational structures, relationships, material resources, and values of a society are reproduced and contested. In line with this understanding, *Judaism in Motion* asks how same-sex couples interact with their families and friends, legislators, state workers, and religious authorities to negotiate their own and their children's place in networks of kinship as well as in the Jewish Israeli collective.

In Israel, where the Rabbinate wields historically sanctioned influence over the legal definitions of marriage and parenthood, same-sex parenthood raises important questions such as what constitutes belonging to the national collective, who has the authority to define the norms of reproduction, and where are the boundaries of Orthodox Judaism. This book addresses these questions from a transgenerational perspective that pays heed to how religiously informed rules, norms, and practices of transferring material properties, names, and societal belonging are adopted and transformed. The goal of this book is twofold: First, it presents a detailed ethnographic account of the dynamic interaction between kinship, religion, and the state that complicates the commonly held assumption according to which same-sex parenthood is a radically secular sphere that stands in stark opposition to Orthodox Judaism. Secondly, it demonstrates how negotiations over same-sex parenthood are also negotiations over religion as well as over its place in society and the state. Thus, *Judaism in Motion* aims at providing a theoretical approach that facilitates a better understanding of the formation of same-sex parenthood as a part of the processes through which societies negotiate the norms that guarantee their reproduction.

1.2 A SHORT INTRODUCTION TO HOMOSEXUALITY AND REPRODUCTION IN JUDAISM AND BEYOND

Anthropologists have long reported on the role of same-sex practices and relationships in the reproduction of societies. In Nuer society, for example, a woman could marry a woman to the name of a dead kinsman (Evans-Pritchard 1951, 111). Likewise, infertile women were free to marry a wife to produce children for them (Hutchinson 1996, 61). As Evans-Pritchard has already argued, these marriages “must be regarded as a form of simple legal marriage, for the woman-husband marries her wife in exactly the same way as a man marries a woman” (1951, 108). Thus, they all paid bride-price in cattle, and as cattle rather than blood or semen were the

true source of heirs, Nuer women could, through cattle exchange, become paters (Hutchinson 1996, 173, 234). In this system, just as in other African societies (see, for example, Eileen Jensen-Krige 1974), women-marriages fulfilled the same function as ghost-marriages. They reproduced the patriline of the paternal agnates who cooperated in paying the bride-price.

Godelier (2011, 238–246) observed that among the Baruya, oral sex between adolescents plays a key role in a ten-year-long initiation phase that disconnects them from their maternal world. In this phase, which the Baruya understand as the adolescents’ “birth” into the men’s world, older adolescents feed young initiates with their semen and thereby transform their bodies into the bodies of men. These oral sexual acts leave room for eroticism, desire, and affection, and couples consisting of an older and a younger boy are formed. Yet, these relations are restricted to adolescence alone. Once a young man is married to a woman, his semen becomes impure, and he is forbidden to put his penis into the mouth of a boy (ibid. 240–246).

The examples of the Nuer, Baruya, and many other societies where same-sex practices and homosexual unions have been reported, illustrate quite well the social construction of gender, sexuality, and reproduction. They provide important insights to counter the arguments of some Jewish Orthodox rabbis—as well as of opponents of same-sex parenthood in other religious traditions—who predicate their opposition on “nature.” But the sensibility to how societal approaches are shaped by entire cosmologies also reminds us not to put such claims lightly aside as primitive or backward. As Blaser (2013, 559) has argued in his proposition for a political ontology, we need to carve out “a space to listen carefully what other worldings propose.” The worlding of these rabbis does not necessarily have to be the one with which we identify best, and careful listening does not mean that we ignore the suffering and dependencies it produces. But it is a fascinating world, and in my research, I was often intrigued by the skills and unexpected twists and stories that form part of rabbinic thinking. A detailed exploration is necessary to uncover the underlying logics of rabbinic arguments about same-sex parenthood and to uncover the contestations and flexibility that exist within these constructions.

Leviticus (Hebrew: *Vayikra*) has probably influenced Christian, Jewish, and Islamic attitudes toward homosexuality more than any other text (Greenberg 2004, 76). The concrete prohibition in Lev. 18:22 constitutes part of a long and detailed list of prohibited sexual relationships (see Chap. 2). It states: *ve’et zakhar lo tishkav mishkevei isha: to’evah hi* (commonly translated as *and with a male you shall not lie the lyings of a woman: it is an*

abomination). There is no doubt that the prohibition of the “lyings of a woman” referred, at least originally, to an act, usually interpreted as the sexual penetration of men. It is, as Rabbi Greenberg (2004, 94) has emphasized, not concerned with homosexual desire, identity, or orientation. Anthropologist Mary Douglas (1999, 167) has pointed in a similar direction when arguing that there are no abominable beings in Leviticus. Accordingly, both authors suggest that the expression *to’evah*, which is sometimes translated as hateful, distasteful, or abhorrent, is better understood as an act that offends the accepted order. The interpretation of *to’evah* as an act that offends the accepted order does not, of course, diminish the severity of the biblical prohibition. Indeed, Leviticus 20:13, which repeats the prohibition of *mishkav zakhar*, adds certain death as the punishment for transgression.

To understand how rabbis approached this biblical prohibition and other positive and negative commandments that will be treated in this book, it is necessary to first provide a few words about the fundamentals of rabbinic Judaism. As anthropologist Don Seeman (2010) has already observed, Jews and Christians may share in part the same sacred text as the foundation for their wisdom about the world. Yet the ways in which they work with the text could not be more different. Indeed, rabbinic (and in particular Orthodox) Judaism is closer to Islam, as both religions have at their center the interpretation, discussion, and application of religious law. For rabbis, this is halakha (Jewish law), as it has been revealed, transmitted, and elaborated in legal rabbinic discourse over an extended period of time (*ibid.* 349).

The fundamentals of halakha are the Written Torah and the Oral Torah. Orthodox Judaism holds that Moses received these correlative laws at Mount Sinai directly from God. The Written Torah includes the Hebrew Bible with its main divisions of the Torah (instruction), also called Pentateuch or five books of Moses, *Nevi'im* (Prophets), and *Ketuvim* (Writings). The Oral Law, in turn, was communicated from Moses through a chain of successors to those rabbis who codified it in the Mishnah. Many parts of the Mishnah contain opposing views, stimulating further debates and comments. They were all written down between 200 and 500 CE in the Jerusalem Talmud and the more influential Babylonian Talmud. These two vast volumes include direct—and again conflicting—interpretations of the Mishnah, in addition to stories, metaphors, satire, and poetry (Wahrman 2002, 5–7). Since then, rabbis have continued the tradition of commentaries, interpretations, and debate, often in oral or written

responsa (*she'elot uteshuvot*, literally meaning questions and answers) to daily-life questions.

Early rabbinic writing found in the Mishnah and the Talmud entrenched the importance of the Levitical prohibitions of sexual relationships for the cosmological order. Thus, the Sages, as the rabbis of the Talmud are often referred to, maintained that these prohibitions—along with idolatry and murder—may not be trespassed under any circumstances, even to save a human life. In addition, transgressors of these prohibitions are liable to the punishment of *kareth* (literally: to cut off/to be cut off). The concrete meaning of *kareth* is not entirely clear, and the Talmud discusses different possible manifestations: early death, childless death, or the extinction of the soul and denial in the world to come. Yet, there seems to be a rabbinic agreement that *kareth* is a form of divine punishment and thus not in the province of human courts.

The cosmological rather than individual significance that the Talmud attributed to the prohibition of *mishkav zakhar* is further manifest in their associations of homosexual relations with the evil doings among their non-Jewish neighboring groups (Berkowitz 2009; Lubitch 1996, 236–238). Referring to Leviticus 18:3–4, where it is written “Say to the people of Israel... you should not do as they do in the land of Egypt,” the *Sifra* (200–400 CE)⁴ adds: “And what did they do? A man would marry a man, a woman a woman, a man would marry a woman and her daughter, and a woman would be married to two men.” Similarly, the rabbis of the Talmud tried to estimate and reduce the risk for Jews to transgress the prohibition. They discussed, for example, whether two unmarried men are allowed to sleep under the same blanket, as it might seduce them into engaging in *mishkav zakhar*. And they were clear that the transgression of the prohibition had the power to shake the earth and thus to cause nothing less than the loss of the entire people (Lubitch 1996, 240–242).

The exclusion of *mishkav zakhar* from the realm of Jewish tradition meant that compared to the sexual relationship between women and men, which has stood at the very center of Jewish law since the beginning of rabbinic Judaism, there are relatively few rabbinic texts concerned with homosexuality to be found throughout the centuries. Like the Sages, rabbis tended to relate the prohibition of *mishkav zakhar* to the order of God’s creation and the roles that gender, marriage, and procreation play in it. Some reasoned that homosexual intercourse threatens to destroy marriages and families, as men abandon their wives to pursue their desire, while others maintained that homosexual intercourse frustrates the

commandment to be fruitful and multiply or the rabbinic prohibition of wasting seed (Greenberg 2004; Rapoport 2004). For the period between the sixteenth and nineteenth centuries, Greenberg (ibid.) found a couple of written rabbinic responsa that address concrete cases of *mishkav zakhar*. These responsa demonstrate that same-sex intimacy became of rabbinic concern when it affected the functioning of the communal fabric or the safety of children (ibid. 129). In addition, Greenberg's analysis shows that same-sex intercourse was primarily perceived as a sinful act that, although not without consequences, entailed neither prosecution nor exclusion from the community. It was a sin for which one could repent (ibid. 130–134).

Despite the heteronormativity of the Jewish cosmology, Judaists have found space for homoeroticism and intimate same-sex relationships. Michael Satlow, for example, has shown that the Sages of the Talmud “considered male sexual attraction to other males to be unexceptional” (1994, 18). Taking up a similar line of argument, Boyarin has claimed that even though premodern rabbinic Judaism was heteronormative, it was not homophobic (1997, 15–17). He, as well as Greenberg (2004), have found ample sources, both in the Talmud and in medieval rabbinic poetry, that recount a deep affection between men. Indeed, although the rabbis viewed homosexuality as a threat to God's order, homosexual practices did not engender a distinct position in society. This is a peculiarity of modern European naturalism, which not only rests on a rigorous dualism between nature and culture but also between nature and manhood (Descola 2013).

In seventeenth- and eighteenth-century Europe, nature came into being as an autonomous ontological entity, a scientific field for research and experiments, and as a moldable object ready for exploitation (ibid. 69–83). In the same period, scholars have observed a turn in learned thinking about bodies, sex, and sexual difference as firmly confined to the sphere of nature and biology (Laqueur 1990, 149–192). The emphasis on sexual differences being an empirical matter not only essentialized the categories of “man” and “woman,” but also turned homosexuality into a pathology, and thus into a matter of being rather than doing (Weeks 1977, 22–32). Strikingly, at the same time as homosexuality was increasingly understood as a matter of being, Jewish otherness became a matter of race (Boyarin et al. 2003; Lustenberger forthcoming; Mosse 1985; Sanders 1993). This is no coincidence, as both developments were deeply rooted in the emergence of new scientific disciplines that demarcated the boundary of what was considered at the time the normal sex-gender axis. In this

context, both Jews and homosexuals came to embody the anti-type of the bourgeois fiction of male virility, the “other” that endangered the integrity of the moral national collective (Shokeid 2005, 591).

Boyarin had found attempts to masculinize—and thus to normalize—male Jewry in Freud’s thinking about the Oedipus complex and neurosis as well as in Herzl’s political project of Zionism. Indeed, the Zionist movement has, from its early days onward, forged an image of the new Hebrew: “the Muscular Jew” who strongly resembled the ideas of masculinity that dominated Western Europe in the late nineteenth and early twentieth centuries (Mayer 2005). In the context of the Zionist project to settle the land, the ideal male Jew graduated from the youth movement, and then became a pioneer settler (*chalutz*), colonizer, and defender (ibid.). This image has remained significant after the foundation of the State of Israel. Thus, Lomsky-Feder and Ben-Ari (1999) showed that hegemonic masculinity is identified with the masculinity of the combat soldier in Israel. Additionally, it is the combat soldier’s masculinity that embodies good citizenship (ibid.).

Homosexuality had for a long time no place in this image of the masculine pioneer settler and soldier. Thus, my older research participants remembered that when they became aware of their sexual orientation in the 1970s and 1980s, they simply had no role models. The homosexual public character they remembered best was Zalman Shoshi, who was taunted with the invective term *koksinel*—a derogatory word for transvestite—and with whom many of them could not identify. And the first Israeli gay movies, produced in the late 1970s and 1980s by filmmaker Amos Guttman, portrayed gay men as miserable, self-hating, alienated, dying, and even submitting sexually to Arabs (Walzer 2000, 175). They were, as Lee Walzer has put it, “a slap in the face of the Zionist ideal” (2000, 175).

Things changed dramatically in the 1990s, after the Knesset removed the prohibition on homosexual intercourse from the national penal law, thus paving the way for gay and lesbian activism to enter state politics and public consciousness (Harel 2000; Kama 2000; Spivak and Yonai 1999). With the relatively liberal government of Yitzhak Rabin and, after his assassination, Shimon Perez, activists and their allies in the Knesset managed in a relatively short period of time to pass a broad range of laws to protect lesbians and gay men from discrimination. The 1990s were also the decade in which the foundations for Israel’s generous legislation on medically assisted reproductive technologies were laid (see, for example, Kahn 2000; Weisberg 2005). Since then, lesbians and gay men have

achieved a wide range of family rights, including partial access to state-subsidized fertility treatments and legal protection of their family units.

These developments are very surprising, as in Israel the only way to get married, for Jews, is through the (Orthodox) Rabbinate, and as the national family law is largely shaped by Orthodox kinship principles. *Judaism in Motion* addresses this puzzle to show how new forms of Jewish continuity are imagined and made in private homes, the parliament, courts, and even in Orthodox synagogues.

1.3 FROM THE MAKING OF SAME-SEX PARENTHOOD TO TRANSGENERATIONAL CONTINUITY

The first anthropologists who studied gay and lesbian kinship worked in contexts in which lesbians and gay men were believed not to have children, not to establish lasting relationships, and to invariably alienate their birth or adoptive families. Thus, when anthropologist Ellen Lewin started working on lesbian motherhood in the United States in 1977, many peers were puzzled, wondering how lesbian women can become mothers at all (Lewin 1993, 1). And even in the late 1980s, when Kath Weston researched kinship practices among lesbians and gay men in the San Francisco Bay Area, not only the older research participants but also some of the younger ones felt that having children was intrinsically linked to heterosexual relationships (Weston 1991, 25–27).

Anthropological scholarship on lesbian and gay kinship and same-sex parenthood has constituted part of a new direction in the anthropology of kinship that emerged in the United States and is commonly known as “new kinship studies.” This scholarship was the result of a growing awareness that anthropological kinship theories were biased by the Euro-American emphasis on sexual intercourse and common physiological substances, such as blood or genetic material. As they directed their attention to the symbols and practices of kinship at home, scholars such as David Schneider (1968, 1984) and Jane Fishburne Collier and Sylvia Junko Yanagisako (1987) revealed that American premises about parenthood and procreation were as cultural as in any other society.

Following these insights, scholars now asked how people conceive relatedness, how they construct an understanding of the substances that connect people with each other, and what values and meanings they attribute to it (Carsten 1995). This approach to kinship as relatedness allows

for diverging notions of what is given and what is made to exist in different parts of the world, but often also in the same society. Thus, scholars showed that even in American and British kinship practices, the biological/social dichotomy is not as predominant as Schneider suggested. Instead, kinship allows for creative reformulations into which people invest their emotions, energy, and new imaginings (Carsten 2004, 9, 153).

The appeal of this approach for the study of same-sex parenthood—and gay and lesbian kinship more generally—is obvious. Because modern homosexuality, as it emerged in the nineteenth and twentieth centuries, constitutes a social position that stands in opposition to heterosexual marriage, same-sex couples' claims for family rights call for studies that decentralize the heterosexual intercourse and make room for creative reformulations. Same-sex family-making constitutes an arena where people themselves contest the axioms that, according to scholars, lie at the bottom of scientific *and* folk theories about kinship. Similar to—and maybe even more radically than—reproductive technologies and adoption applied by heterosexual couples, gay and lesbian kinship demands a careful analysis of how people think, rethink, and live kinship. Here the denaturalization of gender and kinship, which was and is such an important task for feminist scholarship and anthropology in general, occurs in practice.

Thus, Weston's seminal *Families We Choose* (1991) impressively demonstrates that against the assertion that coming out means leaving family behind, her interlocutors in the San Francisco Bay Area emphasized work and duration as the elements that make kinship real. More than other people, they experienced the fragility of relationships with birth or adoptive families. For Weston's research participants, disclosure of their homosexuality to parents and siblings put kinship relations to test. Would love endure? Or would kinship relations be cut? Accordingly, coming out was thought to uncover the truth of kinship relations, yet at the same time it was also a "prerequisite for intimacy" and thereby a means to validate relations with kin (1991, 52). Personhood was shaped by the relationships these men and women ascribed to blood, by reworking these relationships in the context of a coming out, and by the relationships with friends, lovers, and children that became part of their families. These gays and lesbians challenged first and foremost "the belief that procreation *alone* constitutes kinship" (Weston 1991, 34, her emphasis).

When same-sex couples bring children into their domestic units, either through adoption or reproductive technologies, they have to answer

questions about assigning familial status to both partners. As Anne Cadoret (2009, 85) has argued, “two parents of the same sex are not able, between themselves only, to produce a child and pretend they are the genitors.” Even more, if heterosexual intercourse and not cattle (as among the Nuer) is the primary means to constitute parenthood, same-sex couples have to explain on what grounds they define their parenthood. How do they define filiation and trace descent, when all parents of a particular child claim for themselves the same kinship position?

Addressing these questions, anthropologists and sociologists have shown that lesbian co-mothers claim generative agency and thereby take responsibility for the existence of the child: they highlight the mutual decision to have a child, choose the donor, monitor the partner’s monthly cycle, and at times even carry out the insemination (Hayden 1995; Mamo 2007; Nordqvist 2012). Gay couples make similar claims when they phrase their desire for parenthood or their path through surrogacy as rooted in their loving relationship (Lewin 2009; Lustenberger 2016; Moreno 2016). Same-sex couples’ request for legal and social recognition of these unions as families in their own right and as a “potentially life-giving reproductive form” (Godelier 2011, 548) often confronts medical, legal, and bureaucratic protocols that are primarily meant for heterosexual couples (Agigian 2004; Mallon 2004; Mamo 2007; Ryan-Flood 2005). Lesbian and gay couples do not fit, for example, the requirements to obtain sperm, the forms in fertility clinics, or the laws regulating foster parenthood, adoption, and in general, the recognition of their parenthood. Scholars have therefore rightly argued that lesbian alternative insemination as well as gay fatherhood through adoption or surrogacy unveils, but also challenges, the patriarchal norms and heteronormative discourses that structure American families, the welfare system, and reproductive medicine.

In light of this, lesbian and gay couples have developed a myriad of ways to authenticate their family unions (Hayden 1995; Lewin 2009; Murphy 2015; Nordqvist 2010; Ryan-Flood 2005). In the United States, in Europe, and also in Israel, they may merge their family names, use the same sperm or egg donor for all their children in order to emphasize their siblingship, choose a donor who resembles the “nonbiological parent,” or refuse to unveil who the biogenetic father is. And, as Lewin (2009, 91–95) has demonstrated, they narrate an immediate and “natural” connection with their adoptive child. Scholarship on same-sex parenthood therefore

impressively shows how alternative family formations simultaneously build upon and transform existing cultural logics of gender and kinship.

But while same-sex couples mobilize and complicate the symbolic capital of nature and biology, it is important to remember that names and family resemblance are not particular to biogenetic kinship thinking. Rather, anthropologists have demonstrated that human and non-human actors, such as preceding sexual partners (Conte and Essner 1999), pictures and mirrors (Sholkamy 1999), or godparents (Fine 1994), may be held responsible for transferring physical and moral properties. Accordingly, *Judaism in Motion* constitutes an attempt to broaden our analytical perspective on the formation of same-sex parenthood with a shift away from the concern with notions of what is given and what is made. Following the anthropologist Annette B. Weiner, I understand reproduction, “not as biological construct, but as a cultural concept in which the basic processes for reproducing human beings, social relations, cosmological phenomena and material resources are culturally defined and structurally interconnected” (1978, 183). For Weiner, reproduction is not limited to the practices surrounding conception, gestation, and delivery. It includes events and processes throughout interconnected life cycles, relating to ideas surrounding fertility, care, alliances, belonging, and death.

Such a broad perspective requires that research does not end with the achievement of parenthood. Rather, it adds the societal interactions, religious rituals, and bureaucratic processes that take place before and after the birth of a child and through which religious status, societal belonging and exclusion, as well as material assets are passed from generation to generation. As Maurice Godelier (2011, 457) has observed, children—however they are conceived and whatever relationships the making of a child enacts—ensure social and material continuation. Only through children are social relations, collective identities, and material resources passed from generation to generation. Thus, I ask with Sabeian and Teuscher (2013, 9) “how different kinds of substances such as names, real property, statuses, and offices each provide complex ways of connecting and differentiating kin.” Sabeian and Teuscher’s sensibility to how kin are connected and differentiated directs our attention to siblingship. Indeed, anthropologists have long shown that the relationship between brothers and sisters is fundamental for the reproduction of collective identities and thus a structural principle of kinship (Conte and Walentowitz 2009, 228). Even though being siblings means different things in different societies—and societies recognize claims and allocate responsibilities differently—the

distribution of property, shared names and status, relationships between affines, collective identities, alliances and rivalry all become meaningless in a world without siblingship and transgenerational bonds.

The study of gay and lesbian parenthood in a transgenerational perspective places importance upon filiation and descent and does not attempt to overcome the “genealogical grid.” I believe that anthropologists threw the baby out with the bathwater when they turned away from genealogies in order to denaturalize kinship and to do justice to the more flexible kinship practices they encountered in their research. Genealogies “are not historical records of biological relations, but contemporary models for social relations” (Barnard and Good 1984, 9). Scholars have amply demonstrated that genealogies often assemble persons *retroactively* around a name or names, a village, and so on (e.g., Arena 2011; Conte 2003). This provides ample room, for example, in Muslim Arab societies, to attach one’s patriline to a prestigious name, to forget less illustrious ancestors, and even to incorporate illustrious maternal ancestors into the patriline and thereby alter the genealogical memory (Arena 2011, 5–6). Assuming a transgenerational perspective, therefore, does not focus on “anonymous and supra-individual entities, [but shifts the attention] to individual actors and their strategies within and against structuring structures” (Schweitzer 2000, 9). In this sense, paying attention to genealogies by no means intends to overemphasize sexual intercourse or the combination of male and female reproductive substances. Rather, it is a way to embed the kinship practices of LGBT people in the processes through which societies negotiate the norms that guarantee their regeneration over time.

1.4 SAME-SEX PARENTHOOD, THE STATE, AND THE NATION

Social scientists have long shown that reproduction is deeply political. 40 years ago, the Israeli sociologist Nira Yuval-Davis (1980, 15) coined the term “bearers of the collective” to argue that Jewish Israeli women reproduce more than the labor force and/or the future subjects of the state; they are also “the reproducers, biologically and ideologically, of the national collective and its boundaries.” Faye Ginsburg and Rayna Rapp (1991, 1995) expanded the theoretical framework to bring the relationship between global and local processes and power relations into the study of the politics of reproduction. They have demonstrated that global

movements take on diverse local forms and that “the social organization of reproduction was intrinsically linked to the production of culture, not a mere reflection of it” (Browner and Sargent 2011, 3). In addition, scholars have in the last decade increasingly questioned the conceptual separation between kinship and the state that has dominated the social sciences throughout the twentieth century (McKinnon and Cannell 2013; Thelen and Alber 2017). Addressing the relationship between kinship and the state, Michael Lambek recently argued:

Kinship is not separate, because it is embedded in the fundamental actions of the state, and it is not subordinate, because it is part and parcel of what the state is and means. The state is constituted in and through such acts as making citizens, providing birth and death certificates, registering property, taxing households, and, more generally, producing and authorizing the means by which people are related to one another as parents, offspring, spouses, siblings, and the like, in addition to regulating such relations. (Lambek 2013, 257)

In Israel, kinship is quite explicitly bound not only to the state but, through the state, also to religion: Personal status is here regulated through religious law. In practice, this means that each of the thirteen recognized religious communities has its own religious institution that is authorized to contract and dissolve marriages in accordance with their respective religious laws (Lustenberger 2017). Or put differently, the various religious authorities have the power to define who is allowed to get married to whom and who is a legitimate member of their respective religious community. For Jews, this religious authority is the Rabbinat, which is Orthodox.⁵

The segregated structure of family law has a long history in the region (Karayanni 2010). As the *millet* system, “[it] was originally set up by the Ottomans, who ruled what came to be Mandatory Palestine and Israel for 400 years (1517–1917)” (ibid. 37). The *millet* system, as well as its legacy in contemporary Israel, is at times perceived as a model of tolerance and religious pluralism. However, it also presents a social code according to which each religious community should interact only within itself when it comes to matters of personal status and thus segregates the population along religious lines (Berkovitch 1997; Fogiel-Bijaoui 2003; Hacker 2009; Halperin-Kaddari 2004; Karayanni 2006, 2010). Furthermore, the various recognized religious communities and their respective authorities

do by no means stand in an equal relationship to the state. Initiated and established in the Declaration of Independence⁶ as the homeland of the Jewish people and as *the* Jewish state, Judaism has a privileged position. Accordingly, public discussions over the relationship between religion and state are in fact about Judaism alone, although no doubt they have implications for the minority religions as well. As Karayanni (2006, 46) argues, “the matter of Jewish religious accommodations has essentially been ‘nationalized’ thus becoming part of Israel’s ‘public’ sphere.”

While this is plainly visible in the Israeli flag, national emblem, anthem, and official holidays, the hegemonic position of Judaism also influences the laws pertaining to family matters and the procedures to enact them. Laws pertaining to reproductive technologies and adoption are phrased so as not to infringe upon Orthodox definitions of prohibited relationships (see, for example, Kahn 2000, 142–148; Shalev 1998, 64–72; Weisberg 2005, 191–192). According to Jewish law, Jews are born to Jewish women. Monographs such as Jacqueline Portuguese’s *Fertility Policy in Israel* (1998), Susan Martha Kahn’s *Reproducing Jews* (2000), Kelly Weisberg’s *Birth of Surrogacy* (2005), Elly Teman’s *Birthing a Mother* (2010), and Michal Nahman’s *Extractions* (2013) provide complex accounts of how Jewish and Israeli pronatalism coupled with rabbinic kinship thinking and a concern to maintain the stratified structure of citizenship along religious lines all come together and mobilize the reproductive potential of single and married women. Adopting various foci and theoretical frameworks, these scholars have shown how women make sense of their experiences and identities as they contribute to the reproduction of the Jewish Israeli collective and its porous boundaries. The regulations and practices of reproductive technologies, this scholarship makes clear, are intrinsically linked to Zionist definitions of Israel as a Jewish state and the construction of Palestinians as the other.

But citizens are not passive recipients of state regulations. Weisberg (2005) has shown in her detailed description of the birth of Israel’s surrogacy law that recipients of fertility treatments have actively pushed and shaped the law through interventions in court and vis-à-vis public authorities. Similarly, Gooldin (2013) has demonstrated that when the government planned to cut public funding for fertility treatments, patients formed powerful lobbying groups to fight the law. Same-sex couples, for their part, have in the last three decades persistently challenged their exclusion from family rights. The question as to what extent their challenges reproduce or transform social structures lies at the heart of this book.

Legal scholars and social scientists have already traced the development of lesbians' and gay men's family rights (e.g., Gross 2001; Hadar 2005; Harel 2000; Triger 2013; Spivak and Yonai 1999; Yonai 1998). This scholarship shows that Jewish Orthodox influence in Israeli family law poses considerable constraints upon an all-encompassing recognition of same-sex unions, but also that same-sex couples have achieved a wide range of family rights through arduous litigation in court and negotiations vis-à-vis public authorities. Today, the Israeli National Insurance Institute gives pensions to lesbian and gay widowers, and the Ministry of Interior grants residency rights for same-sex spouses of Israeli citizens, as long as they do not fall under the exclusions defined in the Citizenship and Entry into Israel Law (Hadar 2005, 24). When gays and lesbians want to transfer all or partial ownership of an apartment to a same-sex partner, the partners count as family members and do not have to pay taxes. Gay and lesbian couples further enjoy a special mortgage rate when buying a first apartment (Hadar 2010). Lesbian women have unrestricted access to fertility treatments including sperm and egg donation. Gay men are to this date excluded from surrogacy, but the state recognizes their parenthood for children born through surrogacy abroad and grants them citizenship. In addition, same-sex couples can formalize the parenthood of both spouses by the means of second-parent adoption or a judicial parenthood order.

Along with these legal developments, scholars have shown that lesbians and gay men in Israel have seen a gradual inclusion in mainstream (Ashkenazi⁷) society (Ben-Zvi 1998; Kadish 2005; Kama 2000; Shadmi 2005; Solomon 2003). As the queer theorist Amalia Ziv (2013) has put it: "In Israel today gays and lesbians have already become a type of domesticated pet, [they are] exactly like all the rest, and then it's really comfortable to accept [them]." Sociologist Adi Moreno, uses even harsher words, when she explains that Israeli LGBT politics of the last two decades has "created a new subject-position made up of patriotic gay-lesbian citizens [...] while at the same time excluding others on the basis of economic capabilities, ethnic/racial identities and national belonging" (Moreno 2016, 174).

In Israel, homonormativity (Duggan 2002)—or to use the emic term: the politics of *homoiim straitim* (straight gays)—has taken the shape of political and legal activism for parenthood rights (Kadish 2005; Shadmi 2005). Thus, the organized lesbian community, and in the last two decades also gay men, have put their political focus on the formation and

recognition of same-sex parenthood “almost to the exclusion of all else” (Kadish 2005, 236). I understand this focus first of all as an expression of the great of importance that Israelis of all sectors place upon having children. Indeed, for most of my research participants it was clear that one child was not enough. Instead they had or planned to have three, four, or even more children. And they were aware that having children was a ticket into mainstream society. This does, of course, not mean that lesbians and gay men decide to have children in order to be accepted by society. They had personal reasons for their parenthood and had experienced diverging degrees of acceptance within their societal environment. They displayed diverging political positions with regard to Israel’s societal and political order, and they had various ideas about the kinds of citizens they wanted their children to be.

Thus, Kadish and others do not delegitimize the desire of individual lesbians or gay men to have children. Rather, they criticize that by adopting this political focus, the organized gay community has pushed a political agenda that privileges gay men and lesbians who already find themselves in a strong societal position at the expense of the needs of more vulnerable populations within the LGBT community such as transgender people, LGBT people who live in poverty, or those who are excluded from the mainstream community due to their skin color or national-religious position. In line with this critique, scholars have adopted Jasbir Puar’s concept of homonationalism (2007, 2013) to argue that the Israeli lesbian and gay liberal rights discourse plays into the hands—and at times quite consciously so—of those political players who “present Israel as the ‘only democracy in the Middle East’, while at the same time maintaining the occupation of the Palestinian territories” (Moreno 2016, 176; see also Hartal and Sasson Levy 2017). As Puar (2013, 337) made clear, “homonationalism is fundamentally a deep critique of lesbian and gay liberal rights discourses and of how these discourses produce narratives of progress and modernity that continue to accord some populations access to citizenship—cultural and legal—at the expense of delimitation and expulsion of other populations.”

The critical frameworks of homonormativity and homonationalism add to the study of same-sex parenthood the question as to what societal borders and hierarchies same-sex couples reproduce (or challenge) when they have children. Yet they account less for the various and often conflicting norms and ideas of reproduction that exist within society. I agree that it is highly important to maintain a critical stance with regard to the exclusions

on which the inclusion of (some) same-sex couples in the reproduction of the nation rests. Yet, I would like to show here that with a transgenerational approach to the formation of same-sex parenthood, we can approach an understanding of whether and to what extent the formation of same-sex parenthood may, in the long run, deeply transform the very same nation and its borders.

1.5 CONFLICTING NORMS AND MORAL LOGICS IN TRANSFORMATION

Kinship, as the historian Gadi Algazi (2010) has argued, is not a thing in itself, but rather a set of patterns that create various kinds of relatedness and proximity and that are structured by ontological order, moral values, and language. Or to put it in his words: “Kinship is not a domain that may disappear, but a set of powerful, supple and resilient cultural options, providing matrices for practices that can shape social worlds (and, in turn, themselves be shaped)” (ibid. 86). Same-sex parenthood creates new sites and moments for translating and redefining these matrices, not only in fertility clinics but also in parliaments, newspapers, synagogues, and at home. This is bound to create conflicts and ambiguities. As Sabeen and Teuscher have already made clear:

There are different discourses, in some cases, which may be operating at the same time, but which cannot be seen to cohere in a single viewpoint. It is quite possible for a strictly agnatic lineage property system to develop and coexist with marriage prohibitions that interdict alliances with both paternal and maternal kin; or for medical science to model heredity in one way, while jurists model it in quite another. (2013, 9)

In Israel, political struggles over same-sex parenthood are often phrased as a conflict between a religious sector, represented by the Rabbinate and its affiliated Orthodox political parties, and the secular majority. This representation of a “culture war” (Mautner 2011) has not come out of nowhere, of course. Time and again, representatives of Orthodox Judaism have made headlines with homophobic statements and blocked political attempts to put same-sex couples on an equal footing with heterosexuals. In the view of these political and spiritual leaders of Orthodox Judaism, their assigned role to “be a light unto the nations” as written in the Book of Isaiah has nothing to do with liberal progress. As Yuval Cherlow, a

prominent rabbi in the Orthodox Zionist movement, has recently explained in a public discussion with religious lesbians and gay men, from the Rabbinate's perspective, Jewish law is not lagging behind; rather, the world is going crazy.⁸ For many of my research participants who had not grown up in a religious home and also for some who had a religious background, in turn, the principles that structure Orthodox regulations of reproduction seem anachronistic and completely unreasonable.

Philippe Descola's (2013) classification of four major ontologies (animism, totemism, analogism, and naturalism) that each structures the relationships among humans and between humans and non-humans in different ways helps to understand the feeling reported by many of the research participants that there is not even a mutual ground for a conversation. Following Descola, I suggest that in Israel, norms and logics that derive both from analogism and naturalism coexist in a tense relationship. Rabbinic kinship principles originate in the biblical ontology, which is deeply analogical. In this world, everything and everyone has a clearly determined place in the world, and this determines the relationship and expected behavior toward other beings (2013, 274). It is a highly fragile world, and the derangement of one piece unsettles the whole order.

But Orthodox kinship principles are not simply remnants of the Bible and the beginnings of rabbinic Judaism some 2000 years ago. Indeed, scholars such as Susan Martha Kahn (2000), Tsipy Ivry (2010), and Ronit Irshai (2012) have impressively demonstrated how the Rabbinate has integrated biogenetics and reproductive technologies in this world through a set of very concrete rulings that are supposed to maintain the order of creation. These rulings address not only the Orthodox communities; through the Surrogacy Law (1996) and the Egg Donation Law (2010), as well as rabbinic interventions in clinical practice, they shape the reproductive practices of Israelis in general (see particularly Ivry 2010, 2013, 2015). Quite fascinatingly, it appears that even though rulings are necessary in order to kosher reproductive technologies, the multitude of possible analogies provides great flexibility. Thus, the Rabbinate has in the last decades found ample ways to permit practically all reproductive technologies, including sex selection, gamete donation, and surrogacy.

When same-sex couples claim access to and make use of reproductive technologies, new challenges arise. Their practices not only raise questions as to how to define descent and siblingship, but also as to what kind of Jews their children are and what this all means for the transgenerational fabric that constitutes the Jewish people, as well as God's place therein. In

addressing these questions empirically, it is possible not just to grasp the Rabbinate's objections and hesitations to endorse same-sex parenthood, but also the space for hermeneutic liberties that exists within rabbinic kinship thinking. These liberties, so I argue, acquire their force in combination with a naturalistic understanding of the world. As Descola has beautifully described, Europe witnessed from the seventeenth century onward a transition from an analogical to a naturalistic order of categorizing humans and non-humans into different collectives:

With the emergence of the modern world, to which the best minds of the last two centuries have devoted their analyses, the hierarchical segments of collectives based on levels of status have crumbled, giving way to an immense mass of human individuals who are legally equal but who continue to be separated by concrete disparities both within the particular communities in which they are distributed and also within the formal aggregate that they all constitute together in the "concert of nations." (2013, 278–279)

Descola's insights help to develop an understanding of the logics that underlie the current political dynamics and struggles around the formation of same-sex parenthood. Importantly, the conflicting norms and logics cannot neatly be divided into a religious Orthodox and a secular sector. As I will show in this book, Judaism and the Orthodox logic that constructs the Jewish people as an expansive transgenerational kinship network not only remains a cornerstone of Israeli family law; rather, Orthodox Jews have also, to various degrees, incorporated naturalist elements in their reasoning, even when they oppose the formation of same-sex parenthood. Instead of highlighting the clashes between representatives of the Rabbinate and LGBT activists, *Judaism in Motion* therefore addresses the translation of ethical and legal principles from one societal context to another. It follows Lambek (2012, 345), who has asked: "How does a liberal legal language of rights translate into a religious language of obligation, devotion, love, obedience, etc., and conversely?" Similarly, Arena (2011) has demonstrated that kinship concepts are transformed when they are translated from one legal context into another and may even acquire new connotations; Gooldin (2013) has pointed out that in the political struggle around public funding for fertility treatments, rabbis, fertility patients, and politicians from all sectors of Israeli society have successfully constructed access to in vitro fertilization (IVF) treatment as an issue of emotional well-being, individual vulnerability, and universal rights (ibid. 94).

The ontological shift identified by Descola further allows us to situate the debates and struggles surrounding same-sex parenthood in a historical perspective. In eighteenth- and nineteenth-century Western Europe, the emerging nation-states with their undifferentiated mass of (white, predominantly Christian, male) citizens brought along pressing questions for the Jews (Neusner 2000, 1240–1243). With legal emancipation that turned Jews into citizens subject to national law, the Jews asked what Judaism was and how one could be a citizen and a Jew at the same time (*ibid.*); what is the value of regulations aimed at maintaining God’s order of creation and preventing the wrong mixing of substances and bodies in a world where the People of Israel⁹ cease to be a supernatural entity; and whether marriage prohibitions and sexual prescriptions maintain any relevance at all.

In the nineteenth century, disagreement over these issues caused a split and brought into being the three major streams that still exist today: Reform Judaism, Conservative Judaism, and Orthodox Judaism. The split indicates how tightly kinship principles are interlinked with very fundamental questions pertaining to the definition of Judaism itself. And it is no surprise that one finds the very same questions and contestations in Israel, where notions of equality in citizenship meet Jewish preeminence, Orthodox control of marriage and divorce, and a strong medical sector with highly developed reproductive technologies.

1.6 THE ENTWINED PATHS OF ETHNOGRAPHIC RESEARCH

Work for this book started with extensive research that I conducted between 2010 and 2012 for my PhD dissertation. Living in Israel—first in Haifa and then in Tel Aviv—I was able to collect a wide range of material. I conducted in-depth interviews and participant observation among same-sex couples, participated in events on pertinent matters by the organized LGBT community, and analyzed court decisions, parliament protocols, laws and rabbinic literature, as well as the media coverage of the observed legal developments. While I read through the interviews with same-sex couples, took memos, and built categories, I learned about relevant court decisions, political disputes, or statements made by rabbinic authorities to include in the research. When I compared my research participants’ experiences and kinship principles with rabbinic texts, I developed new

questions. And when I read through newspaper articles reporting on same-sex couples' court petitions regarding access to surrogacy, I found out about lawyers and activists whom I could approach for expert interviews. In this sense, I followed the trajectory of same-sex parenthood, as my material led me from one context to the next.

Ancient Hebrew has no expression referring to the concept of sexual orientation or identity. Yet, the concepts gay (Hebrew: *homo*), lesbian (*les-bit*), sexual orientation (*netiya minit*), and same-sex parenthood (*horut had minit*) are today widespread in Israel. Most of my interlocutors defined themselves as gay or lesbian, with a handful who identified as bisexual.¹⁰ Accordingly, I use these terms as emic categories, just as my interlocutors employed them either to define a sense of identity or to describe their relationships or status in society. For the inclusion of research participants in the sample, however, it was not important whether they identified as lesbian or bisexual, but rather that they had at present or in the past a partner of the same sex with whom they raised—or planned to raise—children.

I recruited interview partners by spreading information about my research through online and offline gateways. Establishing direct contact with potential interview partners through friends and acquaintances proved to be the most fruitful strategy. The ease with which people directed me to acquaintances and the paths that led me to my research participants often astounded me. One day, for example, I stopped on my way to the brit milah—the ritual circumcision—of a lesbian couple's son at the office where my friend Oren worked. When I arrived, he was just having a cigarette and a chat with a colleague. As I joined them and told them about the upcoming event, his colleague got excited. Half a year earlier, she herself had organized a commitment ceremony for a befriended gay couple. This couple was about to fly to Mumbai for the birth of a child through surrogacy. She immediately called one of them, and two minutes later I had their consent to participate in my research and their contact details. There were ample other moments in which people whom I just met or whom I knew from completely different contexts told me about their children's schoolmate who had lesbian mothers or a sister's friend who had just started a surrogacy process in India or the United States. These situations are surely linked to the possibilities that same-sex couples in Israel indeed have to become parents. But these moments also raised my awareness of the embeddedness of same-sex couples in extensive

networks of kin and friends and the role of life cycle events in the reproduction of these networks.

My sampling method could certainly not set up a representative cross-section of the Israeli population. Nevertheless, using several gateways, I recruited 34 couples (18 male and 16 female couples) from very different socioeconomic and family backgrounds. While Tel Aviv has played an important role in the emergence of LGBT identities, and is advertised as a holiday destination for lesbians and gay men by the municipality itself (Hartal and Sasson Levy 2019), over half of my interview partners lived outside the Tel Aviv area. They lived in Jerusalem, Haifa and Beersheva, small towns, and even in rural areas. At the time of the interviews, all but four couples already had children, and with a few exceptions, both spouses were engaged in paid work. Many of the interviews were conducted in the interviewees' homes, with only a few preferring to meet in a café. Doing research among working parents, particularly when their children are young, demands flexibility from the researcher, since time is scarce. Accordingly, the decision regarding whether to conduct couple interviews or not depended on my interlocutors' timetables and availability.

The depth of the relationships with my interlocutors varied from case to case. I met with two-thirds of them more than once, and with a core of ten couples, I established long-term relationships that facilitated informal conversations and participant observation in daily-life activities. Besides the *brit milah* mentioned earlier, I also spent holidays and Shabbat dinners with research participants, celebrated the birthdays of children with them and their parents, grandparents and siblings, and attended the funeral of one research participant's father, who unexpectedly died. These moments—mostly happy but sometimes sad—enriched the material collected through the formal interviews. They helped me to experience the emotional facets of Israeli family life, to conduct formal and informal conversations with their parents and siblings, and to turn Israel into a place where I felt at home.

My interviews were loosely structured around the following overarching themes: the decision-making process regarding if and how to become parents, experiences with reproductive technologies, ways of welcoming the child into his or her family and society, and creating legal kinship. Within all these themes I put great emphasis on understanding which relationships my interlocutors conceived of as kinship, and how these relationships are interpreted. Hence, I paid attention to my interlocutors' understanding of terms such as sibling, filiation, marriage, and Judaism.

Furthermore, I included questions about my interlocutors' childhood, as well as their coming out as lesbians or gay men. As Weston has demonstrated, coming outs are often perceived as a way to "reveal the truth not merely of the self, but of a person's kinship relations" (1991, 44). Accordingly, I wondered what my interlocutors' coming out stories unveiled about their understanding of kinship. I also paid attention to the involvement of family members in the aforementioned processes. To what extent and how did they support my interlocutors' decision to have a child? Did they participate in childbirth celebrations and rituals, or oppose them? And what struggles over inheritance loom ahead? With a number of informants, I drafted family trees and talked about their family histories. Combined with the information about the participants in circumcision rituals and childbirth celebrations, I hoped to establish whether same-sex parenthood followed already existing patterns, and how this relates to the historical fractures that the Holocaust and the migration to Israel brought about for Jews.

My gay and lesbian interlocutors' accounts about their paths to parenthood led me to court decisions, laws and regulations, as well as administrative practices that deserved further enquiry. At the end of my research, I had collected and analyzed hundreds of political, juridical, and legal documents, most of them dating from 1990 to 2012. To achieve a better understanding of the legal and bureaucratic possibilities and hurdles, I also attended and at times volunteered at events of the organized LGBT community on topics related to same-sex parenthood. Besides the legal knowledge I gained from these events, they presented invaluable occasions to map the people, the relationships, power struggles, and controversies between the different organizations and social networks. Through these events, I became acquainted with those lawyers who are leading the legal and political struggles pertaining to same-sex couples' family rights. These women and men were ready to discuss with me my interpretations of past and present developments and to provide a clearer picture of their strategic decisions in these struggles, their daily frustrations and stumbling blocks.

Just as my research has guided me to legal sources, it also led my way to the Indian metropole of Mumbai. In the years 2010–2012, the business of transnational surrogacy agencies that offered relatively cheap arrangements in the Global South was thriving. Through my research among gay couples, extensive media analysis, and attending informational events about surrogacy, I learned that surrogacy in India had become *the*

preferred way for gay couples to become parents.¹¹ Most of my interview partners had contracted Tammuz, which at that time was the biggest Israeli surrogacy agency and worked with a number of clinics in Mumbai. In the interviews, I learned about their emotional journeys in Mumbai, their struggles with bureaucracy, their often brief and unsatisfying encounters with their surrogate mothers, and the bonds they developed with other gay couples that stayed in the same hotel. Their accounts convinced me that participant observation in Mumbai would add important material to my data.

The possibility of putting my plan in action came about when a friend agreed that I accompany him, his partner, and his mother-in-law to the metropolis for the birth of their baby girl in the spring of 2013. There, I got to know another eight Israeli gay couples, three heterosexual couples, a single mother, and two gay men from other countries. Most of them arrived a few days before their children's birth and spent one to three months in Mumbai, until they had all the authorizations necessary to take the babies out of the country. I conducted fieldwork mainly in the hotel, where I joined my interlocutors' meals and leisure hours at the pool and accompanied them on trips to the hospital, to the migration office, and the Israeli embassy. In addition, I conducted interviews with local fertility specialists and surrogate mothers and spent many hours with the agency's driver and the family of a local woman who offered her service as a nanny to my interlocutors. The insights I gained during these two intensive months greatly added to my knowledge about the formation of same-sex parenthood. Not only did I get to know my research participants in moments of high emotion, happiness over a long-expected birth, and frustration when confronted with bureaucratic gridlocks—I also learned how international business arrangements, women from distant countries, and global inequalities contribute to the formation of same-sex parenthood. They joined in rather unexpected ways with rabbinic cosmology and Israeli bureaucracy to reproduce—or rather transform—the Jewish Israeli collective and the demographic composition of the state.

To understand how religious law shapes the legal possibilities for the making of same-sex parenthood, I followed the paths of Susan Martha Kahn, whose pioneering work has opened up the relationship between Jewish law and reproductive technologies as a field of enquiry for social scientists. Her book guided me to the rabbis and their writings who have been fundamental for—and still influence—the regulation and medical practice of reproductive technologies. The interviews with rabbis and the

analysis of rabbinic literature were fundamental to understanding how rabbinic kinship principles were transformed when translated into civil law. Quite early in my research, however, I got to know women and men from Orthodox homes who identified both as homosexual and religious, and who were very engaged in what were, at the time, still rather young religious LGBT organizations with a political agenda. From these women and men, I first learned about the struggles within Orthodox Judaism about the question under what conditions lesbians and gay men could have a place within this religious movement. As my research progressed, the religious LGBT community gained visibility and the controversies within the Orthodox sector became increasingly heated.

These developments convinced me that understanding how Jewish law shapes the possibilities of same-sex couples to become parents provides only one side of the picture. Equally important are the questions how and to what extent religious lesbians and gay men who enter same-sex relationships and bring children into their social environment transform Orthodox Judaism. A postdoctoral research fellowship between 2016 and 2018 at the University of Haifa allowed me to study these questions in depth under the invaluable guidance of Tsipy Ivry. In this research, I studied the lives of lesbians and gay men from Orthodox homes with children, most of whom still identify as religious, maintain the rules of *kashrut* and *Shabbat*, pray in a synagogue, and participate in the events and campaigns of religious LGBT organizations. To better grasp how and to what extent same-sex parenthood is gaining a foothold in Orthodox Judaism, I interviewed parents and siblings of these women and men, as well as halakhic decision-makers. I engaged more deeply with rabbinic (halakhic and non-halakhic) texts and analyzed commentaries and debates in the newspapers affiliated with Orthodox Judaism. The insights from this research highlight the dynamic side of Orthodox Judaism, and thus open up the possibility for change occurring not against religion but through the transformation and translation of religious concepts.

In all of the described encounters in Israel and in Mumbai, I conducted research from the position of an outsider, as a non-Jewish Swiss woman engaged and later married to a Jewish Israeli man. At a younger age, I had had my own experience of telling my parents, siblings, and friends that the boyfriend in reality is a girlfriend, and I have experienced the challenge of managing such information, as aptly described by Goffman (1986, 42): “To display or not to display; to tell or not to tell; to let on or not to let on; to lie or not to lie; and in each case, to whom, how, when, and where.”

Of course, this personal background greatly informed my interest in the research topic, as well as my sensitivity to the challenges many of my interlocutors had experienced. Remembering my own fears and uncertainties, I often could not help but admire the assertiveness with which my research participants claimed their place, and the openness that many persons, public authorities, and private institutions displayed vis-à-vis same-sex parenthood.

Being in a heterosexual relationship while conducting research on same-sex parenthood created a dynamic in which the distance between my research participants and myself simultaneously expanded and contracted. On the one hand, I experienced my own moments of a reversed coming out, when my interlocutors wanted to know why I was interested in same-sex parenthood, and whether I myself belonged to the *kehila*¹² too. Being in a heterosexual relationship has for a long time put me in the comfortable situation that my sexuality is in general simply not an issue, neither for myself nor for my social environment. By placing the spotlight on my research participants' sexual orientation and same-sex relationships, in turn, I had to take a stand and phrase my identity in terms of sexuality as well. In these situations, I struggled with the fear that my research participants would cease to confide in me or question my authority as a researcher, once they learned about my heterosexual relationship. However, thanks to my research participants' openness and curiosity, my subsequent admission that I was engaged to a man never caused negative reactions.

At the same time, my own relationship with a Jewish man is anything but normative. From the perspective of the rabbinic authorities, both same-sex marriages and interfaith marriages are not only prohibited but void. As I will demonstrate later, the struggles of same-sex couples for family rights have to be understood in the context of other exclusions, such as interfaith marriages and the definition of Israel as a Jewish state. Being Swiss and non-Jewish triggered much curiosity among my research participants, who wanted to understand my interest in Israel. When meeting rabbis and halakhic experts, my relationship with a Jewish man made me uncomfortable, and I wondered what transgression they considered as worse: that of my lesbian and gay research participants or that of my husband?

Thus, my research provided ample room for reflection on my own role in—and position on—the (re)production and contestation of collective identities and social relations in the Israeli context. My partner's parents

deserve credit for having taught me firsthand just how complex and multilayered these social processes are. Although being committed Zionists, they have embraced me with open arms. They never asked me to convert to Judaism, and they are wonderful grandparents to our non-Jewish and non-circumcised son. Thus, my partner's family helped me not to forget that reproduction is not only about social structures. Thanks to their open-mindedness, I participated in Jewish Israeli family life, last but not least in the weekly Shabbat dinners and the subsequent hours in the garden or in front of the TV. Through them, I myself experienced the devotion and commitment to which many of my research participants referred to when they talked about their own parents or about Israeli families in general. I learned about the obligations Israeli family life brings along, for example, when I had a bad conscience for spending the Passover Seder with a befriended lesbian couple rather than with my own family. In short, I gained insight into what it means to be part of a Jewish Israeli family, which also allowed me to imagine the meaning of exclusion.

1.7 OUTLINE OF THE BOOK

The goal and challenge for this book was to develop a structure that (a) discusses the formation of same-sex parenthood as an intrinsic part of the processes through which societies negotiate the norms that guarantee their reproduction and (b) overcomes a rigid segregation between the religious and the secular in order to show how diverging principles and norms travel between different societal contexts and institutions and are thereby transformed. The five empirical chapters trace the translation work of ethical and legal principles and between and within the different societal contexts and institutions that same-sex couples, their families, medical personal in fertility clinics, state workers, and rabbis encounter in various moments of the formation of same-sex parenthood.

In Chap. 2, I show how courts and ministerial committees have increasingly phrased access to motherhood in liberal terms, while drawing on the biblical image of the barren matriarchs. I argue that this development is not simply an external appropriation and misuse of religious principles. Rather, with their huge efforts to kosher virtually all medically assisted reproductive technologies, Orthodox rabbis themselves have paved the way for medical practices in sperm banks and fertility clinics that turn lesbian motherhood into a shared project. In Chap. 3, I shift the focus to transnational surrogacy and the bureaucratic procedures that make

children belong to the commissioning fathers rather than to the surrogate mothers. I demonstrate that the procedures surrounding the DNA tests that are necessary to establish a legal relationship between father and child are shaped by rabbinic kinship principles, even though the Rabbinate neither approves of these family formations nor recognizes the children as Jews. Thus, the bureaucratic procedures surrounding fatherhood tests entrench the Rabbinate's power to define what a Jew and a Jewish family are and, at the same time, facilitate the formation of families that transgress these definitions.

After having established the paths of lesbians and gay men to parenthood, Chap. 4 discusses how same-sex couples make their parenthood official through adoption and parenthood orders. Drawing on court decisions and the narratives of my interlocutors about their experiences with these legal possibilities, I discuss how the procedures and rationales have changed since the precedent that opened the doors to second-parent adoption in 2005. Although adoption and parenthood orders create children with two parents of the same gender, they neither turn the two parents into spouses nor bring about a clear definition of siblingship. In daily life, this did not bother my research participants. But in crisis situations, the inconsistency between felt relationships and recognition becomes threatening. I argue that these legal inconsistencies and ambiguities in the recognition of same-sex parenthood are not a failure of the legal system. Rather, they are necessary to maintain a fragile balance between civil and Jewish law.

Chapter 5 adds to these legal strategies the ritual practices of same-sex couples and their families that affirm their children's religious and societal belonging: the conversion of children born to gay men through surrogacy abroad, the ritual circumcision of newborn boys, and lavish feasts to celebrate the birth of girls and boys. In their decisions about whether and how to perform these rituals and life-cycle events, my research participants tried to make sense of their own and their children's positions vis-à-vis the Rabbinate and their social environment. These were not easy decisions, as they had to find a balance between their own perceptions of themselves and societal ideals, their families' expectations, and concerns about their actions' consequences for the children. Their decisions, but also the events themselves, rendered the force of societal inclusion and exclusion tangible.

Chapter 6 concludes the empirical part by discussing the heated struggles over homosexuality currently being fought within Orthodox Judaism. Addressing these struggles, I show that homosexuality has become a new

locus for observant Jews to ask what role secular values and new forms of identity have in the regeneration of Orthodox Judaism. Although rabbis and halakhic experts who publicly think about the recognition of same-sex couples still constitute a tiny minority, religious lesbians and gay men are today an undeniable—albeit uncomfortable—part of Israel’s religious Jewish sector. I show how these women and men establish and negotiate their desire to take part in the making of a different Orthodox future. Indeed, while the tense coexistence of civil and Jewish law precludes an encompassing recognition of same-sex parenthood, change might come from an unexpected direction.

Beyond their ethnographic insights, the five empirical chapters also constitute an attempt to move same-sex parenthood away from the fringes of scholarly interest, where it still lingers as a somewhat queer phenomenon with little societal significance. I hope to show that although the phenomenon of same-sex parenthood is small in numbers, it lays bare the very principles and norms through which societies seek to guarantee their regeneration, enters existing rifts and shifts, and intensifies them. Thus, the heated discussions surrounding same-sex parenthood, the tacit agreements, compromises, and painful encounters provide a useful prism to explore how transformations of societal structures take place, and what flexibility and leeway exist in organized religions. In this sense, *Judaism in Motion* is a holistic work about continuity and change, manifested in the underlying logics of kinship concepts; in the concrete transmission of names, religious status, and property; in the making of citizenship in Israel and abroad; as well as in the surrounding political struggles and power relations.

NOTES

1. The transliteration follows the recommendations of the Academy of the Hebrew Language published in September 2011 on <https://hebrew-academy.org.il/wp-content/uploads/taatik-ivrit-latinit-1.pdf>. Accessed 10 June 2020. Exceptions are made for words with a different, commonly accepted transliteration and for official terms.
2. I use pseudonyms to protect my research participants’ and their children’s privacy. I have given pseudonyms to all my interlocutors. Most of the LGBT people I interviewed are completely out of the closet, and some even affirmed that they have no problem in reading their names in my book. Yet their stories include intimate details that concern not only them,

but also others—most importantly their children—I find protecting their identities crucial. I only made exceptions for (1) interview partners who are public figures, such as rabbis, lawyers, and politicians; (2) gay rights activists when appearing in public.

3. I am, of course, aware that there are women and men whose gender does not correspond with their sex. I decided to stick nevertheless to the term same-sex parenthood rather than same-gender parenthood, because it is the term that is most widely used in academic, public, and political discourse and that corresponds to the commonly used Hebrew term *horut had-minit*.
4. The *Sifra*, a collection of *Midrashim* to Leviticus, is dated between 200 and 400 AD. Its authorship remains unclear (Neusner 1988).
5. Orthodox Judaism is by no means the only Jewish movement. In the United States, for example, the Conservative and Reform movements are far larger than Orthodoxy. But in Israel, the influence of these Jewish movements is limited by their small size (Sharot 2007, 686) and by the Orthodox Rabbinat's state-sanctioned position in society.
6. For the official English version of the declaration, see: <http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/declaration%20of%20establishment%20of%20state%20of%20israel.aspx> (accessed 05 June 2013).
7. The term Ashkenazi Jews (*Ashkenazim*) is commonly used for Jews of European origin, whereas the term Mizrahi Jews (*Mizrahim*) designates those of Middle-Eastern origin. Jews from Europe constituted for many years an economically advantaged power elite, and socioeconomic gaps continue to persist (see, for example, Goodman and Mizrahi 2008).
8. These and These are the Words of the Living God: on the culture of debate over the LGBT question in Jewish religious society. 01 May 2018. Podium organized by *Pessach Sheni* at the University of Bar-Ilan.
9. In Jewish religion, Israel is a theological category that “stands for the holy people whom God has called into being through Abraham and Sarah and their descendants, to whom the prophetic promises were made, and with home the covenants were entered” (Neusner 2003, 230).
10. Although I met transgender women and men in the course of my research, I decided not to study their experiences with parenthood in depth. The same applies to Palestinian LGBT people. In both cases, I felt that the intricacies of their situations require a research of their own. For further reading on these groups, I recommend Sa'ed Atshan's *Queer Palestine and the Empire of Critique* (2020) and Oriol Poveda's published dissertation *According to whose will. The entanglements of gender & religion in the lives of transgender Jews with an Orthodox background* (2017).
11. This changed toward the end of this research, when Indian public authorities decided to close the gates of surrogacy to unmarried foreigners.

12. Hebrew for “community,” the term is often used for the imagined community of lesbians, gay men, and, to a lesser extent, of trans- and bisexuals.

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CHAPTER 2

Rachel's Cry and the Paths to Lesbian Motherhood

On a sunny February noon in 2012, I followed in the footsteps of Susan Martha Kahn and went to an Orthodox neighborhood in Jerusalem, the site of the headquarters of PUAH, an organization that provides rabbinic advice regarding the practice and regulation of reproductive technologies (Kahn 2000, 89–92). PUAH is the abbreviation for *poriyut verefua alpi habalakha* (fertility treatment according to Jewish law) and the name of one of the “biblical midwives that saved Jews from the Pharaoh’s genocidal decree” (ibid.). I arrived early to my meeting with Rabbi Burstein, the organization’s founder, and was first received by one of his coworkers, a young rabbi who asked me about the topic of my research. When I told him that I was researching same-sex parenthood, he corrected me. Same-sex parenthood, Rabbi Katz explained to me, is an oxymoron because every child has a mother and a father. After explaining to him shortly my interest in the questions that same-sex parenthood raises for society and Judaism in particular, he seemed satisfied and led me to the office of Rabbi Burstein. The founder and head of PUAH brought in hot water and a large bowl of raw vegetables. While he prepared a cup of tea for me and himself, as well as a cup of instant soup for Rabbi Katz, he asked me about my own background, my family, and my interest in Judaism. After I repeated the answers that I had already given to Rabbi Katz, Burstein told me that he was happy to answer my questions. He also made clear that he expected me to maintain respect for Judaism and not, like some journalists, use our conversation for a populist attack on it.

Rabbi Burstein's concern must be understood in light of the heated clashes between representatives of the Rabbinate on the one side, and gay and lesbian activists on the other, which, from the 1990s, were fought out publicly in the Knesset and the media. Although gay and lesbian activism existed in Israel before this period, the criminalization of homosexual intercourse in the national Penal Law left them without legal and political means to fight harassment and discrimination (Spivak and Yonai 1999). From the mid-1960s, attempts to eliminate the prohibition of homosexual sex or at least to reduce the punishment failed one after the other, until, in 1988, a major reform of the criminal law made the cancellation possible (Yonai 1998, 532–542). Legal scholar Alon Harel suggests that this attempt was successful because no explicit reference to the decriminalization of homosexuality was made (2000, 455). In addition, he wonders whether conservative members of the Knesset had hoped that eliminating the prohibition would at the same time contribute to the elimination of homosexuality from the public discourse (ibid. 458). If this is true, their hopes were quickly dashed.

In 1991, the Knesset passed the first bill to protect gay men and lesbians. Through an amendment of the Equal Employment Opportunities Law (1988), the Knesset explicitly prohibited employment discrimination on the basis of sexual orientation and marital status. According to Harel, the amendment was the result of a well-considered campaign carried out by activists of the Association for the Protection of Personal Rights (*HaAguda LiShmirat Zkhuyot HaPrat*), commonly known as the “*Aguda*” (Association, in Hebrew).¹ They had examined the prospects of different legislative proposals to institute equality for gay men and lesbians and perceived a reform of the Equal Employment Opportunities Law to be the least controversial one (Yonai 1998, 551). They also wrote the bill and organized extensive and ultimately successful lobbying of the Knesset members (ibid. 552–554). In 1992, the Labor Party won the election for the first time in 15 years. Yitzhak Rabin—and after his assassination Shimon Peres—headed the coalition, composed of the Labor Party, the left-wing party of *Meretz*, and the Ultra-Orthodox party of *Shas* that was then under the spiritual leadership of Sephardic Chief Rabbi Ovadia Yosef. Because of the strength of the liberal parties in the Knesset and government, this was a good time to push forward the equality of gay men and lesbians.

Shortly after the elections, Yael Dayan of the Labor Party initiated a Knesset subcommittee for the prevention of discrimination on the basis of sexual orientation. To the subcommittee's first meeting that took place on

2 February 1993, she invited sixty lesbian and gay activists (Kama 2000, 145–146). Subsequently, Dayan confronted the Knesset on a regular basis with interpellations and bills on behalf of lesbians and gay men. These discussions were often heated and accompanied by provocations and insults from all sides. The Knesset members of religious parties were deeply offended when, on 10 February 1993, Yael Dayan quoted a paragraph in the Hebrew Bible in order to make her point (Knesset 1993, 47–69).² That day she addressed the treatment of gays and lesbians in the Israel Defense Force (IDF) to make a more general case for lesbian and gay equal rights.

The discussion started emotionally, when Rabbi Yosef Ba-Gad of *Moledet*, a small far-right political party that existed between 1988 and 1999, announced under protest his intention to leave the parliament. Dayan countered that he should stay as the topic could particularly interest him. From time to time he interrupted her and called out that all of this was shameful. Things got even more heated when Dayan started to name historical public figures, including medieval Talmudic scholars, to whom she ascribed homosexual inclinations. Now Hanan Porat from *Mafdal* (NRP, the National Religious Party) protested. At this point, Dayan yelled back: “If you let me, I’ll get to King David, or at least Saul!”

Porat: “Not everything is legitimate!”

Dayan: “(Reading from the Book of Samuel) ‘I am distressed for thee, Jonathan. You have given me great pleasure.’”

Porat: “Don’t do it!”

Dayan: “‘Your love surpasses the love of women.’”

Porat: “Don’t do it!” (Walzer 2000, 19)

Subsequent Knesset discussions were less heated, but every now and then Orthodox Knesset members insulted gay men and lesbians, calling them deviants, sick, or even accusing them of spreading AIDS. Promoters of lesbian and gay rights usually replied in kind, by calling the religious parliamentarians’ opinions primitive, backward, medieval, and ignorant.

National newspapers such as *Yediot Ahronot* and *Haaretz* brought these political clashes into the public consciousness. As Amit Kama (2000) has demonstrated, from the 1980s, these and other media platforms have swayed between presenting homophobic and at times panic-stricken images of deviant “homos” on the one side, and more empathic and humanist positions on the other side. In the 1990s, they were ready to

frame the political clashes on homosexuality entirely in liberal terms, and sided openly with the proponents of lesbian and gay rights. Thus, “[a]s of 1993, there is coverage of gay men and relevant issues by various media on a nearly daily basis” (ibid. 148). With this coverage, Israeli gay men, in particular, underwent a dramatic process of normalization. Although eccentric figures such as Zalman Shoshi continued to exist, gay men were now mostly portrayed as “sweet, adorable, Jewish Israelis whose foibles and predicaments anyone can identify with, [the new image assures] that even queers can take part in the Zionist project of the ‘normalization of the Jews’” (Solomon 2003, 156). In internationally successful movies such as *Yossi and Jagger* (2002), *Walk on Water* (2004), and *The Bubble* (2006), young gay men do military service and are confronted with the Holocaust, suicide bombings, and the occupied Palestinian territory. In short, they immersed in Israeli mainstream society. They left the comfort zone of Tel Aviv and became part of those experiences that are quite generally associated with living in Israel.

In all these political disputes and representations, Israeli lesbian women have hardly received any attention. But while remaining largely invisible in public debates, they have undergone their own process of normalization. They entered mainstream society through motherhood. Or to put it in the words of my research participants, they discovered motherhood to be a ticket into mainstream society. Since 1996, they have enjoyed unrestricted access to sperm banks as well as to state-subsidized medical treatments. Since then, lesbian motherhood, facilitated by anonymous donor sperm, has become a common sight both in fertility clinics and public representations.

In this chapter, I trace the path of lesbian women into and through sperm banks and fertility clinics to complicate the image of two opposing forces—Orthodox Judaism and liberal-minded activists—that are fighting over the formation of same-sex parenthood. Although from a rabbinic perspective, same-sex parenthood is, as Rabbi Katz had made clear to me, an oxymoron, I argue that Orthodox rabbis themselves have paved the way for lesbians’ access to sperm donation. With their efforts to kosher virtually all reproductive technologies, they have fostered an understanding of parenthood as a universal right and a matter of personal dignity, upon which lesbian women effectually drew. To sustain my argument, I explicate first the Rabbinate’s trouble with sperm donation and discuss how rabbis have stretched and bent halakhic kinship principles to allow it nevertheless. I then turn to the image of the barren matriarchs,

with which rabbis explain their efforts to kosher reproductive technologies. I show how this image entered the political discourse and judicial reasoning so as to establish parenthood as a universal right. In the last section, I inquire into the encounters between lesbian women, sperm bank managers, nurses, and physicians to show how they have turned lesbian motherhood into a shared project. Together, the sections in this chapter put forward that although lesbian-headed families unsettle the rabbinic cosmology, they are a result of inner-Jewish contradictions rather than a complete move away from the religious logic.

2.1 RABBINIC APPROACHES TO JEWISH CONTINUITY

Scholars have already observed that halakha establishes the preeminence of biological maternity and paternity (Birenbaum-Carmeli and Carmeli 2010, 6). In Jewish law, there is no encompassing concept of adoption. Taking care of a child born to someone else is a *mitzvah* and can establish strong emotional ties. Yet, in terms of religious status and marriage prohibitions, the child always follows the birth parents (ibid.). Similarly, the Jewish concept of bastardy (*mamzerut*) does not affect the obligations and rights between father and child. Thus, *mamzerim* (masculine, plural) are not excluded from succession and inheritance from their parents. Yet, the value of blood ties (*kesher dam*) should not be mistaken for a naturalist understanding of kinship. In Leviticus, blood equates life: “the life of every creature is the blood of it” (Lev. 17:14). God made life, and the life of all creatures belongs to God. Accordingly, blood too belongs to God (Douglas 1999, 233). It is sacred, and should never be eaten nor spoiled in secular contexts. In the Bible, and at least up until medieval times, blood symbolizes alliance through the covenant between God and Israel (Hoffman 1996). Hence, blood belongs first and foremost to ritual rather than to sexual reproduction (Douglas 1999, 5).

In the context of reproduction, the Babylonian and the Jerusalem Talmud associate blood with the woman's red contribution to the making of a child (Kiperwasser 2009). However, neither blood nor semen, which the Sages associated with the male's ‘white’ contribution, has generative power. Instead, they are ambiguous and potentially polluting when they flow uncontrolled. In such moments, vital fluids breach the body's containing wall and thereby challenge God's creative action of setting up distinct boundaries in the beginning (ibid. 190). In this sense, the bodily substances that contribute to the reproduction of the People of Israel

never stand alone, but are viewed in relation to the order of God's creation, as preserved in Jewish law.

Accordingly, the rabbis' principle question is not whether a family or a mode of reproduction is natural, or which part of reproduction is social and which part is natural. The issue at hand is reproducing Jews, and this is first and foremost a matter of God and halakha. In my conversation with Rabbi Burstein, he made clear to me that God has a principle role in the making of a human child regardless of whether it was conceived with the help of reproductive medicine or not. Replying to my question whether something is missing when a child comes into being via assisted insemination or IVF, he said:

We think that [reproductive technologies] come from G-d.³ We believe that if G-d sends them to us, he also makes them complete. ... If a couple has no other way [to become parents], G-d provides these technologies. And if used in accordance with halakha, they are spiritually complete.

Burstein's explanation is important because it points not only to God's role in providing women and men the ability to use reproductive technologies, but also to their responsibility to use them according to his order, according to halakha. Not nature, but halakha—and as such ultimately the rabbis as its interpreters and guardians—upholds the order of creation. Nature may be an expression of the divine, but it is not a normative ideal (Greenberg 2004, 158). Indeed, Orthodox Judaism is “immodern” in Latour's sense, as it is simply not concerned with keeping nature and culture separate. Or to put it differently: it is relational and not naturalistic.

Rabbi Burstein harshly condemns the praxis of same-sex couples making use of reproductive technologies, and perceives same-sex parenthood as a threat to the Jewish People:

According to Jewish philosophy, the People of Israel constitute one single unity. Usually a people is built upon individuals. You have one person, another one, and another one. Together, they are a people. The Jewish people is different. We are one single unit, built upon families. The moment a family is not kosher, it ruins the whole web, the whole system.

Burstein's image of a web is highly instructive. This web of families is built upon pedigrees and upholds one of the basic principles of Judaism: the

understanding of Israel as the holy community that “God has called into being through Abraham and Sarah and their descendants, to whom the prophetic promises were made, and with whom the covenants were entered” (Neusner 2003, 230). The view of Israel as a family emerged during the later formative period of rabbinic Judaism, between 400 and 600 CE, the time when the Jerusalem Talmud and the Babylonian Talmud were written. According to Neusner (ibid. 232, 235–237), the genealogical definition of Israel was a strong answer to the claim that Christianity constituted “the true Israel after the spirit.” In this understanding of Israel as a family, a web of pedigrees places every Jew in a relationship of obligation and responsibility to the biblical ancestors and to one another.

Women and men have complementary roles in maintaining this web. Women transmit to their children the belonging to the Jewish people. The transmission of Judaism through the mother, however, does not mean that Judaism is matrilineal. Rather, Jewish law simply does not provide for the possibility of intermarriage. The central rabbinic text on succession is the Talmud’s chapter *Kiddushin* 3:12 (Cohen 1985, 30) that holds:

- In potentially valid marriages, the offspring follows the father.
- In potentially valid but sinful marriages, the offspring follows the parent with the lower status.
- In relationships prohibited by the Torah, the offspring is a *mamzer*.
- In potential marriages between a Jewish man and a slave woman or a Gentile woman, the offspring follows the mother.

As this Mishnah makes clear, in a normative situation, when a relationship is legitimate and a potential marriage valid, the offspring follows the father. Hence, the patriline is the standard and not the matriline. According to the Mishnah, normative marriages are between two full-fledged Jews, or, more precisely, between a *kohen*, *levi*, or *yisrael* and a daughter of a *kohen*, *levi*, or *yisrael*. These three lines of descent are passed on through males and designate flawless descent. While their origin is not completely clear, *kohen* and *levi* point to priestly status. From earliest times, priesthood was, so biblical sources tell us, in the hands of the Levite tribe, and at some moment assigned exclusively to the descendants of the house of Moses’ brother, Aaron (Encyclopaedia Judaica 1972b, 1082–1084). *Kohanim* (plural masculine) claim Aaron as their common ancestor, a claim certain circles try to prove by searching for a particular *kohen* gene (see, for

example, Skorecki et al. 1997, 1998). *Levi* designates descendants of the Levite tribe, and *yisrael* all those without priestly status.

There are certain marriage restrictions applying only to *kohanim* that include, first and foremost, marriages with proselytes and divorcees. According to the ancient sources, intimate bodily contact with these women would supposedly profane priestly holiness and disqualify priests from being servants of God. According to the Encyclopaedia Judaica (1972a, 379–380), during the Second Temple period, priestly families used extensively documented genealogies to prove their lineages. After the destruction of the Temple by the Romans, the priests lost their function, but the marriage restrictions and the order of succession from father to son remained intact. The emerging rabbinical Judaism hoped that once the Messiah came and rebuilt the Temple, the *kohanim* would resume their task. Hence, it was important to keep the genealogical categories clear. In the meanwhile, Reform and Conservative Judaism have erased the marriage restrictions for *kohanim* (Homolka 2009, 56). In Israel, the (Orthodox) Rabbinat that controls Jewish marriage maintains these restrictions (Encyclopaedia Judaica 1972b, 1089–1090).

Priestly status does not bring prestige in and of itself. Indeed, the authors of the Mishnah and Talmud did not owe their own leadership to descent from priestly families (Encyclopaedia Judaica 1972a, 380). In the rabbinic Judaism that they established, “the acquisition of Torah learning and piety was not dependent upon noble descent” (ibid. 380–381). But this does not mean that lineages lost their relevance all together. In the Middle Ages, the Hebrew term for pedigree *yihus* (from the root yud-het-samekh: to refer, ascribe, relate) acquired a new meaning, particularly in Central and Eastern Europe but also in Babylon (ibid. 383; Dynner 1997). *Yihus* came to stand for dynastic genealogies tracing their prestige from a forefather’s pious and scholarly achievement. *Yihus* acquired thereby quite a flexible quality. If not kept alive through further achievements and genealogical knowledge, *yihus* could be lost. But, at the same time, individual pious and scholarly achievements could further strengthen genealogical prestige and even enact new dynastic genealogies (Dynner 1997).

For many Jewish Israelis whom I met in the course of my research, *yihus* was no more than the updated Jewish concept for nobility—a concept that has no practical significance for those who do not belong to the Ultra-Orthodox sector. For the Rabbinat, however, the concept of *yihus* retained a much broader meaning. In our discussions, Rabbi Burstein and Rabbi Katz argued that *yihus* pointed first and foremost to the importance

of knowing one's ascendants. As Rabbi Burstein explained to me, keeping clear family records is necessary in order to know who belongs to the Jewish people and who does not. Only then would it be possible to distinguish neatly those who shoulder the task of being a light to the nations.

Knowing one's ascendants is also important to prevent confusion and prohibited relationships within the Jewish collective. As Burstein's statement makes clear, the web of pedigrees is highly fragile and the derangement of one piece unsettles the whole order. The most serious derangement happens when two Jews enter a sexual relationship prohibited in Leviticus 18 and 20: a relationship classified as incestuous or a relationship between a married woman and a man other than her husband. The resulting children of such relationships are *mamzerim* (masculine, plural). Although *mamzerut* does not void the duties and rights between the child and the parents, the consequences are severe. Thus, *mamzerim* (women and men) and their offspring are prohibited from marrying Jews with flawless descent. This means in fact that the whole lineage is excluded from the reproduction of the Jewish collective. The marriage prohibition for *mamzerim* appears cruel from a naturalistic perspective. Indeed, Reform Judaism has abolished the status of *mamzerut*, arguing that no one should be punished for the deeds of her parents (Homolka 2009, 48). Even the Orthodox Rabbi Lamm feels uncomfortable with the thought that a child could suffer because of the "moral infractions of his parents" (1980, 77). From the perspective of Descola's concept of analogical ontologies, however, this consequence makes sense. Lineages that carry the moral stain of *mamzerut* are still part of the Jewish cosmos, but they have their own position in the web of Jewish pedigrees, and thereby cease to threaten the order.

The structure of pedigrees helps understand why, for Rabbi Katz and many of his rabbinic colleagues, same-sex parenthood simply does not exist. Women and men are, in the rabbinic, Orthodox view, not only necessary for the conception of a human being; motherhood and fatherhood are also crucial for the attribution of a clear and unequivocal status within the Jewish collective. The rabbinic understanding of *yibhus* as knowing one's ascendants adds severe halakhic problems to sperm donation, especially when practiced anonymously, as in Israel. In the next section, I explicate these troubles in detail.

2.2 HALAKHIC TROUBLES WITH LESBIAN RELATIONSHIPS AND SPERM DONATION

In contrast to the sexual penetration of men, sexual intimacy between women is not mentioned in the Bible at all. There are various explanations why lesbianism is so rarely mentioned in ancient Jewish texts. I doubt that among the Israelites intimate acts between women did not exist or remained unknown to the men who wrote these texts (Biale 1984, 194–196). I rather think that since Leviticus was written for male priests, activities between women alone were of little interest for the author. In addition, the two Talmudic references to bodily intimacy between women attest that such engagement was not necessarily viewed as sexual at all. Thus, in the first Talmudic reference, the rabbis discuss the question—and disagree—whether “women who rub against each other” engage in a form of sexual promiscuity (Greenberg 2004, 86). In the second one, the Talmud asks why a certain Rabbi Abbahu d’Shmuel would not let his two daughters sleep next to each other and concludes that his reason was not the fear that they would rub against each other (ibid. 87).

While these rabbinic texts do not amount to a clear prohibition of female bodily intimacy, Rabbi Moses Maimonides, who lived in twelfth-century Andalusia and Northern Africa and who is considered to be one of the most important halakhic scholars in history, attached to the act of rubbing against each other more weight. He relates the Talmudic discussion on “women who rub against each other” to a comment in the Midrash-Halakha *Sifra*. The comment refers to Leviticus 18:3–4 where it is written: “Say to the people of Israel [...] you should not do as they do in the land of Egypt.” The authors of the *Sifra* added:

And what did they do? A man would marry a man, a woman a woman, a man would marry a woman and her daughter, and a woman would be married to two men. It is about these customs that it is added, ‘in their statutes you shall not go.’ (*Sifra Aharei Mot* 8:9)

In his code of Jewish law, *Mishneh Torah*, Maimonides argues that this paragraph maintains that women are forbidden to rub against each other. He therefore called on men to prevent their wives from having contact with “such” women and legitimates courts to punish public lesbian behavior with lashes. It appears that Rabbi Maimonides perceived female intimate relations first and foremost as a problem of male disempowerment

and a threat to marriage. At the same time, he affirmed the Talmudic view that this behavior did not constitute sexual intercourse. Accordingly, women who rub against each other are, according to Maimonides, not prohibited to marry a priest. But although Rabbi Maimonides did not consider “rubbing against each other” to be a *sexual* transgression, his association of this act with the *Sifra* had great consequences. As a Midrash-Halakha on Leviticus, the *Sifra* has biblical status. Accordingly, rabbis can and often do treat lesbian behavior as a transgression of a biblical prohibition.

The renowned Rabbi Eliezer Waldenberg (1915–2006) constitutes here a remarkable exception. For him, lesbian relations are “mere indecency,” and at most prohibited rabbinically (Greenberg 2004, 93). Waldenberg would nevertheless quite certainly oppose the practice of lesbian couples having children with the help of sperm donation, which in Israel is strictly anonymous. Indeed, the rabbi is best known for his extensive treatment of topics related to fertility and his views on medically assisted reproduction that are relatively strict when compared with other rabbis. As other scholars (Ivry 2010a; Kahn 2000; Seeman 2010) have already observed, rabbinic concerns with medically assisted reproductive technologies revolve to a great extent on the kinship catastrophes that the mixing of wrong lineages can bring about. Thus, rabbinic discussions on medically assisted reproductive technologies focus on how to ensure the reproduction of flawless Jewish lineages and not on the question of who should have access or not (Seeman 2010, 353–354). Sperm donation is here particularly problematic, as it has the potential to generate unknown lineages and unclear religious statuses. Waldenberg therefore argued:

This entire business of introducing into a married woman’s womb semen from another man is a great abomination within the tents of Jacob and there is no greater family desecration within the dwelling places of Israel. It destroys all the lofty concepts of the purity and sanctity of Jewish family life at which our nation has excelled from its beginnings, as it severs the chains of lineage running from sons to fathers. Instead of the fathers being the glory of their sons, we will come, God forbid, to have dust instead of glory, as we see a generation that says to wood, ‘you are my father.’ (Waldenberg, quoted in Irshai 2012, 242)

Rabbis who support reproductive technologies share with Rabbi Waldenberg the notion that a child’s position in a pedigree depends on the

known names of the Jewish father. In my interview with Rabbi Katz and Rabbi Burstein, we came to talk about the respective patrilineal status of *kohen* and *levi*, and how they relate to sperm donation. The two rabbis held that these lineages are passed through artificial insemination, but only when the donor is named. Rabbi Katz illustrated the argument with the following example:

There are ten men, and all of them are *kobanim* (pl.), but we do not know which of them is the father. The child is supposed to be a *kohen*, because one of them is his father. But nevertheless, we do not consider him to be a *kohen*; it is very important to know exactly who the father is.

Accordingly, a child conceived with anonymous donor sperm cannot be a *kohen* or a *levi*. To keep sperm donation secret becomes difficult if the husband belongs to one of these priestly lineages: Men of these lineages have specific public duties, including the recitation of the priestly benediction during prayer. If the son of a *kohen* did not perform this duty, it would raise questions, and the congregation would probably suspect that he was not conceived with the husband's sperm. Inversely, if the couple were to conceal the sperm donation and let their son perform the religious obligations of a *kohen*, he would be committing a halakhic transgression. For Rabbi Burstein and Rabbi Katz, this posits a dilemma as both options are bad, but they found a solution, nevertheless. In cases where the only option for such couples is sperm donation, they allow sex selection:

We do IVF and Preimplantation Genetic Diagnosis (PGD) and transfer only girls ... Only recently, the National Committee of the Ministry of Health gave us permission. At the beginning, they did not allow PGD in these cases. But I fought in the committee, and we succeeded. They accepted it.⁴

During their ethnographic research in Israeli fertility clinics, both Goldberg (2010, 97) and Kahn (2000, 207–208) have observed cases of Orthodox couples that turned to sex selection for the reasons described here. My interview with Rabbi Burstein and Rabbi Katz shows that they actually have rabbinic and ministerial backup. This practice is attractive for Orthodox couples with fertility problems, as well as for the Rabbinate, due to the gender asymmetry in Orthodoxy. In contrast to boys, girls do not have specific religious obligations that derive from a patrilineal status. With the help of sex selection, a couple's use of sperm donation can

therefore be hidden from the congregation and also from the child itself, as Rabbi Burstein explained to me. Furthermore, girls do not pass the priestly lineages to their own children. The girl's own children will receive the religious status of their father, and the question as to whether she was of priestly descent or not drifts completely into the background. Sex selection in favor of girls is, then, a means to reproduce the patriline's centrality in the rabbinic kinship matrix.

The dangers of sperm donation appear so essential that they justify the application of IVF: an invasive procedure that exposes women to hormones, injections, and anesthesia. Accordingly, Rabbi Burstein's solution does not represent a laissez-faire or lenient approach to reproductive technologies; rather, it accounts for the ongoing importance of patriline. As I have argued earlier, knowing one's parents (*yihus*) is for the Rabbinate a necessary condition for clarifying each person's position in the Jewish collective. By allowing anonymous sperm donation, PUAH accepts births that transgress this principle. By assuring that only girls are born if the infertile father is a *kohen* or *levi*, however, the illusion of known and traceable pedigrees is maintained.

Girls share with non-Jewish men the inability to reproduce Jewish patriline. It should therefore come as no surprise that, like Jewish girls, rabbis mobilize non-Jewish men for the reproduction of Jewish kinship. Concretely, a number of rabbis suggest that if sperm donation is necessary, then the donor should preferably be a Gentile. They reason that non-Jewish paternity does not exist for Jewish children (Kahn 2000, 105–106). Or, to put it differently, when the donor is not Jewish, the resulting child's patriline is not unknown, simply because there is none. Accordingly, children conceived with the help of the same non-Jewish donor but born to different mothers are halakhically not related, which eliminates the danger of half-siblings unwittingly entering a prohibited relationship. However, this proposition has caused harsh reactions among other rabbis such as Eliezer Waldenberg. They agree with the argument that sperm from a non-Jewish donor does not create Jewish paternal relatedness, but they hold that for exactly this reason it "pollutes" Jewish kinship (ibid. 106–107). The disagreement here is not about the relationship between patriline and Jewish reproduction. For the opponents of this solution, the sperm of non-Jewish donors carries the Gentile's impure quality, and therefore is impure itself (Lasker 1988, 7–9).

2.3 PARENTHOOD AS A MATTER OF HUMAN DIGNITY AND AS A UNIVERSAL RIGHT

The described practices and rabbinic rationales make clear just how problematic sperm donation is from a halakhic perspective, but also how much effort rabbis have put into finding kosher solutions. Indeed, despite being one of the most renowned rabbis of the twentieth century, Rabbi Waldenberg has remained rather alone in his critical approach to medically assisted reproductive technologies. PUAH and its founder Rabbi Burstein, in turn, have been at the forefront of gathering rabbinic endorsement of reproductive technologies, be it in one-to-one conversations with rabbis from all Orthodox movements, in conferences, or in courses to train medical personnel. In addition, they have not shied away from direct interventions in biomedical practices and found solutions like the one described earlier to make reproductive technologies halakhically acceptable (Ivry 2010a).

Their effort draws from an understanding of procreation as a positive commandment and as vital for a fulfilled and happy life. As Irshai has pointed out, “[t]he hegemonic halakhic discourses of contemporary Orthodoxy speaks of the commandment to procreate [be fruitful and multiply] in terms that enhance its importance beyond what is implied by the original halakhic sources” (Irshai 2012, 25). While it appears in the Bible first as a blessing granted to men and women alike, already in the tannaitic period rabbis turned the blessing into a positive commandment for men (ibid. 28). For many centuries, rabbis balanced the commandment to be fruitful and multiply with other values and commandments, such as studying the Torah. Rabbi Waldenberg, too, recognized “*the existence of values more important than the commandment to procreate*” (ibid. 244, italic in original). Yet, rabbis have displayed an increasing tendency to treat the commandment to procreate as trumping everything else, and promote families that are as large as possible. As Irshai has forcefully criticized, this position does not value women in their own right, but rather defines the value of women primarily through their reproductive function (ibid. 273).

Rabbis explain their efforts to kosher reproductive technologies not only with the halakhic commandment but also with the suffering of childless couples—and of childless women, in particular. As Irshai has remarked, the rabbinic concern for childless women and their suffering ends when unmarried women turn to sperm donation (ibid. 274). Instead of granting them permission to have a child of their own, Rabbi Burstein recommends

that they freeze their eggs, so as to gain more time to find a suitable partner (Doberne 2014). PUAH also collaborates with Rabbi Aharon Harel, who promotes reorientation therapy and matches lesbians with gay men, so that homosexuals, too, are able to build heterosexual families (see Chap. 6). But despite these restrictions, I would like to argue here that with the tremendous value they have attached to procreation, their effort to kosher reproductive technologies, and the discourse of the yearning and suffering of childless women, the rabbis themselves have paved the way for an understanding of parenthood as a universal right that does not depend on marital status and sexual orientation.

In the last decades of the 20th century, Orthodox women, themselves, have begun to study the sacred texts and find their own answers and ways to be religious (El-Or 2002). As explained elsewhere (Lustenberger 2017, 451), unmarried women in their late thirties and early forties have found legitimacy for their turn to sperm donation in biblical stories and the rabbis' sympathy with the suffering of childless women (Ross 2004, 61–62). Three of the four matriarchs, Sarah, Rebecca, and Rachel, were barren until God heard their prayers and “opened their wombs.” These stories can be interpreted in various ways. Yet rabbis and Jewish bioethicists themselves often quote Rachel's cry “give me children, or else I am dead” (Genesis 30:1) as the epitome of the barren woman's suffering (see, for example, Weitzman 2009, 207). The Talmud, which was compiled between 200–500 CE (common era) and has become the basis for many rabbinic legal codes, recounts the story of a woman who asked her rabbi to receive permission to get divorced from her infertile husband (Ross 2004). At first, the rabbi hesitated and maintained that the commandment to be fruitful and multiply addressed only men. At the end, however, he was convinced by the woman's argument that in her advanced years she will need someone to take care of her.

This story, paired with Rachel's cry, provides strong support for the argument that the urge of unmarried women to have children is legitimate (Barilan 2014, 149). To be clear, neither unmarried Orthodox women nor compassionate rabbis think of single motherhood as a choice but rather as their last chance to become mothers (Schischa 2016). Furthermore, to become a single mother does not mean that these women have given up hope of entering a marriage at a later age. Heterosexual marriage remains the norm. And yet, in this logic, having children is more important than marriage and the rabbinic kinship structure, and thus can be translated into a right (Lustenberger 2017, 451). As the following

paragraphs show, this is exactly what has happened in political discussions and judicial reasoning.

Gooldin (2013) has demonstrated that the suffering inflicted by childlessness on a person is a central component in the public view that access to state-subsidized reproductive technologies is a basic right. In the political discussions over the government's plan to reduce subsidies for IVF treatment, which took place in 2003, Jews and Muslims alike conceptualized the infertile body "as an 'ailing body' and infertile individuals as 'unfulfilled humans'" (ibid. 95). They did not distinguish here between married and unmarried, heterosexual and homosexual women. Rather, the basic health basket that was under contestation included infertility diagnosis and therapy and IVF for the purpose of "Bearing a first and second child—for couples who do not have children from their current marriage, and also for a childless woman who wishes to establish a single-parent family" (Paragraph 6e of the Second Addendum to the National Health Insurance Law, 1994). Thus, it is remarkable that even the rabbi and physician Mordechai Halperin, who as chief officer of medical ethics at the Ministry of Health has long been one of the most influential players in Israel's laws and regulations of reproductive technologies, argued:

We are dealing here with the creation of human life, and with the issue of realizing the right to parenthood. This is a basic right [...] and I think it is our job to view [the right to parenthood] beyond the narrow frame of numbers [...] This is an issue of values and humanism. (Committee on the Status of Women, 18.9.2003, protocol # 7113, quoted in Gooldin 2013, 90)

Unmarried women have had unrestricted access to infertility therapy, IVF, and sperm donation since the mid-1990s, thanks to court cases led by a number of women. Ruth Nahmani gained considerable prominence already in the early 1990s, when she and her husband at the time, Dani Nahmani, received the High Court of Justice's permission to have state-subsidized in vitro fertilization in Israel and subsequently transfer an embryo into the womb of a surrogate mother in the United States (Kahn 2000, 65; Lustenberger 2017, 451; Weisberg 2005, 73–75). But shortly after they started fertility treatments, the couple separated. Ruth Nahmani wanted to proceed as planned and to use the embryos to become a mother, but her ex-husband opposed and instructed the hospital not to release the embryos. The Nahmani's fight triggered intensive media coverage, in which Ruth Nahmani "became somewhat of a popular hero in her

single-minded pursuit of motherhood” (Kahn 2000, 68–69). The couple’s divorce and the fact that Ruth Nahmani would become a single mother did not do any damage to this image. Rather, the media generated public empathy by detailing the suffering of “poor barren Ruti Nahmani” (Kahn 2000, 65). The case went through many instances, took unexpected turns, and ultimately landed before an expanded panel of the Supreme Court. In this panel the justices overturned the Supreme Court’s previous decision, and ruled in a seven to four decision that Ruth Nahmani had the right to use the embryos even against her ex-husband’s will. The seven justices reasoned that “the right of parenthood prevailed over the right of refusal to be a parent” (Weisberg 2005, 86). For their emphasis of the value of parenthood, they also drew from religious sources. Hence Justice Tsvi Tal argued in his verdict:

If you take parenthood away from someone, it is as if you have taken away his life. In the Bible we find the desperate cry of our ancestress Rachel, ‘Give me children, else I die’ (Genesis 30, 1[65]). Similarly, from the teachings of the rabbis we learn that ‘whoever has no children is considered as a dead person’ (*Bereishit Rabba* 79,9 on Genesis [66]). Similarly, they interpreted the verse in Jeremiah 22,10 [68]: ‘Do not weep for the dead, nor bemoan him; weep indeed for him who goes’—Rabbi Yehuda said: ‘for him who goes without children.’ (Babylonian Talmud, Tractate *Moed Katan* 27b [69])⁵

Justice Tsvi Tal himself identifies as religious, and it is therefore not surprising that he gave credit to religious sources. But, in this legal framing, the rabbinic understanding of reproduction as a tricky matter that has the power to unsettle the entire web of families constituting the People of Israel becomes secondary. Rather, parenthood turns into a property of men, women, and couples regardless of their marital status and sexual orientation (Lustenberger 2017, 452). Indeed, this precedent and its logic, according to which childlessness is a state of unhappiness whereas parenthood makes people happy, has come to be a powerful instrument for gay men and lesbian’s claims for parenthood.

In 1996, only a year after the Nahmani court decision, Dr. Tal Yarus-Hakak approached the High Court of Justice with a petition, in which she requested that the Ministry of Health change its regulations of sperm donation (Kahn 2000, 81–82). At that time, the regulations included a requirement for unmarried women to obtain the approval of a psychiatrist

and a social worker, whose role was to screen the applicants for their emotional and societal fitness to become a mother. This request has not prevented lesbians from having children through sperm donation. Yet the lesbian women in Kahn's studies all concealed their sexual orientation and same-sex relationship (*ibid.* 50–53), as they feared that coming out would seriously threaten their access. As a lawyer who went through the examination herself said to Kahn: “No one can say that they are lesbian and get through the interview” (*ibid.* 51). Yarus-Hakak requested the abolition of this requirement, arguing that doubts over her ability to function as a mother because of her marital status and sexual orientation are discriminatory. They not only violate her privacy and autonomy in controlling her body but also infringe her right to parenthood (Hadar 2005, 27; Kahn 2000, 81–82). Her argument was persuasive; with the consent of the minister of health, the court granted the request in 1997 and thus gave unmarried women unrestricted access to donor insemination.

For lesbian women, the court decision had more than symbolic value. Without the need to conceal their sexual orientation and same-sex relationships during the interviews, they could embark on their path to motherhood as a shared project. I turn now to their experiences in sperm banks and fertility clinics to demonstrate that medical settings have become a primary location for the formation of lesbian families.

2.4 ENTERING SPERM BANKS AND FERTILITY CLINICS

The story of Michal and Keren demonstrates how complicated the formation of same-sex parenthood can be in practice. The path to parenthood taken by the two women was strewn with hesitations, disappointments, and unexpected turns. When I met the couple in 2007, I was still working on my master's thesis. They then lived with their two daughters in a spacious house with a garden, near the commercial center of a Northern town. Michal was 35 years old and worked as a psychologist. Keren was a 45-year-old social worker.

Keren said of herself that she always knew that she wanted to be a mother, even when, as a teenager, she understood that she was different from the other girls. For years she dated men. “I knew that I was lesbian, but I did not accept it,” she explained to me. After unsuccessful attempts to realize a heterosexual life, Keren felt that she did not want to “live a lie” any longer, and tried to pair up with a homosexual man in order to enter a shared parenthood arrangement. She and her parenthood partner

set up a private contract that regulated the details of the parenting arrangements: financial issues, the child's living arrangements, decision-making processes pertaining to the child's upbringing, and education. They then started a long series of unsuccessful cycles of artificial insemination. Keren became pregnant twice and lost the child both times. Looking back at the two miscarriages, Keren is glad that it did not work out. Who knows, she says, whether she would have met Michal otherwise? When she was 36 years old, Keren decided to continue alone and to become a single mother through sperm donation. She feared that she would not become a mother at all if she did not exhaust her options. Then she met Michal, ten years younger, and this changed everything. Michal herself had thought for a long time that being lesbian and having a child were mutually exclusive. When I interviewed the two women, Keren was surprised to learn about Michal's hesitation. Thus, the two women started to discuss the matter:

Keren: "I did not know that. So what changed your mind?"

Michal: "The relationship that I had (laughing)."

Keren: "With me?"

Michal: "No (laughing)."

Keren: "With whom? Seriously, what changed your mind?"

Michal: "The understanding that there is no perfect world. And for no child can I make a perfect world where she will not be hurt. And the only thing that I can do is to give her the tools to handle the imperfect world that awaits her."

From the moment the two women got to know each other, parenthood was a central topic of discussion. For a short time, they considered a shared parenthood arrangement with a befriended gay couple, but very quickly they decided that this would not work out. In retrospect, Michal explained that having three or even four parents would be too much for a child. She further argued: "We did not know what my position would be if Keren would become pregnant from one of them, especially the legal position. We were afraid that it would hurt our relationship." Finally, they opted for anonymous sperm donation. During the interview, it was important for the two women to make me understand that they were equal mothers to both of their daughters.

Obviously, the stories I collected during my research were all different from each other. Yet, many elements in Michal's and Keren's experiences

and thoughts permeated the narratives of my other interlocutors. Some, like Keren, had sought marriage without success, and others were actually married before they came out of the closet. Others told me how parents or aunts tried to convince them to get married despite their homosexual orientation. Ilana is a lesbian woman in her fifties, who started to identify as a lesbian only after she got divorced from her husband. Her mother, to whom Ilana was very close, suggested that she should get married again in order to have children. This, the mother argued, should not prevent her from having a girlfriend simultaneously. As Ilana and her partner, Billie, told me laughingly, the mother spoke from experience. Back in Europe, in the beginning of the twentieth century, her best friend's mother was in a romantic relationship with a woman while the whole village—including the husband—knew about it.

Ilana did not think that her mother's well-meant suggestion was a real option for her. A befriended heterosexual couple had offered her the use of the husband's sperm, but in the end she declined, fearing that this would complicate the relationship with her friends. She preferred anonymous sperm donation, which gave her full responsibility and full control and turned her into a single mother. When Ilana took this decision, she had the backing of her parents. And still, there was one thing that troubled her: she feared that her son Boaz would end up all alone in the world. When he was five years old, Ilana wanted to have another child, but she had to give up this plan for health reasons. A couple of years later, she met Billie, who moved in with them. But the children from Billie's previous marriage have not lived with them on a regular basis, and Boaz never thought of them as siblings. Ilana herself was also a single child, and most of her parents' relatives were killed in the Holocaust. There was an aunt who came to Israel in the 1970s or 1980s and who lived with her daughter and son-in-law in a kibbutz nearby. This family branch hardly spoke Hebrew, and until recently, neither Ilana nor Boaz had contact with them. Only when Ilana fell ill with cancer did she activate this relationship in order to forge an anchor for her son.

Similar concerns caused Malka, who also grew up without siblings, to plan shared parenthood with a gay man who had, as she emphasized, four siblings and fifteen nieces and nephews. The large family he brought along made him an attractive parenthood partner. Ultimately, nothing resulted from this contact. Malka then entered a relationship and moved in with Racheli, who was raising twin boys as a single mother. Racheli had grown

up in a kibbutz, where the family still lives. Regarding Malka's account of finding a man with many siblings, she remarked:

For me things were different, because I had the kibbutz and all my friends. I felt that I can do it alone, and therefore I went for sperm donation [...] When the twins were born, I received a lot of help from the people in the kibbutz. I did not have a girlfriend then, and they came in the morning to take care of the boys so that I could sleep a little bit. They came whenever I needed them [...] Sometimes single women consult with me about having children, and I always tell them that it is very important to have help. Don't do it completely alone. Even from a financial perspective, you need someone who supports [...] So, the kibbutz is an ideal place.

For Racheli, the decision to become a single mother does not contradict Malka's narrative; it rather confirms it. Some form of extended family is sought out by lesbian women who want to have children. I do not suggest that single women necessarily think that raising a child without a co-parent is impossible. I do, however, emphasize that none of these women talked about male role models or the child's need to know the father. When thinking of family, they had a myriad of relationships in mind, not just at present but also in the future. My interlocutors' narratives thereby differ from scholarly accounts of lesbian motherhood in the United States or Europe, which focus, in accordance with public discourses, on fathers or male role models rather than on the potential kinship relations these men entertain (e.g., Clarke and Kitinger 2005; Mamo 2007; Ryan-Flood 2005).

When my lesbian interlocutors entered a same-sex relationship, priorities changed, and the perceived benefits of fathers eroded drastically. If, for single lesbian women, the idea of a father had a certain appeal for enlarging the family, having additional relatives felt complicated and even threatening for couples. Several of the women who were in a lesbian relationship when thinking about children, reported that gay men or couples had asked them to team up for a shared parenthood arrangement. But after considering the option, they all declined. Many argued that three or even four parents would be too many for a child and complicate the family's functioning. And they feared, just like Michal and Keren, that a man would introduce asymmetry into their relationship and motherhood and threaten the integrity of their family unit. They opted for anonymous sperm donation that excluded the donor both socially and legally from their family.

Contrary to other countries, buying sperm at a bank but carrying out the insemination at home is prohibited in Israel. Additionally, ordering sperm from abroad has to be done through an Israeli sperm bank and requires permission from the Ministry of Health. My interlocutors did not consider this a problem. Israeli women only pay for the sperm, which costs 300–900 shekels per portion, and, if necessary, a small amount for the hormones that assist in impregnation. The rest—including counseling and medical treatment in the clinic—is covered by the Israeli mandatory health insurance. Accordingly, even women who struggled with their monthly finances felt that they could afford institutionalized donor insemination.

These intricacies of Israeli sperm donation are well in line with the observations of other scholars. Yali Hashash has convincingly demonstrated how, over the years, doctors and gynecologists have shaped Israel's reproductive policy and “captured it within a medical veneer” (2010, 280). Anthropologist Tsipy Ivry (2010b) has described in detail the medicalization of pregnancies. The conception of pregnancies as risky situations exposes women to extensive medical monitoring and diagnostic tests (Ivry and Teman 2008; Ivry 2010b). Deliveries in hospitals are financially encouraged. In contrast to privately funded home births, deliveries in hospitals are covered by Israel's mandatory national health insurance and entitle women to a monetary birth grant (Morgenstern-Leissner 2006). And while hospitals increasingly market costly “natural birth” and “hospitalized homebirth” options, Israel remains one of the countries with the highest rates of caesarean deliveries, vacuum-enabled births, and epidural use during labor (Ivry and Teman 2008, 363). Social movements that propose different reproduction scenarios are rare, and women and men mostly comply with the protocols for pregnancy and birth.

This conformity also seems to hold true in the context of lesbian reproduction through sperm donation. Even though some of my interlocutors experienced the medical setting as technical, impersonal, and uncomfortable, the described regulation and state subsidy left little incentive to request permission for home insemination or to find donors by themselves. In turn, they invested most of their energy and were primarily concerned with the treatment they received *as a couple* in sperm banks and fertility clinics. Particularly in the case of their first child, the women placed great importance on going together to the sperm bank, for the inseminations, and for the medical check-ups. When they talked about their experiences at the sperm banks or fertility clinics, they usually spoke in the plural:

“we sat on the list with donors”; “we decided”; “we asked the secretary.” And when I asked them directly whether they went together to these medical institutions, the couples left me in no doubt that for them this was not a question but a matter of fact.

During the Rainbow Family Conference that took place in February 2011 in Tel Aviv, I attended a presentation held by the staff of Cryobank Israel. The representatives of this private sperm bank were mindful to talk about those topics that they felt were particularly important for lesbian couples. While we received a lot of interesting and helpful information, the presentation was first and foremost a promotional event. Cryobank representatives insisted on emphasizing the advantages they provide compared to sperm banks in public clinics. Their examples stretched from the uniquely large number of “highly qualified” and “thoroughly screened” donors, to the wide range of information their clients receive when choosing a donor. The presentation was a unique possibility for the sperm bank to reach a large group of potential clients.

Public sperm banks did not promote their service so explicitly among lesbian couples. But there, too, lesbian women have become a common sight, particularly in the central area of Israel. Rotem described one of the larger sperm banks located in a public hospital near Tel Aviv:

There are only lesbians there. I do not know, but in my opinion 80% of the clients are lesbians, another 15% are single women and another 5% are heterosexual couples. From the times we have been there, I can say that they [heterosexual couples] were uncommon. The presence of lesbian couples, by contrast, is completely trivial.

In smaller sperm banks and clinics, in particular in peripheral areas, lesbian couples were less common. Avigail and Kareen, for example, tried to become pregnant for over two years in a small Northern public hospital. Besides their growing dissatisfaction about the continued failure to conceive, they resented the fact that each time they went to the clinic, different doctors and nurses treated them. Accordingly, the two women had to explain time and again why they came together and what Kareen's role was.

During my research, I could not obtain more than estimations about the ratio of lesbian couples, heterosexual couples, and single women who use sperm banks in Israel. As Kahn has reported, this is no coincidence. Neither the sperm banks nor the Ministry of Health collects statistical material on how many unmarried women use donor sperm (2000, 58). A

background paper on sperm donation that was presented to the Knesset Committee on the Rights of the Child confirms Kahn's finding (Knesset Research and Information Center 2005). According to the authors, the Ministry of Health has data neither on the number of women who apply to sperm banks nor on the number of artificial inseminations carried out in Israel. Yet, the material analyzed in the research points to a rising trend in the number of unmarried women seeking sperm donation. At a meeting of the Knesset Committee on the Status of Women on 31 January 2005, the director of Israel's largest hospital, the *Tel HaShomer* Hospital located in a suburb of Tel Aviv, reported that in the preceding year, his sperm bank provided sperm donation to 320 women, 260 of whom were unmarried.

I do not know how many of these women were, in fact, lesbian couples. Sperm banks do not use specific forms for lesbian couples. According to the newest version of the "Rules as to the Administration of a Sperm Bank and Guidelines for Performing Artificial Insemination," issued in November 2007 by the Ministry of Health, there are two different versions of the registration and consent form: one for couples and one for a single woman (*isha pnuya*). And as I understood from my interlocutors, the sperm banks usually applied the registration and consent form for single women also to lesbian couples. Unlike husbands, lesbian partners did not have to give their consent to the insemination. I problematize this policy in Chap. 4, when I discuss its consequences for the legal recognition of same-sex parenthood. When it came to the selection of sperm, blood tests, insemination, and medical check-ups before and during the pregnancy, my interlocutors did not take issue with formally being treated as single women. What counted, instead, was their overall feeling that the secretaries and the medical staff recognized their relationship and acknowledged that both spouses were about to become mothers.

2.5 EMPOWERING EXPERIENCES

The first stage consisted of going together to the sperm bank, consulting with the secretary, and deciding on the donor. Kalanit and Sharon, for example, followed the recommendation of a friend and went to a sperm bank that provided a great deal of detailed information about the donors. When they first arrived, the secretary—a woman whom they identified with some surprise as Orthodox—went with them through the list of donors and said a few words about each of them. The couple then took the list home and chose their donor in the quiet of their home. The two

women have very different backgrounds. Sharon grew up in a half-American, half-Israeli middle-upper-class family. She is blonde, fair-skinned, and tall. Kalanit is short with black eyes and dark hair, and her working-class parents immigrated to Israel from Morocco. As Kalanit was going to carry the child, the couple chose a man who resembled Sharon—not only physically but also in terms of education and profession. Through the donor and the perceived common background, they established a link between Sharon and the child to be born.

Such strategies are not unique to Israeli lesbian couples. Social scientists have amply demonstrated how notions of similarity, both in terms of perceived phenotype and community background, inform the donor choices of men and women. Birenbaum-Carmeli and Carmeli have claimed that, presented with a choice, heterosexual couples in Israel tended to choose donors who corresponded to a “specific body image perceived as more attractive in terms of prevailing Israeli culture” (2002, 373–374): fair skinned or tanned, light-brown hair, blue or green eyes, and tall. They usually adapted this ideal of beauty, however, to the husband’s phenotype. Similarly, Petra Nordqvist (2010) observed that lesbian couples in the United Kingdom consciously looked for sperm donors who resembled the spouse who would not carry the child. They hoped to establish a family resemblance between the children and the non-birth mother and thereby “signal a continuity of family relations and identity” (ibid. 1131). At the same time, choosing a donor who resembled the women in the couple was also a strategy to move the donor out of mind. The women reasoned: “When the donor can be traced in the physical characteristics of the child, he is also recognized as present in the child and serves as a reminder of his involvement in making him/her” (ibid. 1139). Donor choices were meant to make the relationships within the family visible and to establish unmistakably who belonged and who did not.

Explicitly choosing a donor who resembles the birth mother’s spouse was particularly important for couples such as Sharon and Kalanit, where the women belonged to different emic categories. Most of my interlocutors, in turn, put much less energy into choosing a particular donor. Ilana, for example, explained to me that her only criterion was that the donor should not be black. She feared that this would be another signifier of difference for the child. It would not only look different from her but also from Israel’s majority population. Accordingly, it is often impossible to distinguish between personal, family, and community resemblance. Indeed, my interlocutors seldom specified the features they were looking

for, but simply wanted a donor who generally fit their features and those of average Israeli men. Smadar answered my question about what was important in making her donor choice:

Well, not so many things because I believe that he is my child anyway. I did not ask for someone, you know, the doctor in the sperm bank told me that he chooses the donor. He said to me that no one who gives sperm is... They are all in the range of normal scale. So they are all educated, they are all students, they are all not so small, not so fat. He said they were very, very average normal persons.

She, as well as most of my research participants, did not choose the sperm bank according to the information the sperm bank provided about the donors. They went to the sperm bank nearest to their homes, or to those that had special financial arrangements with their health insurance. In most of these sperm banks, the women had little influence on the selection of donors and only received minimal information about them. Indeed, in many sperm banks, the manager, a nurse, or a secretary made the match, and the women could only partly bring to bear their wishes and criteria. Kahn has suggested that Israeli public sperm banks function like traditional matchmaking agencies rather than consumer-oriented service providers (2000, 38). Since her research in the mid-nineties, things have somewhat changed. But even in those sperm banks that emphasize the recipients' choice, the secretaries in charge helped the women to choose a donor, gave advice, or even discouraged them from using a specific donor. Couples such as Kalanit and Sharon appreciated the staff's advice. Accordingly, Kahn's argument that in Israel sperm donation is understood "as part of a more communal process of reproduction" (ibid. 39) still seems to be valid.

I suggest, however, that there is more to it. Lesbian couples complied with the sperm banks' matchmaker policy as it allowed them to de-emphasize the donor's significance. According to this logic, it was not by *consciously choosing* but rather by *not choosing* that they moved the donor out of sight and out of mind. The strategic and ideological component of not choosing a donor became most apparent during my interview with Avigail and Kareen. When I asked the couple how they chose the donor for their four children, Kareen replied that they did not even know whether it was one or several donors. And Avigail added:

It is a donation. He sold his sperm and that is it. So we said: 'Stop! If we choose a donor we give him importance.' And we did not want him to be important to the children. If we give him weight, the children will do so too.

Avigail and Kareen were the only couple that actually refused to know anything about the donor. However, many women talked about selecting sperm as something technical or even burdensome. Gili said a little helplessly, "somehow we had to choose," when explaining to me why she and Noa ended up with a theater student as donor. She echoed Smadar, who had argued that the donor's features did not matter, since the child would be hers anyway. Not choosing a donor and minimizing the significance of choice are therefore parts of an "ontological choreography of procreation" in Thompson's sense (2005), which facilitates the formation of same-sex parenthood and continues throughout the insemination and pregnancy.

As Corinne Hayden (1995, 49) has argued, the oft-used terms "non-biological mother," "nonbirth mother," and "other mother" immediately point to the marginality of those they denote, to a "lack" rather than to a kinship position or status. In the course of my research, I often heard people referring to *ima lo-biologit* (nonbiological mother). They emphasized the power of nurturing to turn the spouses into mothers, as well as the joint decisions and the engagement of both prospective women in the parenthood project. From this perspective, both women carry the same responsibility for procreation. In fact, lesbian procreation does not start with the moment of conception, but with the decision-making process. However, as the term *ima lo-biologit* upholds the dichotomy between nature and nurture, some of my interlocutors were concerned that the pregnancy would nonetheless introduce an asymmetry into their relationship. They not only wondered whether others would recognize both women as mothers, but also about how they themselves would feel about it.

In this context, the cooperation of physicians, nurses, and sperm bank managers could become crucial in validating and facilitating the women's shared responsibilities. For example, when I asked Meirav whether she accompanied her partner, Eti, to the inseminations in the nearby clinic, she replied:

Of course I was present. I was present and once—not the last time because then they [the medical staff] were busy. But the time before, I even inseminated her. Like, they let me do the insemination. Not that it worked, but it

gave me a good feeling. So yes, of course, I am a part of this. Just like a woman and a man cannot bring a child into being when they are not together, for us it is the same.

The extent to which Meirav actually participated in the insemination was unique among my interlocutors. But as Laura Mamo (2007) has demonstrated, preparing for conception provides ample possibilities for both spouses to be involved, at home and in the clinic. Adi and Laura, for example, had to bring the frozen sperm in a thermos jug from the sperm bank to the clinic, where it was thawed and prepared for the insemination. Once the portion was prepared, they had to bring it to the surgery. This had to happen fast, and the women had to keep it warm. Therefore Adi, who had already organized the thermos jug, placed the small plastic container inside her bra, and then handed it over to the physician who carried out the insemination in Laura. While this decision was completely pragmatic, its symbolic power struck me. It locates, just as Hayden (1995) has suggested, the generative power in Adi's bosom.

The physicians' and the nurses' recognition of their relationship was probably even more important for Keren and Michal. As Keren had already decided that she wanted to have a child before the two women met, parenthood became a shared project only in the course of the fertility treatments. Michal remembers the situation as very complicated: "I did not choose it," she explained to me. "The decision to have a child did not evolve out of our relationship." Keren and Michal, at times struggling to find the words in English,⁶ tried to explain to me how Michal became part of the pregnancy:

Michal: "The agreement between us was that I take the responsibility that I can. And when it finally happened, I was completely into it. But it was not so easy, because it did not come from me. It was something that I had joined. And it became mine eventually."

Keren: "Yes, but until, because it took time until I got pregnant, I think, not, Michal? It's in the, you became a part. Just in the beginning it was difficult for you and not clear she wanted it, because it takes time."

Michal: "It was very complicated, because, you know, all of our relationship was about pregnancy. So it was complicated. But at the end it was completely mine."

- Keren: "Not when she was born, before!"
- Michal: "Before."
- Keren: "You go together to the doctor and see, you know, the ultrasound, all together, and I think just in the beginning, maybe a month or two it took you to enter the process."
- Michal: "No, no. It took time."
- Keren: "Ok. It took time. But after I got pregnant, I think, ok, I felt that it was equal. I didn't feel that Michal did not belong to the pregnancy. And she was, you know, I got pregnant, it was complicated, how do you say?"
- Michal: "IVF"
- Keren: "IVF. So Michal was with me inside when the doctor made all the operation and all. After a few months, you were already quite a part of it."
- Michal: "Mhm, yes."

While they needed to discuss exactly how long it took Michal to become part of the parenthood project, they did not dispute the role of the clinic as an important setting in which parenthood became tangible for both spouses. Indeed, the narratives of my interlocutors were very different from those that scholars found among Israeli men (Ivry and Teman 2008; Ivry 2010b). Men often reported unease during the medical examinations or complained that they were "unnecessarily 'forced' into a medical activity by their female partner" (Ivry 2010b, 159). I never heard similar statements from my research participants. To be sure, my lesbian research participants have also experienced moments of stress and discomfort during medical examinations. However, I suggest that it is more conspicuously important for them than for heterosexual couples to work on and to highlight bonding during the pregnancy and that this extends to the medical aspects of pregnancy. Even if men at times feel excluded from the pregnancy experience (Draper 2003), their position as a prospective parent is clearly defined and not questioned. Furthermore, their status as men in society gives them other privileges, regardless—or rather because—of the missing pregnancy experience. Because of the described distinction between *ima* (mother) and *ima lo-biologit* (nonbiological mother), lesbian spouses of pregnant women are in a much more fragile situation.

To be sure, I do not intend to romanticize the experiences of lesbian women in sperm banks and fertility clinics. Indeed, much has been written about the medicalization of reproduction in the late twentieth century as

“patriarchal violence that resulted in the control, exploitation and objectification of women” (Nordqvist 2011, 1662; but also see Thompson 2005 for a nuanced overview). Gena Corea (1985) has surely been among the more radical voices, when she described in *The Mother Machine* (1985) how reproductive technologies are infused with masculine language and images that bomb ovaries, send embryos into outer space, and manufacture humans. Equally influential was Emily Martin’s *The Woman in the Body*, initially published in 1987. There she painfully described how American women experienced hospital births in the 1980s as a fragmentation of themselves and their bodies, leaving them out of control. In the 1990s, ambivalence entered the moral certainty in feminist writings on reproduction. Anthropologists now paid attention to the multiplicities of women’s experiences, thus cautioning against simplistic right and wrong readings, not only of the technological possibilities but also of physicians and scientists (Thompson 2005, 69). Charis Thompson made the important argument that reproductive technologies have subjugating effects, but that these are not necessarily antithetical to personhood (ibid. 181). She demonstrated that “women are rendered into multiple body parts many times during a treatment cycle” (ibid. 199). This objectification, in which women patients often participate, is, according to Thompson, not problematic and even enhances women’s subjectivity, as long as they feel that it contributes to their personal trajectories of pregnancy.

The experiences of lesbian couples in fertility clinics are in many ways similar to those of heterosexual couples, particularly when confronted with failed attempts to conceive. The lesbian women in Mamo’s study (2007) struggled with the same emotional ups and downs—swaying between hope, anticipation, and disappointment—as the heterosexual women whom Sarah Franklin (1997) researched in the United Kingdom a decade earlier. And like the women in Thompson’s account (2005), Mamo’s research participants—over time—became experts of their bodies, as they moved between hormone injections at home, monitoring their cycles, and inseminations or egg retrievals in the clinic. This, of course, includes moments during which lesbian and heterosexual women feel vulnerable and, as Thompson has argued, objectified. Many of my research participants found the insemination clinical and impersonal. “Of course it was all very technical,” Eti explained to me when I confronted her and her partner with the unease other women had felt in the fertility clinics. “But it is all a matter of attitude. Of course I would have preferred to make a child through an act of love with a crazy orgasm. But this is what there is

and we were ok with it.” She used to joke with the physicians who were often young medical assistants: “The last time, we were with two physicians and suddenly a third one entered. I was lying there with my legs spread open and said: Are we doing it now in a foursome?” While Eti used this episode in order to tell me about how she deals with the situation, her narrative also points to her exposed intimacy and vulnerability.

Sometimes this vulnerability went together with not receiving the necessary attention, information, and counsel. Michal and Lili, for example, needed four cycles until Lili got pregnant, and they were glad it did not take them longer. Besides the arduous hormonal treatment and the emotional ups and downs when waiting for the results of the pregnancy test, they found it hard to access clear information. “In the beginning there were many things we did not know,” they explained to me. What exactly should they expect? What will happen? What is the meaning of the different check-ups and results? With the medical staff’s passivity in relation to providing information, the two women put a lot of energy into collecting pieces of information from friends and relatives. In another example, Aya and Revital felt that the first clinic they visited—and particularly the clinic’s sperm bank—functioned like an assembly line: a list of tick boxes. They had driven all the way from their town in the southern part of Israel to Tel Aviv. After a drive of several hours, they sat in front of the sperm bank manager, who did not take the time to answer their questions and explain all the options available to them.

Accounts such as these are important for maintaining a critical view on reproductive technologies, the power relations that may structure them, as well as how women experience their bodies and subjectivities and endure pain in these situations. In the end, I think that Sawicki’s concern with “who defines women’s needs” (1991, 84) has not lost relevance. Laura Mamo (2007) has pointed out a possible difference here between heterosexual and lesbian women. She argued: “Although clinical encounters may cause objectification, this objectification does not unbalance lesbian subjectivities in the same way as it might for those heterosexuals whose femininity has been linked to their status as ‘not-yet’ mothers and, therefore, as appropriate reproducers” (ibid. 186). In Israel, lesbian women probably do link their femininity to motherhood. Indeed, as I have described above, the right to become a mother forms a central part of the political activities of lesbian women. Nevertheless, lesbian subjectivity also depends—and maybe even more importantly—on their orientation and relation with other women. Accordingly, when my research participants talked about

their experiences with sperm banks and clinics, they focused on how the medical setting affected the relationship between the two women, as well as between both partners and the envisioned child. Hence, I think that when studying reproductive technologies, we should not forget that persons are not just made of bodies, but first and foremost of relations. Indeed, by recognizing same-sex couples as procreative unions, the medical setting was, for my interlocutors, very much in partnership with their subjectivity and agency as *lesbian* women.

2.6 CONCLUSION

As the formation of lesbian motherhood in Israeli sperm banks and fertility clinics is practiced as a shared project, families are here formed that do not fit the rabbinic understanding of how Jewish continuity is made. Here, fathers are deliberately removed from the picture and replaced with a co-mother who takes on an active and indeed substantial part in the making of a new child. Or as Meirav has put it: “Just like a woman and a man cannot bring a child into being when they are not together, for us it is the same.” As a consequence, it is not possible to maintain the illusion of known and traceable pedigrees. The web, the system, as Rabbi Burstein argued, is ruined.

But while rabbis like Menachem Burstein regard lesbian motherhood as a threat to the Jewish family and the entire Jewish people, I have shown in this chapter that they had their share in paving the way for these family formations. With their efforts to kosher reproductive technologies, they successfully integrated new technologies into the halakhic logics, even to the extent that medical technologies such as sex selection and in vitro fertilization have become a necessary component for the making of Jewish families. And yet, in treating the commandment to procreate as trumping everything else while emphasizing the suffering of childless couples, they have also shifted the weight from an embeddedness of procreation in the cosmological order to a more naturalistic and individual-centered understanding of procreation. In rabbinic reasoning, this individual still constitutes part of a larger collective and cosmological order. But in a societal context, where different norms and ideas of procreation exist, rabbis cannot control the paths and turns that this individual and their ideas take. It has therefore become increasingly difficult for them to explain why halakhically problematic practices like anonymous sperm donation should be accessible solely to heterosexual couples.

At the same time, however, the formation of lesbian motherhood in sperm banks and fertility clinics does not constitute a merely individualistic practice. Sylvie Fogiel-Bijaoui (1999) has already observed that the Hebrew concept of *mishpachtiyut* (familism) intertwines the individual with the collective. Indeed, “the centrality of the family institution in the life of the individual strongly correlates with the centrality of the family institution in the life of the general [public], the national-religious collective” (ibid. 128). Motherhood in Israel is the primary route for Jewish women to become part of the national collective (Berkovitch 1997; Teman 2010). It is seen not only as a necessary step to self-fulfillment, but also as a national mission. Thus, women receive their greatest value here, just like among contemporary Orthodox rabbis, through motherhood and their potential of being a mother.

In December 2009, *Ynet*, the online edition of the national daily *Yedioth Ahronoth*, launched a series of seven articles, each of them portraying another constellation of lesbians and gay men with children (Levi 2009, 2010a, b, c, d, e, f). *Ynet* published these articles in the run-up to the Rainbow Family Conference (*kenes mishpachot hakeshet*) that took place from 10 to 13 February 2010 in Tel Aviv. While the Rainbow Family Conference surely provided an actual occasion to inspire the articles, such broad coverage is not self-evident. Portraits of gay men and lesbians with children, as well as their rather complicated paths to parenthood, carry drama and novelty that make them attractive for the media. At the same time, for *ynet* it was not a threatening novelty. These features provided a stark contrast to the stories of loneliness and death pictured by Amos Guttman some thirty years ago. They were written in a language of sympathy and emphasized the parents’ happiness and the harmony between them. As Sara Ahmed (2009) has poignantly argued, presentations of queer happiness—but more often of queer unhappiness—are also statements about what is perceived as the good and right way of living one’s life. The anticipation of happiness directs us toward certain things that are considered as causes of happiness. Recognition, in turn, is often conditional: “You have to be the right kind of queer by depositing your hope for happiness in the right places” (ibid. 9). Same-sex parenthood in Israel, so it seems, has become the right place and may be described as “a straight way of doing queer love” (ibid.).

My radical left-wing and feminist interlocutors were highly aware of these dynamics, and they put a lot of thought into whether being feminist, anti-Zionist, and a parent could go together. One evening in 2011, I discussed the matter with Ran, a transgender man in his early twenties. We

were on the road from Haifa to Tel Aviv after a meeting with a group of feminists and gender nonconformists, with whom we discussed Jasbir Puar's concept of homonationalism. While driving, we talked about my research and Ran told me his sorrows. A few days earlier we had been invited to a party at a befriended couple to celebrate the second birthday of their twins. As Ran asserted, he was very fond of the two women. But there was one thing that troubled him. He felt that everyone around him, including gender-nonconformists and feminists of his age, were having children or at least talking about it. He told me:

I do not know what to think about it. All the queers are having children!
 Maybe the problem is mine, but when Ruti talked about normativity today,
 I wanted to shake her and say: 'Ruti! All the queers are having children!'

The two mothers, whose twins' birthday we had celebrated, were themselves highly critical about the stance on motherhood in Israel and the power asymmetries between men and women it often went with. Gili and Noa worked in the field of education and put a lot of energy into carving out ways of practicing motherhood that undermined, rather than reproduced, existing power relations. Their efforts to (re)queer motherhood took place in a context in which lesbians were joined by increasing numbers of gay men who followed suit and increasingly turned to transnational surrogacy arrangements to fulfill their own dreams of parenthood. This development made clear to them that the formation of same-sex parenthood cannot only be completely normative, but also potentially exploitative (for a critical discussion of Israeli gay men's turn to surrogacy and their relationships with surrogate mothers, see Lustenberger 2016; Moreno 2016; Eyal and Moreno 2018). For me, it also opened up a new field for studying the dynamic relationship between civil law, halakha, and social practice.

NOTES

1. Today the Aguda's full name is: *HaAguda Lemaan HaLaHatab BeYisrael* and in English *The Aguda – Israel's LGBT Task Force*.
2. All protocols of the Knesset's plenary are published on the Knesset's search official website: <https://main.knesset.gov.il/Activity/plenum/pages/sessions.aspx>.

3. Religious Jews do not use the explicit, full name of God and avoid any term in any language that refers to it explicitly.
4. Sex selection is legal in Israel, but for non-medical purposes, it is carefully regulated by the state (Lavi 2010, 88). It can be authorized in a limited set of cases and on an individual basis, by a special national committee that works under the auspices of the minister of health (ibid.).
5. *Nahmani v. Nahmani*, SC 2401/95, 12 September 1996, 40–41. The English translation of this court decision was published in *Israel Law Reports* 12, no. 1 (1995–6).
6. When I interviewed Keren and Michal in 2007 for my master's thesis, my Hebrew was very basic. Therefore, I conducted this interview in English.

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DNA Tests, *mamzerut*, and the Bureaucracies of Transnational Surrogacy

Surrogacy has been legal and regulated in Israel since 1996, when the Knesset passed the “Agreements on The Transportation of Embryos Law” (hereafter: the Surrogacy Law). As scholars have comprehensively demonstrated, halakhic considerations and concerns for the regeneration of a clear-cut circumscription of the Jewish collective entered the legislation once the draft reached the Knesset (Kahn 2000, 142–148; Shalev 1998, 64–72; Weisberg 2005, 117–146). Concretely, the criteria pertaining to the civil and religious status of surrogate mothers and the relationships between the involved parties were first and foremost motivated by the goal to produce unequivocal and unblemished Jewish children. As at that time, most rabbis considered the gestational mother to be the child’s halakhic mother, Jewish women could only hire Jewish surrogate mothers, and Jewish surrogate mothers could only carry children for other Jewish women (ibid.). Furthermore, the legislators determined that surrogate mothers should be unmarried, since otherwise, the children to whom they give birth might be *mamzerim*.

Scholars have paid less attention to heterosexual couples’ exclusive right to contract a surrogate mother. Indeed, it appears that when the Knesset discussed the surrogacy law in the mid-1990s, the position of heterosexual marriage as “the preferred location for biological and social reproduction” (Kahn 2000, 86) was unquestioned. Surrogacy was meant to be a solution for a limited number of cases of hardship rather than an industry (Ministry of Health 2012, 54). At that time, neither same-sex parenthood

nor single motherhood was a public or political topic. As described in the previous chapter, same-sex couples had just started to fight against discrimination and for family rights.

With the inception of sperm donation and fertility treatments and the growing public sympathy for the wishes of unmarried women and same-sex couples to have children, it did not take long until the exclusive access of heterosexual couples to surrogacy was also challenged. In 2002, a single woman approached the High Court of Justice and asked for permission to hire a surrogate mother (Teman 2010b, 113–114). The court agreed in principle with the petitioner and argued that the exclusion of single women from surrogacy was discriminatory. Yet the judges preferred not to interfere with this relatively new law and phenomenon, reasoning that this was a matter that required public discussion. In November 2005, the Knesset Committee on the Advancement of Women took up the matter and discussed whether to give single women access to surrogacy (Teman 2010b, 114–115). In the meeting, Mira Hibner, the legal advisor to the Ministry of Health, explained why the Ministry opposed this change: “From the moment that there is the option of opening [the law] to single women, I do not see any way to prevent it from same-sex family units” (quoted in Teman 2010b, 115). She added that this would be a social revolution into which the Knesset should not rush. The committee followed the ministry’s opinion and “concluded with the recommendation to leave the law in its current form” (ibid.). Yet, due to the dynamics of a growing transnational market, the lawmakers’ attempts to prevent the formation of same-sex parenthood failed. What Mira Hibner called a “social revolution” occurred slowly abroad, as increasing numbers of Israeli gay men turned to the use of transnational surrogacy in order to become parents.

Gay men’s turn to surrogacy in the early twentieth century went along with the narrowing down of their opportunities to adopt an unrelated child. The position of same-sex couples with regard to adopting an unrelated child was only formally clarified in 2008. In that year, the Ministry of Justice responded to a gay couple’s petition to the High Court of Justice, in which they applied for an adoption order on behalf of a young man who had been part of their family for twelve years. As a result of this court petition, the Ministry of Social Affairs and Social Services established a task force to discuss the matter, and on 9 February 2008, the Ministry of Justice published a statement where it announced the General Attorney’s new directive on the matter:

In fitting circumstances, when in accordance with the adoptee's best interest, it is possible to allow same-sex couples to adopt a child who is not related to one of the spouses. The Child Welfare Service is authorized to place a child with a same-sex couple, in circumstances in which a placement with a *single person* would have been possible, too. (Ministry of Justice 2008, my emphasis)

National newspapers and gay rights activists celebrated the directive as the final step for the recognition of same-sex parenthood (e.g., Yoaz 2008a, b). And yet, the equation of same-sex couples with singles rather than with heterosexual couples bears concrete consequences for same-sex couples. It means that the Child Welfare Service treats their adoption applications as second best and only grants them adoption of children for whom no heterosexually married adoptive parents could be found. In practice, this has rendered adoption for same-sex couples very cumbersome and unattractive.

Their chances of accessing intercountry adoption are no better. Some of my older research participants had managed to adopt a child at the turn of the century. But since 2004, the global decrease of intercountry adoption (Selman 2009; Smith Rotabi and Footen Bromfield 2012) and Israel's tight grip on local adoption agencies (Noyman and Tamir 2004) have brought intercountry adoption almost to a standstill. For same-sex couples, this has seriously reduced the chances of finding an agency that agrees to accept them as clients and that works in countries where they are eligible to adopt at all. At the moment, the doors are locked, and it is hard to say whether they will unlock again.

At the same time as the doors to intercountry adoption closed, gay men saw a veritable boom of surrogacy agencies both in Israel and abroad, which specifically addressed them as potential clients. When Mira Hibner, the legal advisor to the Ministry of Health, warned the Knesset in 2005 that opening surrogacy to single women would soon bring same-sex couples to the scene, gay men had already discovered transnational surrogacy as a path to parenthood. Indeed, from that year on, the Ministry of Interior was increasingly confronted with requests from couples that wanted to register their children as Israeli citizens (Knesset Research and Information Center 2012, 11). In 2007, during research for my master thesis, lawyer Victoria Gelfand proudly explained to me that in those very days in which we were meeting, the organization New Family was providing legal support for the first gay couple that was about to return to Israel with twins born in India.

When I returned to Israel for research on my PhD thesis in 2010, transnational surrogacy had turned into an established business and path to same-sex parenthood. Between 2008 and 2012, over 200 children were born through the Israeli surrogacy agency, *Tammuz*, which Doron Mamet had established with gay men like himself in mind. At the time of my research, the numbers were constantly rising, and almost half of these 200 children were born in 2012.¹ According to the State Comptroller of Israel, in the same year, the Ministry of Foreign Affairs was confronted with 225 requests to register children born through surrogacy abroad (State Comptroller of Israel 2014, 798). My guess is that gay couples' difficulties with access to adoption, the general legality and public acceptance of medically assisted reproductive surrogacy in Israel, the legal insecurities and asymmetries involved in shared parenthood mentioned in Chap. 2, as well as the potential to make money with surrogacy have all combined to create a fruitful ground for the international operation of surrogacy agencies. Furthermore, Israeli public authorities have interpreted the national surrogacy law as a territorial law that only regulates surrogacy within Israel and does not outlaw surrogacy activities of Israeli citizens in other countries.

Confronted with the popularity of transnational surrogacy among gay men and their increasing visibility in the Israeli public, I dedicated a substantial part of my research to their journeys and experiences. At that time, Israeli gay men could choose between surrogacy arrangements in the United States and in India. Among my interlocutors, arrangements in Mumbai were particularly popular. In this chapter, I relate their experiences—as they told them to me in interviews and as I observed them myself in the Indian metropole—to the laws and protocols that are necessary to make children who belong to the commissioning fathers rather than to the surrogate mothers and who constitute part of the Jewish Israeli collective. I demonstrate that the procedures surrounding the DNA tests that are necessary to establish a legal relationship between father and child are shaped by rabbinic kinship principles, even though the Rabbinat neither approves of these family formations nor recognizes the children as Jews. Thus, the bureaucratic procedures surrounding fatherhood tests entrench the Rabbinat's power to define what a Jew and a Jewish family are and, at the same time, facilitate the formation of families that transgress these definitions. Their encounters with bureaucracy reminded my research participants of the ongoing discrimination they face but also shed light on their power to mobilize financial, social, and cultural capital.

3.1 FOLLOWING GAY COUPLES TO INDIA

During my research in Israel, I conducted numerous interviews with gay men who had become parents through surrogacy. They told me in detail about their experiences in Mumbai, where they usually stayed three to six weeks, from their children's birth until they could take them home to Israel. From them, I learned about the bureaucratic struggles, the emotional ups and downs, and the importance of their relationships with other couples who went through the same process. Their surrogacy agency advised all its clients to stay in the same hotel, where they would not only be near the hospital but also in the company of the others. This convinced me that a fieldwork sojourn in Mumbai was feasible and promised to add rich, firsthand observations to my interview material.

I had the opportunity to put my plan into action in spring 2013, when my friend Udi and his partner Yaron went to Mumbai for the birth of their daughter. During my research in Israel, we often discussed surrogacy and Udi's doubts regarding the matter. He particularly feared getting involved in an arrangement that took advantage of the poverty of Indian women. Therefore, he first wanted to fight the public authorities and request the right to adopt a healthy baby. Yaron, however, preferred surrogacy, and when Udi understood that this legal fight could take years, he agreed. Only half a year after having approached the agency for the first time, their first embryo transfer was successful. The anticipated child was to be born in March 2013, and to my delight the couple agreed to let me accompany them. The agency knew about my plans and booked a room for me that became my work place and home between mid-March and May of 2013.

Once in Mumbai, the hours in the dining room turned out to be of great value for my research, since they were the moments in which everyone came together. Breakfast patterns depended very much on the sleep my interlocutors managed to get between their babies' feeding hours. Accordingly, breakfast conversations frequently included exchanges on how the couples and babies had spent the night. They also provided opportunities to make plans together, for example, for a trip to the nearby shopping mall or a walk in the neighborhood. More important still were the dinners. Usually we coordinated at what time we would meet and usually everyone was present. The couples brought the babies in carriers, along with the measured amount of formula powder and water in sterilized bottles, and took turns in feeding them, so that everyone could eat. While it was always clear that each couple was responsible for its own baby,

the men and women helped each other out. Dinner conversations, too, were usually about babies. The parents admired each other’s babies, boasted about their own, exchanged tips regarding feeding patterns and the relief of baby stomach pains, and laughed about the babies’ uncoordinated movements. But besides the attention given to the babies, dinners were important moments to let off steam about the cumbersome bureaucratic procedures and to discuss the surrogacy process, the situation of the surrogate mothers, and the behavior of the involved agents.

Over the two months that I spent in Mumbai, the constellation of the group changed, as some departed and others arrived. But looking back, there was a core of people who shared my Mumbai experience and who became principal informants. Figure 3.1 provides a graphic picture of how the group of intended parents, who stayed with me in the same hotel, changed over time. The table does not include those women and men, whose stay in Mumbai only overlapped for a couple of days with my own sojourn and whose experiences were therefore secondary for my research.

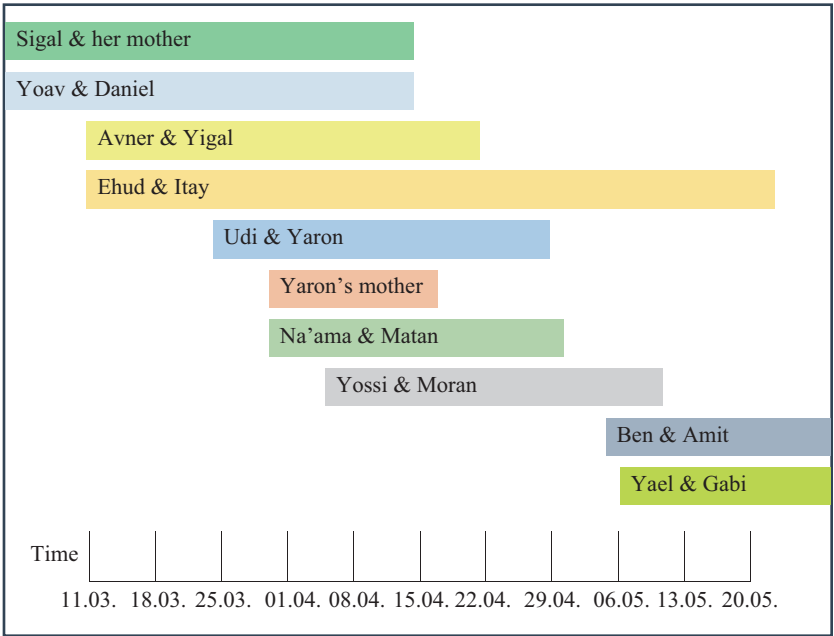


Fig. 3.1 Research participants in Mumbai

Among these principal interlocutors were two heterosexual couples (Na'ama and Matan, Yael and Gabi), a single mother (Sigal), as well as the mothers of Sigal and Yaron. Particularly, Sigal and her mother, Yoav and Daniel, Avner and Yigal, Ehud and Itay, Udi, Yaron, and Yaron's mother, as well as Na'ama and Matan, and to some lesser extent also Yossi and Moran constituted a loosely knit community of fate who continue to be in contact with each other. For the men and women I accompanied in Mumbai on a daily level, I myself became part of their shared experience. Although not exactly one of them, since I lacked my own personal surrogacy story, I was also not an outsider. I accompanied them to annoying appointments at the immigration office, helped them to prepare the meetings with their surrogate mothers, and shared their excitement over a birth as well as their sorrows when the mills of bureaucracy stood still or when a baby was ill. My relationships with these men and women varied, of course. Yet, the intensity of these two months created a strong emotional attachment, which I still feel when writing these pages.

3.2 SURROGACY, THE STATE, AND BUREAUCRACY

In January 2013, six weeks before my own departure to Mumbai, I accompanied Udi and Yaron to a meeting at the agency's office in Tel Aviv. There I introduced myself to the other men and women who would be in Mumbai at the same time and who would become not only important research participants but also friends. They had met each other before. In six successive meetings in the course of "their" surrogacy pregnancies, the agency had offered them the possibility to share their questions, sorrows, and hopes, and to prepare themselves for parenthood. This last meeting before their departure was a preparation for the weeks in Mumbai and the bureaucratic procedure that awaited them. We were seventeen persons—thirteen men and four women between 30 and 45 years old—sitting in a tight circle in the meeting room. Two framed photos were hanging on the wall. They showed two large groups of parents and newly born babies assembled together at the hotel's pool in Mumbai. Tomer led the meeting. He had been one of the agency's first clients, and a few months after he returned with his partner and twin girls from India in October 2009, he himself started to work for the agency. Tomer handed each of us a thick bundle of papers called the "Parents' Guide," and started to pace us through the pages. The morning after the preparatory meeting, I wrote in my research diary:

It is impossible to remember everything, and toward the end of the meeting I felt that it was impossible for my brain to ingest any further information. It became painfully obvious during the meeting how complicated and crazy this whole process is. There are thousands of little steps the couples have to take in order to be recognized as parents and in order to receive citizenship for their children. Hundreds of hands are involved in this procedure and the medical process suddenly seems minor. (Research diary entry from 31 January 2013)

With the necessary distance from this moment and the knowledge gained thereafter, I no longer think that the medical and physical procedures that surrogate mothers go through are insignificant. But at that moment in January 2013, it had taken us almost three hours to go through the fifteen pages of the “Parents’ Guide,” and I could see in the faces of the others that they were as exhausted as I was. Going through the pages with the clients and listening to Tomer’s explanations, I felt as if I had mentally run through Mumbai not within a month but within one evening. I had arrived at the hotel, bought a local SIM card, met the driver and the lawyer, entered the hospital, traveled to the consulate, collected documents from here and there, and before I even had time to draw breath in Mumbai, I was ready to leave again.

Rather than structuring the document according to categories (such as addresses, phone numbers, documents to collect, and expenses), the agency had created a chronological guide with step-by-step instructions. Thereby, we learned what the clients should expect from the moment they landed in Mumbai until their departures. We learned what provisional parents had to do, whom they had to contact and when, and how much they had to pay to whom. Accordingly, the “Parents’ Guide” was a wild mix of lists, numbers, instructions, explanations, and copies of the documents they had to gather. It started with the expenses for the hotel, continued with information about the driver and the nanny whom they could contact if they needed someone to take care of the baby while in Mumbai (including their phone numbers), explained how to buy a local SIM card, and continued with a list of the baby items they had to bring from Israel or could buy in Mumbai. The rest of the document—eleven pages out of fifteen—was dedicated to the bureaucratic procedures. These pages clarified the process from the moment the parents enter the hospital until they are allowed to leave the country with their children. The explanations

were detailed and written in a conversational tone, as the following extract about the procedures before birth shows:

Before the birth you have to contact the Indian lawyer [name] and arrange with him to hand over your surrogacy contract. Without the contract, signed by a notary, you will not be able to enter the hospital. [An extra line highlights the name and phone numbers of the lawyer.] The day of the birth (or the day you arrive in Mumbai if the birth already took place) you have to go to the social worker located in the lobby of the hospital with copies of the passports, passport photos of the parents and the original surrogacy contract. [Then follows the name of the local agent responsible for the surrogate mothers and the address, phone number, and email of the hospital.]

As Tomer walked us through the “Parents’ Guide,” he occasionally made comments about the people the clients would have to deal with or gave background information that helped understand the procedures they would face. Sitting in a circle at the agency’s office and going through the text together also allowed for direct questions, clarifications, and discussions. This fostered a deeper understanding of the text and helped the couples become familiar with India and the bureaucracy that awaited them. Even if it was not the real thing, their first confrontation with the bureaucratic procedures happened in the safe office of the agency, accompanied by Tomer’s expertise. When parents would actually have to deal with the bureaucracy, the agency would be far away in Israel. Going over the procedures on paper was a rehearsal that prepared them for the process they would begin the day they landed in Mumbai. The document, and also the rehearsal, ended with the travel permit, and thereby with the promise that, in the end, they would take the babies home to Israel. Once in Mumbai, of course, things were less smooth than in the agency’s office. As Daisy Deomampo (2014, 23) has already argued, “while the requirements for citizenship may appear clear at the outset, guidelines and protocols are in flux.” Accordingly, the “Parents’ Guide” could neither prepare my research participants for the sudden changes of protocols nor for the moments of standstill and frustration that arose from the bureaucracy of international surrogacy.

Bureaucratic procedures distinguish transnational surrogacy from other types of reproduction, usually summarized in academia under the labels “reproductive tourism,” “cross-border reproductive care,” or “transnational reproduction.” When single women or heterosexual couples seek

IVF, sperm donation, or egg donation abroad, the children are born in the parents' home countries. This allows them to keep the intricacies of their children's coming-into-being secret. Neither neighbors and colleagues, nor the nurses in the hospital and the birth registrar have to know that reproductive technologies or even gamete donation facilitated their children's birth. This makes state control of border-crossings for fertility treatments difficult. Grtin (2011) has demonstrated for Turkey that even when countries forbid activities related to cross-border travels, they have a hard time enforcing this with regard to individual patients. Scholars have therefore come to understand reproductive travel as a strategy to circumvent restrictive religious and national fertility regimes (Inhorn and Grtin 2011, 535; Zanini 2011, 566–567).

Surrogacy can occur in secrecy, too, particularly if clinics actively support their patients' efforts to conceal surrogacy births (Teman 2010a, 189–192). Nonetheless, because the children are born in a foreign country, transnational surrogacy requires direct encounters with public authorities. Commissioning parents have to apply for their children's citizenship and travel permits in order to bring them to their home countries. It seems that at least theoretically, and particularly if state offices are unaware of reproductive travel, heterosexual couples and single women have a chance to hide the fact that their children were born through surrogacy. In countries such as the United States and India, the hospitals register the intended parents but not the surrogate mother in the birth certificates. Whether they can plausibly explain why they stayed abroad at the time of delivery is another issue. And in numerous, sometimes dramatic cases, citizens of Japan, the United Kingdom, France, Germany, Spain, and Belgium have been refused travel documents for their children, because consular officials rightly suspected that they were born through surrogacy (Storow 2011, 539–540). In some of these cases, the children were left without citizenship at all.

Hiding transnational surrogacy arrangements is particularly difficult for single men and gay couples. They have to explain not only why their child was born abroad but also the whereabouts of the birth mother. As a consequence, transnational surrogacy is for them a rather risky strategy for bypassing national and religious fertility regimes. In fact, for my interlocutors, the presence of the state—actualized through bureaucracy—became highly tangible. This is particularly interesting, since international surrogacy allows for the formation of families that would otherwise not be possible. Indeed, while international surrogacy constitutes a way to

circumvent the legal restrictions in Israel's surrogacy law, the public authorities' interpretation of the law as a territorial law allows them to do so. In addition, the general permission granted to surrogacy within Israel has made it difficult for the authorities to prevent gay men from turning to reproductive technologies abroad. In order to better understand the government's approach to transnational surrogacy, I turned to Dr. Segal, the legal advisor at the Ministry of Justice, who has worked intensively on questions pertaining to transnational adoption and surrogacy. When I inquired why Israel did not regulate transnational surrogacy by law, he pointed to the lack of an international treaty and the resulting legal difficulties in restricting the conduct of a country's citizens while they dwell abroad. In the email that he sent to me on 8 March 2012, he asked back: "Would it be proper to deny Israeli citizens access to surrogacy abroad while it is legal in Israel?"

At the time of my research, there was no encompassing regulation of transnational surrogacy, and the intricacies of the procedures necessary to register the children as Israeli citizens were not written down in one single document. Public authorities first had to develop bureaucratic procedures when they were confronted with the first couples that wanted to register their children (Knesset Research and Information Center 2012, 10–11). The Citizenship Law (1956) and the Population Registry Law (1965) maintain that children born to Israeli citizens are eligible for Israeli citizenship. In addition, the "Regulation of the Registration of the Birth of a Child Born Abroad to an Israeli Mother" gives instructions for their registration. Yet, none of these documents addresses the registration of children born through surrogacy or specifies who counts as the child's parent in such a situation. It is therefore likely that the public authorities turned to the Surrogacy Law (1996) to clarify the matter further. There, the Knesset determined that surrogacy arrangements are only legal if the intended father provided the sperm for the fertilization. Accordingly, Israeli men who became fathers through surrogacy abroad had to prove their fatherhood by means of a DNA test.²

For women, this meant that they had to rely on their husbands in order to have their children's citizenship recognized. Their motherhood, in turn, was only recognized after they additionally went through an adoption process. And Sigal, who was a principal interlocutor during my research stay in Mumbai, endured as a single woman a nerve-racking legal fight, until she received permission to undergo a DNA test herself and to bring her twins to Israel. This situation is not unique to Israel. Kroløkke

(2012) and Deomampo (2014) have observed similar problems faced by Norwegian women who turned to surrogacy in India. In both countries, DNA tests were introduced to appoint fatherhood rather than motherhood. The same appears to be true in France, where the *Conseil d'État* (the highest court for administrative matters) determined in 2011 that “if DNA testing demonstrates a biological link between the child and the person designated on the birth certificate as the father, the foreign birth certificate must be given effect” (Permanent Bureau of the Hague Conference 2012, 22). Other countries also introduced DNA tests to formalize parenthood and citizenship in the context of transnational surrogacy, albeit in different ways (*ibid.*). Thus, I learned from an Australian man, whom I met in Mumbai, that in his case, a genetic link between the child and one of the prospective parents establishes the child’s Australian citizenship but not legal parenthood. And as of 19 August 2013, the US Embassy in New Delhi informed on its website that US citizens could prove motherhood and fatherhood through DNA tests if they were performed in a laboratory accredited by the American Association of Blood Banks.

But even if states enact similar procedures to turn commissioning parents into legal parents and their children into citizens, I want to argue here that the underlying rationales and dynamics may vary. To underline my argument, I provide in the next section a careful analysis of the Israeli laws and bureaucratic procedures surrounding DNA tests, and thereby introduce a note of caution concerning hasty interpretations that would link reproductive technologies and DNA tests to a seemingly dominant biogenetic social construction of kinship and reproduction. I demonstrate, instead, that my interlocutors’ encounters with DNA tests were not structured by a coherent kinship ideology, but by the coming together of Jewish law, hierarchies in Israeli citizenship, bureaucracy, and biotechnology.

3.3 ENCOUNTERS WITH *MAMZERUT*

In Israel, DNA tests are regulated by the Genetic Information Law (2000). The original version of the law did not entail any provision with regard to DNA tests for the purpose of determining fatherhood. In practice, however, family courts have for many years requested such tests in lawsuits, in which fatherhood was contested (Knesset 2005, 89). If the alleged father refused to undergo a DNA test, the court could declare him to be the legal

father even without such a test. In 2005, Eitan Cabel of the Labor Party submitted a bill to establish once and for all the family courts' authority and the procedures in fatherhood tests (Knesset 2005, 88–92). As Cabel explained to the Knesset, he was mainly concerned about children who were left without knowing their “genetic-biological” father. This, he argued, would hurt their human dignity, as it deprives children of the right to know their halakhic pedigree, their “genetic luggage,” and the possibility to establish a meaningful relationship with their fathers. The proposed amendment to the Genetic Information Law should authorize family courts to instruct alleged fathers to conduct a DNA test, thereby establishing a stronger connection between genetic and legal fatherhood.

Cabel's arguments indicate that for him, fatherhood was primarily a matter of genes and biology. Still, his representation of fatherhood is not entirely secular. Rather, human dignity, genes, and Jewish law appear tightly intertwined. Indeed, in his reasoning, halakhic pedigrees may be established by DNA tests, as they have the power to locate a child unequivocally within the web of the Jewish collective. This power, however, bears a danger: DNA tests might ascertain that a child was born to a married woman and a man other than her husband. In such a case, the child would be labeled a *mamzer* or *mamzeret*. As described in Chap. 2, *mamzerut* is a rabbinic stigma with severe consequences. *Mamzerim* are not only excluded from marrying unblemished Jews, but also pass the stigma on to their own offspring.

Accordingly, Cabel's bill entailed the provision that if the result of a DNA test might prove the child to be a *mamzer*, only serious medical reasons would render fatherhood tests permissible. The short subsequent discussion in the Knesset focused on this topic. Concerns were raised by Nissim Zev from the Orthodox Party *Shas* and Abdulmalik Dehamshe from the United Arab List. They both suggested that religious courts rather than the civil family courts should have the authority to decide whether to allow a DNA test or not. The bill was then passed to the Knesset's Constitution, Law and Justice Committee and later to an inter-ministerial committee (Knesset 2007a, 266). In these committees, too, the major point of discussion was the relationship between the civil family courts and the religious courts. While the discussions involved representatives of Judaism, Islam, and Christianity, it appears that the focus continued to be on *mamzerut* (Knesset 2007b, 41–44).

The amendment to the law, which was ultimately passed by the Knesset on 30 July 2008, provides for a very detailed procedure to prevent DNA tests from casting the stigma of *mamzerut* on any child. The Knesset kept Cabel's provision that if there was a substantial risk that a fatherhood test would prove the respective child to be a *mamzer*, the test should only be allowed for serious medical reasons. The legislators also added that in cases of doubt, the family courts are requested to consult with the president of the Supreme Rabbinical Court without unveiling the names of the involved parties. The latter, in turn, would submit his opinion to the state attorney who, then, would phrase his recommendation on the matter. The Knesset has thus introduced *mamzerut* as the decisive criteria for fatherhood tests and—as a consequence—for the establishment of legal fatherhood. Since the revision of the Genetic Information Law, the state attorney and the family courts have treated the rabbinic position as authoritative (Zafran 2011, 223). Even though civil courts are granted a first assessment of the files, the Rabbinate was granted the status of ultimate experts and decision-makers in kinship matters.

By establishing the principle of *mamzerut* in the Genetic Information Law, the Knesset followed the Rabbinate's understanding of kinship. This does not mean, however, that all Knesset members who voted for the law shared the view that *mamzerut* is a relevant kinship category that keeps Jewish pedigrees pure. Rather, I suggest that we can better understand the provisions of the Genetic Information Law in light of the Rabbinate's control of marriage. The exclusivity of religious marriage is not simply a matter of performing weddings. It brings along the power to decide who is allowed to get married in the first place and what family unions are recognized. Thereby, the principle of religious marriage permeates all family laws and kinship practices, including conversion, adoption, surrogacy, and DNA tests. The Genetic Information Law does not only regulate fatherhood tests according to the principle of religious marriage, but also entrenches it.

It is therefore important to understand that by preventing fatherhood tests when the result would label a child as a *mamzer*, the law is not working against the rabbinic understanding of *mamzerut* but is completely in line with rabbinic practice. Over the centuries, rabbinic authorities have established a number of principles to prevent a newborn child from being categorized as a *mamzer*, or to prevent the moral stain from passing from generation to generation. If a couple is legally married, for example, the husband is generally assumed to be the father of any child born to his wife,

even if he was away for twelve months (Steinberg 2003, 775–779). In such cases, the rabbis assume that the fetus was delayed in the mother’s womb and still attribute paternity to the husband (*ibid.*). Rabbinic authorities further hold that “one should not inquire into the genealogy of a family suspected of being ‘tainted’ by a *mamzer* among its ancestors” (Miller 2014, 51). Hence, Maimonides, the foremost rabbinic authority of the twelfth century, whose rulings are honored and consulted to this day by Orthodox Jews, argued that only when two reliable witnesses can testify that someone is a *mamzer* is it permissible to reveal the genealogical blemish. In practice this means that two men witnessed the sexual act that led to conception. It is therefore reasonable to assume that *mamzerut* has existed for many years as a theoretical kinship possibility rather than a social practice (Safran 1981, 214).

The category would probably have long sunk into obscurity, were it not for the institutionalization and bureaucratization of Jewish law in Israel. When the Provisional State Council turned the laws and ordinances issued under the British Mandate into the new state’s basic legal order, they also adopted the principle that each religious group enjoy autonomy over family matters. Shortly thereafter, the Chief Rabbinate was consolidated as a state organ under the new Ministry of Religious Affairs. In 1950, this rabbinic authority enacted a set of regulations known as *The Jerusalem Ban* in which it prohibited, *inter alia*, marriage ceremonies without the prior written consent of the Chief Rabbinate (Miller 2014, 28). A standardized set of marriage registration procedures was issued, which requires marriage registrars to assess the spouses’ marriageability according to Jewish law. When assessing the marriageability of a couple, registrars have access to a number of databases, such as the national population registry, the adoption registry, the egg donation registry, and the prohibited marriages database. In November 2012, this database included a total of 5397 names, of which 258 fell under the category of *mamzerim* or suspected *mamzerim* (*ibid.* 36). Miller found that marriage registrars frequently ignore the guidelines and allow couples to marry even if they are suspected to transgress rabbinic law (*ibid.* 32). Still, this renders adults who wish to get married vulnerable to their discretion. Thus, the bureaucratization of religious marriage did not only make religious law more rigid than before, it also constituted a radical departure from the rabbinic principle of not inquiring into a person’s pedigree. Even more, by establishing the principle of *mamzerut* in the Genetic Information Law, the Knesset followed

the Rabbinate's understanding of kinship and institutionalized *mamzerut* as a relevant category for the state.

The instruction to refuse fatherhood tests in risky cases, in turn, translates the lenient rabbinic approach that prefers not to know the concrete circumstances of a child's conception into the bureaucratic reality of the modern state. It infuses ambiguity into the policy of population monitoring through registers and licenses that make clearly identifiable persons. Michael Lambek (2013, 253–255) has argued that modern states fix identities and demand precision and exclusivity. And he has contrasted this with the working of kinship, where the position one holds is always relative and contingent to the context, and where persons are constituted by multiple relations and identities. With the Genetic Information Law, the Israeli state categorizes and registers, and thereby brings order into the dynamic and multiple kinship relations, not by precision and clarity but rather by re-creating a space for ambiguity. As Zafran (2011) has noted, the merging of halakhic and legal parenthood comes with the price of leaving fathers without a legal status and children without the protection of having two parents. Indeed, because *mamzerut* was established as the decisive criteria, the law leaves little room for other considerations as to whether a DNA test may be in the child's best interest.

3.4 THE TEDIOUS JOURNEY OF A DNA TEST

In the case of gay couples having children through transnational surrogacy arrangements abroad, *mamzerut* was not a concern. In none of the cases that I have heard of was the surrogate mother Jewish. And even though in some scattered cases the egg donor was Jewish, the donors' anonymity and the bureaucratic practice, in principle, of not ascribing motherhood to the provider of the egg, rendered her irrelevant for determining the children's legal and religious status. Thus, the children born to gay men through surrogacy abroad were not considered to be Jewish and could not be *mamzerim*. The procedures nevertheless followed the Genetic Information Law and adhered to the respective legal protocols. Additional bureaucratic procedures accounted for the specific situation of transnational surrogacy and were put in place to distinguish surrogacy from child trafficking. As an employee at the Israeli consulate in Mumbai had explained to me, these bureaucratic procedures constantly evolved, as the rapidly changing surrogacy market confronted the involved authorities with ever new situations, problems, and challenges.

If everything worked out smoothly, the process was as follows (see also Lustenberger 2017). While still in Israel, and almost from the very beginning of the surrogacy procedure, the couple hired a lawyer specializing in surrogacy arrangements. Once a heartbeat confirmed that the surrogate mother was pregnant, the lawyer approached the local family court and submitted a request for the authorization of the parenthood test. The judge who was in charge of the file then approached the local office of the state attorney in order to obtain the required consent. With the judge's authorization, the spouse whose semen was used for the successful fertilization and who was designated as the intended father in the surrogacy contract then went to the attested laboratory and gave a blood sample. After this, the bureaucratic procedure continued in Mumbai.

After the delivery, a local lawyer arranged an interview of the surrogate mother at the Israeli consulate. In this meeting, she confirmed that she was a surrogate mother of her own free will, that she had received all the payments, and that she forwent any claims on the child. According to the consulate worker, no woman had ever refused to give up her position as a mother. While I am certain that most surrogate mothers have no desire to keep the child, it is important to note that, contrary to the assertion at the consulate, surrogate mothers received a major part of the payment only when the bureaucratic procedures were finalized. After the interview—often on the same day—the consulate official received the couple to take the baby's saliva sample, which was then shipped via FedEx to the ascribed laboratory in Israel. There, the saliva sample was compared to the prospective father's blood sample in order to calculate the likelihood of a genetic relationship between father and child. Once the man's fatherhood was established, the laboratory sent a report to the judge who had ordered the DNA test. The judge then wrote a parenthood order and informed the couple's lawyer as well as the Ministry of Interior, which registered the child as an Israeli citizen. From there, the information was passed to the Ministry of Foreign Affairs, which in turn instructed the consul to issue the child's passport.

Understanding the long chain of bureaucratic procedures involved in transnational surrogacy puts in another light the 225 requests to register children born through surrogacy abroad, which the public authorities received in 2012 alone. Indeed, it is fair to say that at any time of the year, a number of Israeli officials were busy working on one or another form, document, correspondence, or authorization related to the formation of same-sex parenthood through surrogacy abroad. The documents, saliva samples, and authorizations necessary for the parenthood tests passed through many hands and offices, each of them working according to their

own logic and procedures. Hence, obstacles could take many shapes, and gridlocks were bound to occur. Each authority or state worker could either push the prospective parents' case forward or put obstacles in their way. As I demonstrate in this section, this reminded my interlocutors of their position as "second-class citizens," as some of them argued, and created a feeling of vulnerability, but also gave room for intervention. Accordingly, in these moments, my interlocutors' strength became visible, as they assumed and asserted citizenship.

I first learned about the obstacles potentially triggered by bureaucratic procedures when I met Gadi and Oded in March 2011, a few weeks before they were supposed to fly to Mumbai for the birth of their twin boys. At that time, they had not yet received the family court's permission for a parenthood test, and they were distressed. The couple had submitted a request for permission a long time ago, only a few weeks after they had learned that their surrogate mother was pregnant. But then the process faltered. In order to issue the permission, the judge additionally needed the consent of a state attorney, and state attorneys were on a month-long strike. When the state attorney finally sent its approval to the court, the judge in charge of their file had gone on sabbatical leave. Her substitute decided to start the whole process all over again and requested a new approval from the state attorney. This was a month before the twins were supposed to be born, and it is understandable that Oded and Gadi became nervous. What would happen if the twins were born before they received the authorization? Would Gadi have to fly back and forth in order to deposit a blood sample at the authorized Israeli laboratory and thereby further strain their already tight budget? And how long would it take until they finally could bring the children to Israel?

Fortunately, Oded and Gadi received their permission on time. Yet, in Mumbai, I learned that even after the birth of their children, my research participants continued to struggle with bureaucracy, and I realized how nerve-racking this was. In her research about international surrogacy, Deomampo (2013b, 529) has already noted that intended parents in Mumbai "found themselves in a liminal state of stillness and anticipation, as they awaited the travel documents that would allow them to return home." Their stays were marked by relative immobility, and they described waiting, liminality, and disruption to their normal, everyday lives (*ibid.*). I often sat with my interlocutors, and together we tried to estimate on what date they could book their return flight. But waiting for the passports was also a time marked by hectic activity.

In the weeks after their children's birth, my research participants had to gather the documents necessary to receive the exit permit from the Foreigners Regional Registration Office (FRRO). Besides the surrogacy contract and the surrogate mother's renunciation of her parenthood rights, they needed a confirmation letter from the Israeli consulate, the birth certificate, passport pictures of the child, confirmation letters from the physicians in charge of the medical procedures, flight tickets for the next 48 hours, as well as confirmation from the hospital and the hotel that they had paid all their bills. In addition, they received constant updates from their lawyer in Israel. From the agency's instructions and the experience of other couples, my research participants knew that from the moment of birth it would take three to four weeks until they would receive their children's passports. But holidays and overloaded judges and officials who set different priorities constantly introduced uncertainty into their plans and threatened to delay their return.

On Monday morning after my arrival in Mumbai, I went down to the dining room prepared to take up my role as a researcher. It was not difficult to locate the Israeli couples: they were the ones with the babies. I sat down next to four men whom I had not previously met, and introduced myself. Once they learned that I was a researcher rather than an expecting mother, they lost their interest in me and started to talk about flights. They had already received their children's passports and were about to fly back to Israel. Another gay couple entered the hall and sat down at the table next to me. When I learned that their baby boy was already three weeks old, I remarked that they were probably also going home soon. As I described elsewhere (Lustenberger 2017), I had apparently touched upon a sore topic: "It all depends on Passover," Assaf exclaimed. In the meanwhile, Sigal sat down with me, and Assaf turned toward her in order to vent his spleen on the Israeli bureaucracy and the judge who was responsible for their DNA test. Apparently, the laboratory had already sent the test results to the court several days ago, but the judge had still not opened the envelope. It was Monday and on Wednesday the US president at the time, Barak Obama, was supposed to visit Jerusalem, and Assaf feared that no one would have the time to process their file. Furthermore, Passover was approaching and the public authorities in Israel were about to begin a week-long holiday on Thursday afternoon. The two men hoped to be home for Passover, and they feared that with the authorities' holidays they would have to prolong their stay for another couple of weeks.

Assaf was angry. “How much time would it take the judge to look at the file?” he asked rhetorically. “Ten minutes? If he drinks a coffee, 20 minutes? How many files does he have? Maybe four per week? So why can’t he dedicate one hour per week to those citizens in India? We are citizens. We are miles away from Israel, but the state does not care about us.” Talking himself into a rage, Assaf suggested that they could instruct their lawyer to approach the media and demand from the ministry to bring all of them home before Passover. He personally knew some journalists and was optimistic that they would be happy to take up their case. Others who had joined the conversation wondered whether their lawyer was really committed enough to do the utmost to push their files forward.

During my research sojourn, I recorded many moments that reminded me of Assaf’s early outburst—moments in which supposedly routine bureaucratic encounters turned into a hassle that caused uncertainty, fear, and anger (see also Lustenberger 2017). Udi and Yaron, for example, took their five-day-old baby girl all the way to the embassy, a journey that could easily take two hours, depending on the traffic, just to learn that their surrogate mother had not turned up. They tried to convince the consulate worker to take the baby’s saliva sample nevertheless, but she insisted upon adhering to the set order of the protocol and refused to proceed before interviewing the surrogate. Hence, they returned to the hotel empty-handed and feeling that they had just wasted a whole day traveling through heavy traffic with a newborn and waiting at the consulate. The flight of another couple was delayed for several days because the surrogate mother’s brother who had co-signed the contract had to identify himself at the consulate before their daughter could be registered as a citizen. Since not all Indians have the requested identity card and since it can take weeks to obtain one, the Israeli couple had no idea when he would be able to do this and how it would affect their stay.

To speed up procedures and to handle mishaps, my interlocutors relied on a whole set of agents and brokers both in Israel and in India. I had to go to Mumbai to understand how vast this network actually was, and also there, I managed to acquire only a rather superficial picture. From the agency’s website, I had gotten the impression that the agency worked with one particular fertility clinic in Mumbai to match their clients with surrogate mothers and to manage the whole surrogacy procedure. In Mumbai, I understood that the fertility clinic where IVF took place was not responsible for the surrogate mothers. They were recruited and contracted by a local agent whom most of my research participants only knew by name.

This agent, in turn, was not always in direct contact with the surrogate mothers. Instead, she relied on further agents who accompanied the women to the medical appointments and requested their own fees for their services.³ No wonder that Udi's and Yaron's surrogate mother missed her interview at the consulate! The information about the appointment at the embassy had to pass from the lawyer to the agent and from there to the next agent, until it finally reached the surrogate mother.

Another man was responsible for the birth certificates. From my research participants and the surrogacy agency, I got the impression that he was employed by the hospital, as he appeared to have a small office there. But when I met him one day personally in the lobby of the hospital, he clarified that he offered his service to several clinics and agencies. Usually, issuing birth certificates in India takes months, he explained to me; he ensured that surrogacy costumers received them within a couple of weeks. To do so, he shared the 6000 rupees, which the clients paid him in cash, with the local public servants who register the children. "Someone always makes spelling mistakes, either at the hospital or in the state's office, and thereby causes delays." Therefore, he sits together with the registrars and makes sure that there are no delays, and that they spell the names on the birth certificates in accordance with the passports.

Most important for my research participants was Raj, their driver in Mumbai. He had worked for Israeli surrogacy clients from the very beginning of the agency's activities in Mumbai. Over the years, he was able to not only expand his business and hire two men who worked for him, but he had also acquired extensive knowledge about the bureaucratic processes and the various actors involved. Indeed, with the Israeli agency far away, he was much more than a driver—he was in regular contact with the local agents; passed documents and information between doctors, agents, and the commissioning parents; and helped the clients to collect confirmation letters for the FRRO. In short, he was the person who guided them through the Indian bureaucratic jungle.

These brokers' and agents' social networks and knowledge about the functioning of Indian bureaucracy, together with the clients' financial capital, ensured that the mills of bureaucracy turned faster for surrogacy clients than for locals. Thus, it is fair to say that in entering this particular surrogacy arrangement in India, my interlocutors had made an agentic choice to minimize their scope of agency and to place control in the hands of a network of agents, who, in turn, promised a relatively quick and affordable procedure. At the same time, however, their reliance on

intermediaries could not reduce their sense of vulnerability. Rather, they often felt that in addition to their dependency on state officials and arbitrary guidelines, they were also at the mercy of go-betweens who could make mistakes and whom they did not completely trust. As the concrete responsibilities of the intermediary agents and the relationships among them remained largely unintelligible, they hardly ever knew who ultimately received the fees they had paid for one or another service and whether the concrete amounts were justified.

Their deep sense of vulnerability culminated when, in the end of March, the rumor spread that from April onward, foreigners who wanted to leave India with children born through surrogacy would have to obtain additional permission from the FRRO headquarter in New Delhi. During the last week of March and the first two weeks of April, updates pertaining to the New Delhi rumor were a constant topic at breakfasts and dinners. For two weeks, my interlocutors had no affirmed information about the source of the rumor, whom it would affect, and what the couples would have to do in order to return to Israel. Thus, they asked themselves the following questions. Was this an invention of some local officers who were seeking ways to make additional money? Would the couples have to fly to New Delhi themselves and would they have to take their newborn babies with them? How long would they have to stay in the capital and how much would this additional procedure cost? The information they received changed from day to day. At one point, we heard that the procedure would prolong the couples' stays for a whole month. Then, again, we received the information that Raj, the agency's driver, was working on a solution. Apparently, he suggested that for an additional 40,000 rupees, an agent would fly the documents to New Delhi and bring them back within a few days.

In all my conversations with him, Raj insisted that he only had the benefit of his clients in mind. But with the rumors about his proposition and not knowing what was happening, my research participants started to mistrust him. Now they wondered where Raj was getting all the information from, and whether he had secretly conspired with other agents and officials to take advantage of their vulnerability and make some extra money for himself. And when he proudly presented his new safari jeep, they did not think of it as the fruit of long and arduous labor, but were ultimately convinced of his greediness. As Gupta (2012, 137) has already observed, the image of intermediary agents easily sways between a legitimate facilitator and a part of a corrupt system. The events surrounding the New Delhi

rumors impressively prove his point. Within only three weeks, Raj ceased being their hero and buddy and became a suspicious player in the system; yet, he had not done anything differently than before. He used his knowledge and contacts to smooth the way for his clients, while at the same time increasing his status and profit. No wonder that he felt hurt by his dramatic loss of esteem.

Initially, the couples hoped to receive clearer information from the Israeli agency. But soon they realized that it, too, did not know what was going on. This completely unsettled their understanding of the surrogacy arrangement they had entered. They had received the impression that their Israeli agency was in full control of the process and that the different agents and brokers reported directly to the agency. The Israeli agency had itself contributed to this image, for example, in the preparation meeting when they presented Raj as “our man in Mumbai.” The New Delhi rumors unveiled that their Israeli agency was just a link in a complicated network rather than in a clear chain. This network had grown out of their control, such that the agency itself heavily depended on others. Thus, my research participants felt increasingly abandoned, not only by the state, which had put them in this situation in the first place, but also by those who had offered to help. One evening in the dining room, after she had unsuccessfully tried to obtain some information through the agency, Sigal put this feeling in a nutshell when she exclaimed: “We only have each other!”

In mid-April, the first couples managed to obtain their exit visas and the situation returned to normal. As the new procedure was established, the requirement for an additional authorization by the head office in New Delhi prolonged my interlocutors’ stay for a couple of days but not a whole month as they had feared. But now that they were aware of their vulnerability and the arrangement’s unpredictability, even a delay of one day had the power to once again arouse anxiety and desperation. I realized this best when I accompanied Udi to the FRRO. He and Yaron had submitted the documents a couple of days ago, and hoped that they could take the following day’s morning flight.

We arrived at the FRRO early in the morning, even before the office opened for the public. It became a long day of waiting. The clerk who was responsible for their case approached us soon after she arrived in the office and advised Udi to call the FRRO in New Delhi from time to time to check how they were progressing. Yet, despite all his attempts, Udi was unable to establish a phone call. Instead, he exchanged frequent messages with his Israeli agent who, we learned, had a contact there. At around

3 pm we were told by this agent that the FRRO in New Delhi had a server problem and could therefore not send the permission to Mumbai. The longer we waited, the more eagerly Udi wanted to fly back to Israel. The cash register closed at 5 pm, and after that it would not be possible anymore for the employees in Mumbai to issue the exit permit. The last 90 minutes we sat on needles. Every minute that passed was another minute without a permit—and there was not much time left. At 4.40 pm we received the message from the agent that the permit had been given. Udi ran to the clerk and informed her. Ten minutes later, however, she told us that she had still not received anything; the server in New Delhi was still causing problems. Now Udi lost his patience and approached the office manager. From my position, I could only see but not hear their angry exchange. When Udi left the office, he was shaking from anger and despair. Udi had hoped that he would be able to make the payment in advance, so that he could get the exit permit, nevertheless. Yet, the office manager declined, and we returned home empty-handed. On the way back, Udi talked with his travel agent and instructed her to find a possibility for them to leave India as soon as possible. “I just want to get out of here,” he repeated several times. “Even if it includes a stay in Frankfurt or Paris. I don’t mind making an extra stop, I just want to leave India.”

3.5 ASSUMING CITIZENSHIP IN MOMENTS OF VULNERABILITY

Because of the hardship of reproductive travel, Marcia Inhorn and Pasquale Patrizio (2009) have vehemently argued against the expression “reproductive tourism.” Instead, they suggested thinking about “reproductive exile,” which may be closer to their participants’ subjective experience, as they are often forced to go abroad and are confronted with “challenging, time-consuming, frustrating, impoverishing, frightening, and even life-threatening” procedures (ibid. 906). The expression “reproductive exile” emphasizes hardship over relaxation and excitement, and indicates that reproductive travel may not be completely voluntary. Giulia Zanini (2011) has found that Italian women who traveled to other European countries for fertility treatments felt abandoned and alienated by the state, whose laws forced them to go abroad. For Israeli gay men and their relatives, the sheer fact that they had to leave Israel in order to become parents, as well as the bureaucratic struggles in Mumbai, inspired similar feelings.”

As Michael Herzfeld (1993, 3) has argued, “[b]ureaucracy is one of those phenomena people only notice when it appears to violate its own alleged ideals, usually those concerning a person’s place in the social scheme of things. When my interlocutors felt that Israeli state officials did not treat their files with priority, when they suspected that a judge deliberately put obstacles in their ways, and when they felt that the locals took advantage of their vulnerability, they reflected upon their own position as gay men in Israel and in the world. They were well aware that it was their sexual orientation and same-sex relationship that brought them into this situation. Had they been in a heterosexual relationship, they could have contracted a surrogate mother in Israel. Indeed, in a societal atmosphere in which the suffering of infertile individuals emerges as an acute object of state intervention, and access to subsidized reproductive technologies is viewed as an extension of a human right to parenthood, their exclusion from surrogacy in Israel amplifies their sense of being second-class citizens. At the same time, however, these moments of vulnerability forcefully brought into light my interlocutors’ capacity to mobilize financial, social, and cultural capital to speed up the bureaucratic procedures. I turn now to their agency to demonstrate how my interlocutors assumed citizenship and positioned themselves in society, maybe not at the very center but also not at its margins or beyond.

Most of my interlocutors had followed the agency’s recommendation for a lawyer who himself was a gay man and has a child through surrogacy. They did not particularly like him, but they thought that he was the best person to do the job, since he knew the procedure and had the necessary contacts to intervene. He closely followed the long journey of their DNA tests and kept them updated. Accordingly, my friends could tell me at any moment in what office the fatherhood authorization was, and how long it took a gamete, a document, or an authorization to travel from one institution to another. Avner, who wrote an Internet blog about his experiences in Mumbai, informed his readers that Shira’s saliva sample was in the FedEx’s distribution hub for three days and arrived at the laboratory the day of the Passover Seder, just before it closed down for the week-long holiday. He further knew that the test results arrived at the judge’s desk nine days later, and that it stayed there untouched for five days.

Since my research participants were familiar with Israeli bureaucracy, they had clear views about the approximate time things should take. When

they had the impression that the mills of bureaucracy were not working fast enough, they instructed the lawyer to apply more pressure, or tried to influence the public authorities through other channels. One man, for example, spent a whole day making phone calls to the court trying to talk directly to the judge and explaining to the secretary how urgently they needed the confirmation and passports. Udi and Yaron were better off—one of their closest friends had a friend who worked for the judge in charge of their file. This friend promised to push the file forward as soon as it arrived in his office. Ben and Amit also mobilized their personal contacts. Their baby boy was born prematurely, and because of medical complications he had to stay at the neonatal intensive care unit (NICU) for several weeks. To prevent a bureaucratic delay, they submitted a request for the consul to take the saliva sample in the hospital. However, they did not rely solely on the consul's willingness to approve this request—the couple also posted a call in one of their Facebook groups asking for contacts to the Ministry of Foreign Affairs. Through this, Ben and Amit gained backing within the ministry for their request. When my friends became increasingly exasperated with the lack of information with regard to the FRRO's new policy, one of Sigal's students got them into contact with the Israeli ambassador in Mumbai, and they tried to clarify matters through him. And when Udi and I spent the whole day at the FRRO, he exchanged messages with an employee at the Israeli consulate. I cannot tell to what extent these contacts really sped up the bureaucracy, but I was deeply impressed how they all mobilized their professional and personal networks to assume agency and to overcome a feeling of powerlessness. And as the following situation that occurred in the spring of 2010 shows, they had public sympathy on their side.

In May 2010, the fate of twins born to an Indian surrogate mother hit the headlines. Although the turn of Israeli gay couples to surrogacy was no longer a completely new phenomenon at that time, the Jerusalem Family Court refused to allow Dan Goldberg, whose sperm had been used for fertilization, to perform the requested parenthood test (Glickman 2010a; Zarchin 2010). As a consequence of this refusal, the children and their fathers were trapped in the same hotel in Mumbai in which I conducted my fieldwork three years later. Judge Marcus, whom the journalists quickly identified as Orthodox, argued in his official decision that he did not have the authority to order a DNA test, because the children in question were neither in Israel nor was their affinity to Israel proven.⁴ He further claimed that having two fathers was against the children's best interest, and that

the state had to examine first whether one of the applicants was a serial killer or a pedophile. The couple appealed to the district court, which decided six weeks after the original verdict that the family court had the authority to permit the DNA test and handed the case back to Judge Marcus. From that moment on, the national media followed the case on an almost daily basis.

I do not know how the story reached the media in the first place. But if it was not through the initiative of the couple and their lawyer, they knew perfectly well how to use this public platform to make their case. They not only de-emphasized their same-sex relationship by putting the spotlight on Goldberg and the twins, they also provided photos, explanations, and emotional statements of supporters and family members. In their narrative, the twins' best interest was not to grow up with a mother and a father, but to "come home to Israel" where they belonged (Medzini 2010). Hence, the media portrayed, without exception, the story of a responsible father and good citizen who fought against a heartless and irresponsible bureaucratic system. This narrative captured the heart of the Israeli public, because it placed the struggle in the more general context of the right to parenthood. They, too, successfully adopted the publicly entrenched notion that equates childlessness with deep suffering and turned reproductive technologies into a fundamental issue of human dignity and citizenship, as described in Chap. 2. Accordingly, on 9 May 2010, *Haaretz* quoted Goldberg arguing:

I am an Israeli citizen. I served in a combat unit during both Intifadas. I still do my reserve duties and have volunteered for many years in the police. But when I want to fulfill my parenthood, the state sends me away. (Zarchin 2010)

A day later, *Ynet* reported a rather small demonstration of gay rights activists in front of the Prime Minister's Office, quoting a woman who claimed: "They even gave Yigal Amir [the assassin of Prime Minister Yitzhak Rabin] the right to have children. This basic right applies to us, too" (Glickman 2010b).

This narrative was so successful in creating public pressure that even Israel's prime minister, Benjamin Netanyahu, felt compelled to address the issue. In a public statement, he informed the Knesset that he had instructed the minister of interior to treat the matter as a priority and to bring the children to Israel as soon as possible (Lis 2010). In the end, the situation

was resolved when Judge Marcus reversed his decision and authorized the DNA test. Three months after their birth, the twins landed in Israel.

I have demonstrated in this section that when my research participants waited for the mills of bureaucracy to turn and when things were not moving along, time passed very slowly for them. Having no idea as to how and when their case would be resolved, it is easily comprehensible how desperate and depressed Goldberg and his partner must have felt. But while I do not wish to play down the vulnerability and real pain the judge's homophobic attitude caused, it is necessary to look at the broader picture. As Deomampo (2013b) has shown, the disruptions and moments of stillness experienced by surrogacy customers have to be compared to the controlled and often constrained mobility and disruptions that surrogate mothers and their families experience throughout the months of pregnancy. Even those agencies that do not require their surrogate mothers to move into homes near the clinic restrict the contracted women's movements. They forbid them to engage in paid work, dictate the schedules for the medical check-ups, and at times force them to move to the hospital in order to monitor potential health issues (*ibid.*). One woman I met in Mumbai even moved with her husband and son away from her extended family's neighborhood and cut off any contact with them, because they did not want anyone to know about her surrogacy pregnancy. Scholars have further shown that bureaucratic gridlocks in India could last for years and that subaltern people are vulnerable to police violence and bureaucratic arbitrariness that frequently deprive them of the goods they need to survive (Eckert 2006; Gupta 2012).

In this perspective, Goldberg and his partner were in a very comfortable situation. They lacked neither material comfort nor medical care to endure their involuntarily prolonged stay. Of course, staying three months in a good hotel in Mumbai also incurs expenditure. Nonetheless, at the childbirth ceremony, which the couple celebrated with several hundred guests at the event hall of a four-star hotel near Jerusalem (Salikovitch 2010), it became clear that they had the means and support to bear these costs. And they had the knowledge and network to mobilize and channel public opinion to the extent that even forced the prime minister to react. *Ynet*, in my opinion, rightly concluded its coverage of the case with a statement by Goldberg's sister who said: "Now the public—or rather the government—is aware of our power" (*ibid.*).

Goldberg and his partner, as well as my own research participants, approached the bureaucratic struggles from their position as Jewish Israeli

citizens. It is therefore no coincidence that Goldberg emphasized his service as a combat soldier during the Intifadas, and that the protestor referred to Yigal Amir as the epitome of bad citizenship. Berkovitch (1997, 610) has compellingly argued that in Israel, military service “signifies ‘true’ citizenship in the fullest sense, that is, citizenship as defined by membership in the ‘collective’ or ‘nation,’ as opposed to purely formal membership in the ‘state.’” Active service during the Intifadas is thereby probably among the strongest claims of citizenship to be made. Yigal Amir forfeited his full status as a citizen through assassinating Prime Minister Yitzhak Rabin. Yet, he still figured as a member of the same collective, even representing the feelings of a significant part of the population that opposed the Oslo agreements.

A comparison between Goldberg and the situation of Palestinian Arabs would not have worked for the protestor, because the latter do not count as members of the national collective. Palestinians who live in the Occupied Territories and East Jerusalem have no status as citizens at all, but are nevertheless part of the Israeli administration through one of the many differently colored identity cards that fragment the Palestinian population into different categories with different mobility restrictions (Tawil-Souri 2011a). However, checkpoints, marriage restrictions, and bureaucratic arbitrariness frequently also disrupt the families of those Palestinians who hold an Israeli passport (Conte 2005; Tawil-Souri 2011b). While Goldberg managed to mobilize great sympathy and public pressure for his case, the vast majority of Jewish Israelis neither sees nor bothers about these daily disruptions to which Palestinians are subject. Indeed, rather than being viewed as cases of discrimination, keeping Israeli families apart from their Palestinian neighbors is phrased in a discursive vocabulary of security measures that protect Jewish Israelis both physically and demographically (Conte 2005, 141–148).

Comparing the fate of Dan Goldberg and his twins with the constrained rights of Palestinian Arabs therefore does not work for Israeli same-sex couples when they claim family rights. Yet, I would argue that this comparison is key to appraise the position that gay men like Goldberg actually have in Israel. These fathers do not appear as a threat or strangers (Phelan 2001), but rather as citizens who deserve rights, particularly when they want to take part in the commonly appreciated endeavor of having children. Accordingly, it is fair to say that when my interlocutors went abroad in order to circumvent their exclusion from the Israeli surrogacy law, and when they smoothed their path through the maze of bureaucracy, they not

only brought into being new Israeli citizens, but, through their interventions and mobilization of social networks and public sympathy, they actively “assumed citizenship” (Eckert 2006, 68) and thereby entrenched it.

3.6 CONCLUSION

As the case of Dan Goldberg and his twins impressively shows, five years after Hibner warned the Knesset of the “social revolution” that same-sex couples’ access to surrogacy would constitute, gay fatherhood had already become socially acceptable. This is particularly fascinating since, as I have shown here, this development did not occur beyond the gaze and hands of the state, but through the very offices and officers of the state itself. Transnational surrogacy appears here as a way to bypass national law, not only—and maybe not primarily—for gay men, but also for the state itself.

I want to conclude this chapter by arguing that the paradoxical application of rabbinic kinship principles to children who are not Jewish according to the Rabbinate is the result of the hierarchical structure of Israeli citizenship and a primordial understanding of Jewishness (Handelman 1994). Israeli family law upholds the segregation of Israel’s citizenry by means of the principle of religious marriage (Fogiel-Bijaoui 2003; Yuval-Davis 1980), but also through the religious matching clauses in the Adoption of Children Law (1981), the Surrogacy Law (1996), and the Egg Donation Law (2010). Thus, rabbinic kinship principles that uphold Israel as a holy community, in which every Jew stands in a relationship of obligation and responsibility to the biblical ancestors and toward each other, have received an additional secularized meaning. Hence, the Knesset’s concern with *mamzerut* and more generally with ensuring the marriageability of Jews according to rabbinic law through civil laws constitutes modern politics.

Being Jewish endows Israeli citizenship in its fullest sense because it places Jews at the center of the state’s interest. When the Knesset enacted the Women’s Equal Rights Law in 1951, the politicians meant *Jewish* women (Berkovitch 1997). The proponents of the law presented gender equality as a reward for “the various ways, in which Jewish-Israeli women contributed to the new society’s development” (ibid. 611). In 1960, when the Knesset passed the country’s first adoption law, it had Jewish children in mind (Karayanni 2010). There, the members of parliament associated interreligious adoption with the fate of Jewish children, “who were converted to Christianity and adopted by Christian families [during the

Holocaust]" (ibid. 55–56). Similarly, the authors of the Surrogacy Law (1996) and the Egg Donation Law (2010) looked at these practices from the perspective of the Jewish population and disregarded the interests and kinship principles of the religious minorities. The same seems to be true for the Genetic Information Law. It defines detailed procedures for Jews but does not take into consideration religious statuses and kinship principles of the state's non-Jewish citizens. In 2008, when transnational surrogacy had not yet entered public discourse, the lawmakers did not think about the non-Jewish children born to surrogate mothers in India, the United States, and in other countries.

After the fatherhood tests had passed back and forth through the bureaucratic mills and my interlocutors finally received their children's passport, it felt for many of them like a second birth, and the new parents happily announced the passport to their families and friends via Facebook. One announcement read, for example, "Yesterday, Emma got her passport. Now she is an Israeli citizen." A photo of the baby with the passport and dozens of congratulations and expressions of admirations by friends and relatives followed. Apparently, these pictures were so common, that the Tel Aviv Municipal LGBT Community Center planned to make an exhibition. While I am not aware that such an exhibition has actually taken place, the pictures announce more than happiness about the approaching return. They declare and acknowledge the relationships between the men and the babies, but also the state as a framework for belonging. And they portray children of gay men as the future generation of Israel's citizenry.

At the same time, however, these newly born Israeli citizens blur the clear-cut segregation between Jews and non-Jews. As I will discuss in Chap. 5, although most gay men I encountered in my research converted their children to Judaism, these conversions are not recognized by the (Orthodox) Rabbinate. Yet in the population registry, they are registered as Jewish, and they grow up with Jewish holidays and with people who recognize them as Jewish. Therefore, they will still count as part of the Jewish collective. They stretch the boundary of the Jewish collective and therefore challenge the rabbinic definition of Jewishness. Thus, the very same bureaucratic procedures surrounding the DNA tests that entrench the Rabbinate's power to define Jewishness, also facilitate the formation of families that transgress exactly these definitions and boundaries.

NOTES

1. This number was announced by Doron Mamet at Conference of Tammuz International. New Paths. 10 February 2013. Personal Fieldnotes.
2. In 2016, the Tel Aviv Family Court ruled that the child of a gay couple can be registered even without a DNA test. The court maintained that the couple had proven the genetic relationship between the father who provided the sperm and the child by other evidence, such as legal and medical documents of the surrogacy process that took place in the United States. See: *plonit v. The General Attorney* (Hebrew), FC Tel Aviv 32901-05-14, 7 August 2016. https://www.nevo.co.il/psika_html/mishpaha/SM-14-05-32901-33.htm. Accessed 5 June 2020.
3. The agent-caretakers are often former surrogate mothers or egg donors themselves and thus share the same socioeconomic background (Deomampo 2013a, 168).
4. *D.G., N.R., B.Y. v. The Office of the District Attorney Jerusalem* (Hebrew), FC Jerusalem 28240/09, 19 March 2010. Found on: <https://www.psak-din.co.il/Court>.

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Struggles over Recognition

I am appealing to you to ask you to support my daughter, Shira. She is eight months old and her parents are average citizens, more or less like everyone. They work like everyone, pay taxes like everyone, served in the military like everyone. Maybe not like everyone.

But I wander off the topic. We are not the topic, Shira is. Shira is just a baby with needs like any baby, for Pampers, food, and most importantly warmth and love. Like everyone. We provide for her as well as we can. We get up at night if necessary, bathe her, and sing her songs like everyone. We also take her for walks with our two dogs. Maybe not like everyone.

But again I wander off the topic. We are not the topic, Shira is. Shira also receives some help from the state. Like everyone. She receives vaccinations at the *Tipat Halav*¹ like everyone, she will receive the obligatory education like everyone, and she will become a citizen with equal rights like everyone. Maybe not like everyone.

And this exactly is the topic. Your faction has decided to make use of the right to veto to withhold the tax credit points the state gives all couples with children—to the daughter of your neighbor, to your nephew, to his friend in the kindergarten, and also to the son of the kindergarten teacher. To everyone. Well, not to everyone. Shira does not receive this benefit because she has two fathers. I ask you to help us to annul the veto of your party, so that she and we also can receive the credit points, which everyone receives.

This is the open letter that my friend, Avner, whom I met in Mumbai together with his partner Yigal, published on Facebook in December 2013. He wrote it to the Knesset members of the religious Zionist party *HaBayit HaYehudi* (The Jewish Home), when the government blocked a

bill that would have given same-sex couples with children the same amount of tax credit points as heterosexual couples. Indeed, the medical, legal, and bureaucratic practices described in Chaps. 2 and 3 help same-sex couples to make children. Yet, officially, they are not sufficient for the formation of same-sex parenthood. Both in the forms that lesbians fill out in sperm banks and in the contracts that gay men signed when entering a transnational surrogacy arrangement in India, they appear as singles. The formal invisibility of the spouses who are not undergoing treatment or providing sperm for fertilization continues when the children are born. According to the 2006 “Guidelines Regulating the Treatment and Registration of Newborns in Israel,” the marriage status of the child’s parents determines the registration procedure. With the exclusion of same-sex couples from marriage in Israel, their children are registered with only one parent.

My interlocutors did not need the state’s recognition in order to feel that they were their children’s parents. Yet, it was important for them to achieve some sort of formalization of their status not only with regard to the allocation of state benefits but also so that no one could contest their parenthood. As Crawford (1987, 203) had already argued 30 years ago, “when the relationship between parents is unrecognized [...] then no matter how defined the system may be internally, ex-lovers, ex-husbands, and members of the couple’s family of origin can walk in and walk out at will, as though the family unit does not exist.” Accordingly, my interlocutors asked whether an unrecognized mother would be able to keep the children if her partner dies, or whether the spouse’s parents and siblings would claim custody. And what would be their position if they were to separate? They used legal instruments, such as wills and contracts, to establish security. But, most importantly, since 2005, they can apply for second-parent adoption, and since 2014, increasingly also for a judicial parenthood order to protect their family relationships.

Addressing these strategies, this chapter discusses how the political and legal struggles over the recognition of same-sex parenthood are tightly interlinked with the singularity of religious marriage and its national meaning in Israel. I show that while the Knesset steadfastly adheres to religious control of marriage and divorce, the narrow framework of Jewish marriage has opened unforeseen opportunities for the recognition of same-sex couples as well as the family units they form when they have children. The chapter’s main part discusses same-sex couples’ turn to second-parent adoption. I demonstrate that while the legal and bureaucratic procedures

and rationales have shifted toward a recognition of same-sex couples, the legal status of same-sex parenthood remains inconsistent and indeed fragmented, and thus creates insecurities that become manifest in situations of crisis. I argue that these legal inconsistencies and ambiguities are not a failure of the legal system. Rather, they are necessary to maintain a fragile balance between civil and Jewish law.

4.1 THE KNESSET'S TROUBLE WITH SAME-SEX MARRIAGE

While the Knesset has—since it lifted the ban on homosexual intercourse in 1989—enacted a number of laws protecting lesbians and gay men from discrimination, bills aimed at recognizing same-sex couples stood no chance. In 1994, Yael Dayan, the Knesset member from the Labor Party who we earlier saw infuriating her Orthodox colleagues with suggestive homoerotic quotes from the Bible, made a first attempt to put same-sex couples on equal footing with heterosexual couples (Yonai 1998, 556). Her bill concerned the 1970 State Service Law (Pension) and suggested that same-sex spouses of state workers should have the same pension rights as heterosexual couples. In a rather confusing plenum discussion on 27 July 1994, Dayan presented the bill to the Knesset (Knesset 1994, 215–230). In a short speech, she suggested that this was merely an adaptation of the amendment of the Equal Employment Opportunities Law. This amendment, passed in 1991, was the Knesset's first bill addressing lesbians and gay men and prohibits employment discrimination on the basis of sexual orientation and marital status. However, the protocol of 27 July 1994 indicates that not all Knesset members agreed with Dayan's interpretation. Tempers rose high, even before Dayan could start her explanations, when Moshe Gafni of the Ultra-Orthodox coalition partner, *Yehadut HaTorah* (Torah Judaism), called the whole topic a shame and disgrace. Shouts, interruptions, and disagreement about the appropriate procedure made an orderly discussion from the beginning impossible. Further still, after a break, the Knesset passed the bill, with 13 in favor and 12 against, to the Work and Welfare Committee. On 12 December 1995, the Committee sent the bill back to the Knesset for the first of three, detailed discussions necessary before the bill could be passed as law. While proponents of the bill highlighted democracy, liberty, and equality, its opponents saw in it the legitimization and encouragement of sodomy and the destruction of the Jewish family (Knesset 1995b, 53–87). Sociologist Yuval Yonai (1998, 557) has argued that the bill most likely would have

passed, had it come to a vote. Yet, *Shas* managed to postpone the vote when party leader Aryeh Deri turned it into a motion of no confidence. Under the threat of losing the government coalition, Prime Minister Shimon Peres subsequently ordered Dayan to withdraw the bill (*ibid.*).

Compared to the attempts to attain equality between same-sex couples and heterosexual couples in later years, Dayan's bill came relatively close to enactment—later bills did not even pass the initial reading. In 2004, Avshalom Vilan (*Meretz*) made an attempt to change the Family Court Law (1995). His bill aimed at providing same-sex couples with access to these courts in case they split up and quarreled over property or custody, and he therefore proposed to place same-sex couples under the legal definition of family (Knesset 2004, 47–50). In 2007, Yossi Beilin (*Meretz*) presented another bill, which he had drafted together with a number of Knesset members and a family rights organization (Knesset 2007, 3–12). This bill aimed at allowing heterosexual and same-sex couples to register their relationships with the Ministry of Justice. As Yossi Beilin (*Meretz*) explained to the Knesset, he would have preferred to introduce civil marriage once and for all. The bill, he argued, was a compromise. It would not question religious control of marriage, but nevertheless allow for the recognition of couples that fell outside the religious definition of marriage. He also argued that the bill would only codify the current judicial practice, as civil courts already recognized unmarried couples to a large degree. Both proposals were dashed against the politics of government coalitions involving religious parties.

A broader look at the fate of bills concerning marriage and divorce shows that Orthodox opposition to bills that would bestow same-sex couples with some sort of recognition is not based solely on opposition to homosexuality. Instead, it is embedded in a more general political struggle over the singularity of religious marriage. Indeed, between 1963 and 2009, representatives of parties with a secular agenda have introduced “nearly one hundred bills concerning the Rabbinical Court Jurisdiction (Marriage and Divorce) Law or the issue of civil marriage,” but “none reached the final state of legislation” (Lerner quoted in Sezgin 2013, 108). In the same years in which Vilan and Beilin submitted their bills, the Knesset was concerned with the much greater and publicly more visible challenge to rabbinic marriage posed by about 300,000 immigrants from the former Soviet Union (Fogiel-Bijaoui 2013; Kravel-Tovi 2017). They formed part of a migration wave of roughly 900,000 immigrants who had arrived in Israel in the 1990s. All of them received Israeli citizenship based

on the Law of Return (1950), which embraces descendants and their spouses of at least one Jewish grandparent, regardless of their halakhic status. However, being not Jewish according to the Rabbinat, and thereby classified as having no religion (*hasar dat*), 300,000 of these immigrants have no access to state-sponsored religious services, including marriage.

Between 2004 and 2010, the political disputes over marriage concerned first and foremost a bill that aimed at giving these immigrants access to marriage. As Fogiel-Bijaoui (2013) has demonstrated, Orthodox parties also blocked bills that aimed at institutionalizing a spousal covenant for heterosexual couples alone. On 22 March 2010, the Knesset enacted a reduced version of the original proposition: civil registration procedures are now only available to heterosexual couples when *both* spouses have no religious affiliation (ibid. 216). With this, *hasar dat* was institutionalized as another kind of religious affiliation, similar to the existing Jewish, Muslim, or Christian categories. Hence, the Spousal Covenant Law upholds the segregation of Israeli society into ethno-religious groups and the Rabbinat's authority over Judaism. From the Rabbinat's perspective, the law wards off the danger of intermarriages and blurred patriline.

When Orthodox parties and their coalition allies think that a bill subverts the Rabbinat's control of marriage and divorce, they usually point to "the Status Quo" as the guiding principle for the relationship between religion and state. Scholars date the origin of the Status Quo back to 1947. The term denotes an agreement between David Ben-Gurion and other leaders of the Jewish Agency, which governed Jewish affairs in Mandate Palestine, on the one side, and the non-Zionist Ultra-Orthodox party *Agudat Yisrael* on the other. In this agreement, the Orthodox establishment accepted the legitimacy of the Jewish state and its Zionist leadership. In turn, Ben-Gurion promised to maintain the "Jewish character" of the state as follows: (1) Shabbat would be the national day of rest; (2) Public institutions would abide by the dietary laws of *kashrut*; (3) Orthodox educational institutions would be recognized by the state; and (4) religious courts would maintain exclusive jurisdiction over marriage and divorce (Portugese 1998, 40–41).

Scholars have offered various explanations for Ben-Gurion's reasons to enter such an agreement with the Orthodox leaders in Palestine. According to Sapir (1999), gathering Ultra-Orthodox support for the idea of creating the State of Israel was important for the Jewish Agency in order to

guarantee that the Jewish leaders would speak with one voice to the UN. But while the Status Quo faced criticism from the beginning, it was a pragmatic arrangement, which, “in the context of the war and the uncertainty of Israel’s future, was not too intolerable for the secular camp” (Barak-Erez 2009; Greilsammer 2014, 137). Thus, Greilsammer (ibid. 136) pointed to Ben-Gurion’s own background as a secular-minded Bible scholar who strongly believed that the future state “should include and represent all its various Jewish identities.” Barak-Erez (2009, 2498) has similarly argued that during the founding years of the state, large segments of the secular public identified with some traits of Jewish religious culture and the idea of following the norm of religious marriage.

This mentioned list of concessions, as well as the insistence of Knesset members that the Status Quo be left untouched, suggests that this is an unshakable agreement that sets very clear boundaries. Yet, a closer look at the history of Israeli family law shows the opposite. Under British rule in Palestine (1918–1948), as in the directly preceding period when the region was part of the Ottoman Empire (1516–1917), religious minority groups, including the Jewish population, enjoyed judicial autonomy in family matters. Article 51 of the Palestine Order in Council, issued on 10 August 1922, defined a broad range of family-related topics to be dealt with by the courts of the religious communities: “Marriage or Divorce, Alimony, Maintenance, Guardianship, Legitimation And Adoption of Minors, Inhibition from Dealing with Property of Persons Who Are Legally Incompetent, Successions, Wills and Legacies, and the Administration of the Property of Absent Persons” (quoted in Hacker 2012, 62). Since the foundation of the Israeli state in 1948, however, the scope of religious law in family matters has been dramatically reduced. As legal scholar Daphna Hacker (2012, 62–63) has observed:

Matters relating to the property of legally incompetent persons and absentees from Israel have been excluded by law from rabbinical court jurisdiction. Civil courts have been granted juristic priority in matters of adoption and inheritance, with rabbinical court jurisdiction in these matters subject to the consent of all parties involved. Moreover, although the rabbinical courts retain sole authority to issue divorce decrees and to determine who is married and who is not, the civil courts have been granted parallel jurisdiction in matters related to divorce, such as child custody and property division.

Furthermore, the Supreme Court has the authority to overturn decisions of the religious courts, and in a handful of important precedents, it has obliged the religious courts to conform their decisions to the Civil Law (Zafran 2013, 590–593). In the twenty-first century, however, the Supreme Court has become more hesitant. It seldom interferes with rabbinical courts and has even enhanced their fields of authority (ibid. 598–621). Accordingly, the Status Quo does not provide clear guidelines. Rather, it is a dynamic principle that allows for development and change as well as a political instrument. Indeed, as Don-Yehiya indicated, “[i]n many disputes between religious and secular political groups, both sides claim to be defending the status quo and argue that the other side is trying to violate it” (1999, 89).

It is tempting to frame the political struggles over the definition of spouses and the recognition of same-sex couples in terms of a “war of culture” (Mautner 2011) between a conservative religious sector and a liberal secular sector. The harsh expressions and insults that the Knesset members fling at each other at times provide the impression of a war with hardened fronts. The portrayal of homosexuality as a deviation, shame, illness, perversion, or abomination on the one side, and the description of religious parliamentarians’ opinions as primitive, backward, medieval, and ignorant on the other side make clear that diverging concepts of morality and kinship clash. Yet, this clash alone cannot explain the Knesset’s inability to recognize same-sex couples. Rather, it constitutes part of the broader national politics. As Fogiel-Bijaoui (2003) has already observed, instead of complaining about the unbroken religious control of marriage and divorce, we need to ask critically how this is possible at all. After all, over the last two decades, the percentage of Jewish Israelis who have expressed a wish for a clearer separation between the state and religious institutions has ranged from 51% to 65% (Tressler 2009). How can it be then, that time after time, parties with secular agendas enter coalition agreements that guarantee Orthodox parties a veto in discussions on family laws? And why has there never been a broad movement for civil marriage?

Here is not the place to discuss Israel’s election system in detail. But it is telling that, with a few exceptions, at least one of the Orthodox parties has been part of each of the 34 governments established since the founding of the state. Jacqueline Portuguese (1998, 48) locates the reason at least partly in the Israeli election system. Its comparatively low threshold for parties to enter the Knesset has resulted in a proliferation and very unstable landscape of political parties (ibid.). The rivalries between *Likud*

and opposing parties—in earlier times the Labor Party, and later Tsippy Livni’s *Kadima* or Benny Gantz’s and Yair Lapid’s *Kachol Lavan*—have so far prevented the formation of a grand coalition. Thus, the large parties have to enter coalitions with Orthodox parties in order to form a government at all. But as Portugese (1998, 49) has rightly observed, the inclusion of religious parties in the government is the other side of these parties’ Zionist agenda that precludes coalitions with communist and Arab parties a priori. Accordingly, the voters’ commitment to preserving the Jewish collective and an overall preference for making concessions to the (Orthodox) Rabbinate rather than to the non-Jewish or non-Zionist population contribute significantly to the Rabbinate’s unshaken control of marriage and divorce. The appointment of Likud’s first openly gay minister, Amir Ohana, does not change this dynamic.

Beyond the structure of Israel’s political system, scholars have indicated that even without entering coalitions with the Orthodox, secular parties would probably refrain from such a radical change as the introduction of civil marriage. Although in recent decades, criticism of the Status Quo has certainly become more pronounced than during the founding years, there seems to be a shared understanding that unrestrained conflict over the position of Judaism in the state would greatly endanger stability and unity (Don-Yehiya 1999, 92). Accordingly, Lerner (2009, 446) found in her analysis of three constitutional proposals from between 2005 and 2006 that they all “refrained from reforming the existing religious arrangements in the three most disputed religious-secular controversies in Israel, namely the issues of personal law, observance of Sabbath, and the question of conversion or ‘who is a Jew?’” With regard to marriage and divorce, even the most liberal-oriented proposition by the Israel Democracy Institute (IDI) did not propose introducing civil marriage. Similar to Yossi Beilin’s bill submitted to the Knesset in 2007, the IDI constitutional draft proposed a Spousal Registry Law for those who could not or did not want to marry according to religious law (ibid. 450). But while these constitutional drafts aimed at consensus and continuity rather than at revolution, religious and secular politicians and activists could not reach an agreement and preferred to maintain the existing constitutional ambiguity.

4.2 THE INSTITUTION OF COMMON-KNOWLEDGE COUPLES AND OTHER CIRCUMVENTIONS

The Israeli concept of common-knowledge couples (*zugot yedu'im batsibur*) probably constitutes the most effective instrument to maintain constitutional ambiguity in the field of marriage and divorce. This legally established bypass has made it possible for couples that fall outside of the narrow framework of religious marriage to achieve a broad range of family rights. The legislator has already recognized in the Succession Law of 1965 that Israeli family law needs a solution for those couples that do not fit the rabbinic definition of marriage. The institution of *zugot yedu'im batsibur* is different from a sanctioned wedding, as it remains vaguely defined and does not automatically confer a legal status. The Succession Law defines publicly known couples as a man and a woman who live as a family in a shared household without being married to each other. Yet, it does not specify what exactly living as a family in a shared household must entail. Ultimately, whether a couple falls into the category of *zugot yedu'im batsibur* remains an object of political dispute and often depends on the discretion of courts and public authorities. Since its implementation in the 1960s, the Knesset has on several occasions affirmed its commitment to abstain from a clear definition of *zugot yedu'im batsibur*. This has not just prevented the attribution of a clear status to same-sex couples; it has also prevented their explicit exclusion.

In 1995, when same-sex unions were still a rather new topic in the Knesset, Hanan Porat of the Religious-Zionist party *Mafdal* proposed a bill to define *bnay zug* (spouses, literally: members of a couple) once and for all as “men and women who married according to the laws of the State of Israel” (Knesset 1995a, 63–68). With the help of quotes from the Bible, he argued that homosexuality was a deviation and that without clearly excluding it by law, the Knesset was legitimizing and even fostering this “distorted sexual orientation.” Minister of Justice David Libai of the Labor Party presented the government’s position. Shifting the focus away from homosexuality, Libai emphasized that the government rejected the bill because it would expunge the institution of *zugot yedu'im batsibur*. The minister explicitly compared it with the aforementioned attempt by Yael Dayan to expand the definition of *bnay zug* to include same-sex couples. In both cases, he argued, the result would be a unilateral change that threatens a broad national consensus. The Knesset withdrew the bill without debate by 36 to 23 votes.

It would appear that the Orthodox parties have only enough power to block bills aimed at explicitly recognizing same-sex couples, but not to shut the legislative doors completely. I therefore follow Halperin-Kaddari (2004, 245), who has argued that the institution of common-knowledge couples provides more than just a pragmatic solution for couples whose normativeness is contested. It is the necessary counterpart of rabbinic control of marriage and divorce, as it introduces flexibility into an otherwise rather restrictive system. As I demonstrate below, it is exactly this flexibility that made it possible for same-sex couples to access a wide range of family rights and even partial recognition. At the same time, the ambiguity of *zugot yedu'im batsibur* turns it into an acceptable and non-threatening complement to Orthodox control of marriage. It allows the Rabbinate to exclude halakhically prohibited couples from marriage, while refraining from political fights against such relationships. Such conflicts would probably provoke harsh reactions and strengthen those voices that principally question the primacy of Orthodox Judaism in Israel.

To appreciate the significance (and limitations) of the institution of *zugot yedu'im batsibur*, it is necessary to have a look at the legal struggles of same-sex couples in courts. Indeed, litigation in courts has been far more successful than the political initiatives in the Knesset. As legal scholars have shown, the British Mandatory period (1918–1948) has shaped the Israeli legal system in important ways. At that time, the law and local legal community underwent an intense process of anglicization. Jewish and Arab jurists were trained in law schools devoted to the study of English law, with the aim that they would assist the British in managing the local legal system (Mautner 2011, 36). As a consequence of British influence, the legal system is best associated with the common law system (Shachar 1995, 4), and civil courts have for many years applied English—and later also American, Canadian, and Australian—precedents in all areas of the law (ibid. 6; Mautner 2011, 37). Despite the constant shift from judge-made law to statutory law that took place in the twentieth century, “legislation in Israel usually leaves ample room to be stipulated in secondary legislation” (Shachar 1995, 8). This gives ministers and judges legislative power. And although university programs of law include training in Jewish law, they are largely shaped by the principles of liberal political theory (Mautner 2011, 38–39).

To demonstrate how courts have shaped Israeli family law, I turn now to a number of court decisions. On the basis of the guiding rationales, as they have been analyzed by legal scholars, I discuss how much flexibility

Israeli family law has allowed for the inclusion of same-sex couples in the definition of family. The Supreme Court's groundbreaking precedent goes back to 1994 and is remembered and taught in legal schools as *El-Al Israel Airlines v. Danilowitz* or simply as the "Danilowitz Case," named after the claimant.² Yonathan Danilowitz was a flight attendant who worked for El-Al Israel Airlines. He decided to turn to the regional labor court in 1988, when El-Al refused to give his partner the same work-related benefit (a free flight ticket annually) granted to married *and* unmarried heterosexual partners of employees. When Danilowitz first went to court, homosexual intercourse was still a criminal offense. But due to several delays, the regional labor court issued its decision after the Knesset had not only erased the sodomy law but also after it amended the Equal Employment Opportunities Law to prohibit employment discrimination on the basis of sexual orientation and marital status (Yonai 1998, 582). When the court accepted Danilowitz's claim, El-Al appealed to the National Labor Court, and after another decision in favor of Danilowitz, to the Supreme Court. There, the dispute was finally settled, with Danilowitz's victory in November 1994.

The public largely interpreted the decision as endorsing homosexuality and recognizing same-sex couples (Kama 2000, 144–145). Gay rights activists acclaimed the Supreme Court as an "ally in their struggle for equality" (Harel 2000, 464), and representatives of the Orthodox parties lamented this "black day" and the court's breach of the Status Quo (Herb 1994). A close reading of the decision demonstrates, however, that it is more ambiguous. Most important for further litigation was the lead decision written by Justice Aharon Barak, then the Supreme Court's deputy president. Barak's ratio decidendi is based primarily on the prohibition of discrimination in the Equal Employment Opportunities Law. As such, Barak "left open the question of whether same-sex partners can be considered as a matter of interpretation as spouses or reputed spouses" (Gross 2001, 395). He pointed to the similarity of the shared lives of heterosexual and same-sex couples, but at the same time he made a conscious effort "to detach his decision from a substantive normative commitment to the view that homosexuality is morally on a par with heterosexuality" (Harel 2000, 463). As Gross (2001, 396) has observed, Barak's decision granted legal recognition to same-sex partnerships and simultaneously withdrew it. The Danilowitz case became an important precedent that opened the door for further litigation. But because of its ambiguity, courts continued

to struggle over the definition of spouses and the family rights of same-sex couples.

In 1995, Adir Shteiner, whose deceased partner had been a military officer, requested that the Israel Defense Force (IDF) recognize him as a widower, both in respect to the attendance of memorial events and financial compensation (Gross 2001, 401–410; Walzer 2000, 136–140). When the army declined his request, Shteiner went to court. The military panel that discussed Shteiner's lawsuit ruled against him, arguing that he was not a "family member" for purposes of the Fallen Soldier's Families (Pensions and Rehabilitation) Law. At that time, Shteiner changed his strategy and separated his suit for material benefits from participation in memorial events. In 1996, the minister of defense, who had been a long-time friend of Shteiner's deceased partner, allowed him to participate in memorial events, not as a partner but "as if he was an heir" (Walzer 2000, 139). At the same time, Shteiner sued once more for material benefits, this time in the Tel Aviv District Court under the Israel Defense Force (Permanent Service, Benefits) Law. Here, he was successful. The court decided that the IDF had to recognize Shteiner as the deceased colonel's reputed spouse and grant him the financial benefits of widowers and widows. With the competing decisions, Shteiner and the IDF finally reached an out-of-court settlement that entitled him to most, but not all, of the monetary benefits to which IDF widowers were entitled.

As time passed, more and more court decisions and out-of-court settlements put same-sex couples on a functionally equal footing with heterosexual, publicly known couples. The Tel Aviv District Court's decision in the Shteiner case had an influence on future rulings, even though it never reached the status of a precedent. In 2001, Patrick Levy approached the Tel Aviv Labor Court and requested a survivor's pension, which was tied to his deceased partner who had died of AIDS (Hadar 2005, 22). Judge Meiri accepted Levy's petition and not only granted him the pension but, more importantly, also declared that the two had been reputed spouses (*bney zug yedu'im batsibur*) (ibid.). Three years later, the fate of a gay man whose partner had died without a will led to another important ruling. He had turned to the Nazareth District Court in order to be recognized as heir to the apartment where the two men had lived for many years. The apartment had formally belonged to his deceased partner, and there were no other family members left behind who could have claimed it for themselves. In a 2:1 decision, the court granted his request.

The judges reasoned that when the Knesset defined publicly known couples in the Succession Law (1965) as “a man and a woman who live as a family in a shared household without being married to each other,” the legislators did not have same-sex couples in mind. Instead, the paragraph was meant to create equality between married couples and those who were not able to get married under religious law. According to the judges, the underlying reason for the term *ish veisha* (a man and a woman) was therefore not the partners’ gender but the fact that they were not married. And they maintained that at the time of the law’s enactment in 1965, the Knesset members were simply not aware of the possibility that same-sex couples could form families. The judges therefore recognized that paragraph 55 did not express any opinion about same-sex couples. With reference to a number of precedents, including the Danilowitz and the Shtainer cases, they argued that the concept of publicly known couples now included same-sex couples. The court further held that even if the legislator initially directed the paragraph at heterosexual couples alone, such a definition would be discriminatory in light of the changing social norms and could no longer be upheld.

Over the last fifteen years, direct negotiations with public authorities and further court cases provided same-sex couples with a broad range of family rights. Today, the Israeli National Insurance Institute gives pensions to lesbian widows and gay widowers without requiring recourse to the courts; the Ministry of Interior grants residency rights for same-sex spouses of Israeli citizens as long as they do not fall under the exclusions defined in the Citizenship and Entry into Israel Law (Hadar 2005, 24); when gays and lesbians want to transfer all or partial ownership of an apartment to a same-sex partner, the partners count as family members and do not have to pay taxes; and as couples, gay men and lesbians enjoy a special mortgage rate when buying a first apartment (Hadar 2010a). A solution was also found in the case of the tax credit points for same-sex couples with children. While at the end of December 2013, quarrels over the bill caused my friend Avner to write the letter cited at the beginning of this chapter, the Israeli tax authorities declared that, according to current practice, same-sex couples already received the contested benefits (Azolai and Lahav 2013).

These achievements cannot veil, however, that lesbians and gay men remain vulnerable to the discretion of judges and to contestations about the nature of their relationships. As the lawyer and gay rights activist Ira Hadar emphasized in a lecture held on 11 February 2010 during the Rainbow Family Conference in Tel Aviv, the judges who interpreted the

Succession Law in favor of the widowed gay man were probably willing to accept his position because there were no other family members who contested his right to inherit the apartment (Hadar 2010b). She was not sure whether a similarly favorable ruling would have been possible in a situation where the claimant had to defend his position vis-à-vis siblings, parents, or children of his deceased partner. In an article on the legal situation of lesbian women, she has further demonstrated that the legal recognition of same-sex couples stands on shaky ground when partners separate and do not present themselves as a unit (Hadar 2005). There are a number of cases in which lesbians and gay men approached civil courts in order to settle disputes with former partners. The court decisions make clear that in these cases, there is no guaranteed status for same-sex couples:

- 1) Haifa Small Claims Court 1988: The court held that the separation of a gay couple with shared property should be adjudicated in the same manner as the separation of an unmarried heterosexual couple (Hadar 2005, 21). The judges acknowledged that the couple had managed a shared household and “a deep emotional, spiritual, sexual, and economic day-to-day relationship” (ibid.).
- 2) Haifa Family Court 1997: A woman requested the court to keep her partner away from their apartment, as she had become violent and was a threat to the woman and her children (ibid. 22). Referring to the Danilowitz case, the court granted her request and reasoned that the word spouse (*ben zug*) in the Law for Prevention of Violence in the Family included same-sex spouses (Gross 2001, 410).
- 3) Tel Aviv Family Court 1998: A man filed a complaint against his former partner and requested a share of the property and assets he had acquired during their relationship (Hadar 2005, 22). The court dismissed the request. The judges followed instead the former spouse who challenged the jurisdiction of the family court to hear the case, “arguing that same-sex partners are not included within the legal definitions of the terms partner and family” (ibid. 23).
- 4) Tel Aviv Family Court 2008: The court dismissed a man’s complaint against his former partner, whom he accused of psychological and physical abuse. The judge argued that male couples neither fall under the jurisdiction of family courts nor under the Law for Prevention of Violence in the Family, since they do not establish families (Lovitz 2008).

Putting these court decisions in a chronological order brings into clear view that even though same-sex couples in Israel have won a wide range of family rights in the last two decades, this is not a teleological development. Indeed, in order to be recognized, gay and lesbian couples not only have to convince the judges that same-sex couples have the potential to fall under the category of *bney zug yedu'im batsibur* but also that they specifically fulfill the necessary criteria: most importantly, a shared household, shared finances, and public recognition. In particular, the last point is not trivial for same-sex couples, as they may not always feel comfortable to be open about their relationship. In those cases where same-sex relationships were not publicly known, courts have come to different conclusions.

Hadar (2010a) elaborated upon this point in her lecture in relation to one of her legal victories. There the court recognized a man as his deceased partner's inheritor, even though they were both deep inside the closet. In the same year, *Ynet* reported on a rather peculiar case that had reached the Beersheva Family Court (Koriel 2010). A gay man had filed a complaint against his deceased partner's sister who was, according to a will, the only heir of her brother's property and assets. The claimant explained that during the deceased's lifetime, the two men had not been completely open about their relationship due to his position in academia. He argued, however, that as the surviving spouse, he also deserved part of the inheritance and that the sister was hiding a more recent will that made allowance for him. The judge refused the claimant's request in virtue of two lines of argument: Firstly, he contested the Nazareth District Court's reasoning and argued that the term *ish veisha* only refers to heterosexual couples. Secondly, he argued that the relationship between the two men was not romantic at all, even though they had lived together for 20 years. I am not in a position to assess the fine details of the relationship between these two men. Regardless of the circumstances, however, the case points to the insecure situation of same-sex couples. Social stigma and the reluctance to live openly in a same-sex relationship can have real legal and material consequences. Furthermore, I wonder whether the judge would have inquired about the "true nature" of the relationship if they had been heterosexual.

As long as they do not receive an unequivocal status, gay and lesbian couples will always face situations in which they are treated differently from heterosexual couples. As lawyer and political activist Michal Eden argued on 27 February 2012 at a presentation arranged by an organization of lesbian women, even though courts increasingly recognize same-sex couples as publicly known couples, their legal situation differs from

heterosexual unmarried couples, as they have to fight over and over again for their inclusion.

With the legal insecurities they face, same-sex couples have turned to a number of instruments to legally protect their relationships, including private contracts and wills. In addition, they have turned to alternative means in order to attach a degree of officiality to their relationships. One of them is the Domestic Union Card, first invented by the organization *Mishpacha Chadasha* (New Family) and today provided also by other institutions. The Domestic Union Card has the appearance of an official document, and as of 14 January 2019, *Mishpacha Chadasha* promoted it on their Hebrew website—somewhat misleadingly—as conferring the same rights as a marriage.³ Only visitors who read the website thoroughly from beginning to end and who are familiar with the legal situation can understand that Domestic Union Card is, in fact, a written declaration that the cardholder fulfills the legal criteria to be recognized as a common-knowledge couple.⁴ Accordingly, New Family has been accused of charging couples for something that, in fact, is not really necessary.

Israeli same-sex couples also get married in countries that allow same-sex weddings. Upon their return to Israel, they can register their marriage at the population registry and have their spouse's names entered on their identity cards. This possibility has existed since 2006 when, in an 8:1 decision, the High Court of Justice ordered the population registry to register such marriages (Gross 2006).⁵ Again, it was Justice Aharon Barak who wrote the lead argument, and, as in the Danilowitz case, he kept it ambivalent. Barak argued that the registration of same-sex marriage was merely an administrative act and would not imply the recognition of same-sex marriages in Israel. By decoupling the question of registration from that of recognition, he allowed for a de facto recognition of civil marriages without formally doing so. Like the Domestic Unions Card, the registration of same-sex couples as married manifests the authenticity of these relationships and provides them their recognition, but it does not provide them the same status as heterosexual couples.

At a panel on adoption that took place during the Rainbow Family Conference 2011 in Tel Aviv's Municipal LGBT Community Center, I learned not only how confusing the situation is once same-sex couples have children; I also understood the anger this situation at times generates. After an hour of heated discussion between community members, lawyers, and state representatives, a man in the audience presented his situation. He and his partner are fathers of twins born through surrogacy

in the United States. On the birth certificates, they are both registered as parents. The man addressed the present legal advisor of the Ministry of Justice and asked why the state did not recognize the birth certificates:

We are married. We got married in Toronto and we are registered in each other's identity card as spouses. You emphasized in your explanation the elementary difference between married and non-married couples. Several times you said that something applies to common-knowledge couples, but that it is different for married couples. We are married. Does this make a difference? Even National Insurance does not give me financial benefits as a single parent. They tell me that the children grow up with two parents. But the second parent is not recognized as a father. Where is the logic here? What do we have to do? What additional procedure do we have to undergo?

When the state representative answered that this is the law and that Israel only recognizes religious marriages, the gay man exclaimed confused: "But according to the National Insurance [Institute] I am married!" Contrary to the man's impression, the National Insurance's definition of a single parent does not depend on the marriage status. The information booklets accessible on the homepages of the Ministry of Social Affairs and Social Services as well as of the National Insurance Institute define single parents as follows: "men and women who are not married, who do not have a common-knowledge spouse, or who live separated from their spouses for a period of time (Ministry of Social Affairs and Social Services 2008; National Insurance Institute 2011)." Hence, the National Insurance Institute does not necessarily have to recognize same-sex marriages in order to treat same-sex couples like heterosexual couples. And yet, their marriage might have had an influence in that the registration of the marriage made the two men's relationship visible to the National Insurance Institute.

4.3 ACCESSING SECOND-PARENT ADOPTION AND PARENTHOOD ORDERS

As being recognized as common-knowledge couples, Domestic Union Cards, and marriage abroad do not suffice to formalize same-sex parenthood, lesbians and gay men have found the solution in second-parent adoption, to which they have had access since 2008. It probably does not come as a surprise that here, too, it was the Supreme Court that brought

about the change. The actors are also already familiar: Dr. Tal Yarus-Hakak—the woman who successfully challenged the examinations that unmarried women had to undergo in order to access sperm donation—submitted a court petition together with her partner, Avital Yarus-Hakak, and their friend Ira Hadar, whom we have met in the previous section. In Hadar's lecture, given at the Rainbow Family Conference 2010, it became clear how well thought-out the petition was and how realistic the women had been about their chances. In order to win the case, they played down its meaning for gay and lesbian rights and emphasized the children's welfare at stake. In the Adoption of Children Law (1981), it is written:

3. There is no adoption other than through a man and his wife (*ish veishto*) together, but the court has the power to authorize the adoption through an individual person:

- 1) if his spouse (*ben zug*) is the adoptee's parent;
- 2) if the adoptee's parents have died, and if the adopting parent is an unmarried relative.

In the court petition, Ira Hadar did not challenge the principle that only a man and his wife are eligible to adoption. She rather argued that this paragraph was not relevant for their case, as Tal and Avital Yarus-Hakak did not ask for joint adoption. They had three boys who were born through sperm donation, and each of them had one mother recognized. Accordingly, paragraph 3.1 would have been the fitting clause. But the women decided to make another detour. They feared that the court would not go as far as to actually define a lesbian couple as spouses. And as the previous section has shown, their fear was well-founded. Instead, the Yarus-Hakak couple and their lawyer went for a combination of paragraph 3.2 and paragraph 25 of the Adoption of Children Law, which provides the court with a certain flexibility to allow an adoption that does not exactly fit the law's requirements, if it is in the best interest of the adoptee. Hence, the plaintiffs' argued:

[O]fficial adoption would actively affirm their [the children's] feelings of stability and permanence in the family unit they were born to, and it would prevent any future threat of being cut off from either of the two women, both of whom they view as their mothers... [O]fficial adoption would also strengthen the relationship between their children, who would then grow up as legal siblings... [A]doption would be of particular importance in the

unfortunate event of one partner dying or being unable to take care of the children. In such circumstances, it would be in the children's best interest to continue living with the surviving partner and their other siblings. An adoption order would spare the children unnecessary trauma, and it would offer them maximum permanence and stability. (Hadar 2005, 28)

The state attorney rejected the couple's claims. He argued that the adoption law did not permit the recognition of parenthood by two women, that a child could not legally have two mothers, and that only the Knesset had the authority to change this (Hadar 2010b).⁶ In 1999, the family court rejected the petition without elaborating on the plaintiffs' or the state attorney's arguments. The court simply held that since the child already had a parent, paragraph 3.2 did not fit the women's case. The judges agreed, however, to issue, with the state attorney's consent, the first guardianship order for a lesbian couple. While guardianship did not constitute them as a family, it did give the women important legal and administrative responsibilities, such as making medical decisions for their children in cases of emergency.

Despite this partial victory, the women appealed and brought their case to the district court. The plaintiffs emphasized again their children's best interest, but added a further component. They argued that since the law was enacted, over twenty years had passed and that society's perception of same-sex couples had changed. This social fact should, so they continued, influence the interpretation of the law. Their exclusion from adoption would discriminate against them and their children. The state attorney opposed their case again, adding that the petition's true purpose was to establish a legal status for a "lesbian family core," and that such a redefinition of family was the Knesset's authority alone. In a 2:1 decision, the case was rejected again. Here again the court maintained that paragraph 3.2 did not fit the case at hand. However, instead of staying with this technical argument, the judges further reasoned that the law's aim is to provide a child with a common and stable family substitute that allows the adoptee to lead a normal life. According to their view, only a married heterosexual couple could fulfill this criterion. Adoption through a same-sex couple, in contrast, would rather add to the child's "anomaly."

In 2001, the women appealed once more, and in 2005, the Supreme Court finally accepted their petition in a 7:2 decision. Once more, it was the Supreme Court's President, Justice Aharon Barak, who wrote the leading majority opinion, and, as in the decisions discussed in the previous

section, he was careful not to provide the two women with a legal status as spouses. He explicitly refrained from constructing the two women as a family, when he stated that the issue at hand concerned adoption through a “single adopter.” It would be discriminating to prohibit such an adoption only because the “single adopter” shares her life with the mother of the minor. Instead, Barak held that each case should be considered within its own right and that only a holistic view on each case and a thorough examination could determine the adoptee’s best interest. He further argued that while the law does not explicitly refer to same-sex couples, this does not mean that the plaintiffs’ lesbian relationship contradicts the adoptee’s best interest. It should be taken into account as just one of these circumstances, but it is not the full picture and not enough to deny a second-parent adoption by a same-sex couple.

When I talked with Ira Hadar about the case, she recalled that at the time of litigation, a Knesset member from *Meretz* wanted to submit a bill to allow same-sex couples’ access to adoption. While this attempt was well meant, Ira Hadar feared that it would harm their cause, as the Knesset would most likely reject the bill. This would have been a very explicit statement against same-sex families, and the court would have had a hard time ignoring this. Therefore, Hadar met with the Knesset member and eventually convinced her to withdraw the bill. Indeed, Barak stated: “If the legislator thinks that the welfare of the child should not include the case of same-sex families, he should say so explicitly and the court will then examine whether this is constitutional.”⁷ Expressing the notion that this case was primarily about the children’s best interest and that the adopting mother’s lesbian relationship did not interfere with this allowed Justice Barak to disconnect the adoption order from the legal definition of family and marriage. He emphasized that the decision in no way constructed the plaintiffs’ relationship as a same-sex marriage, and that it was indeed the legislator’s exclusive authority to create a new legal status.

After the Supreme Court’s decision in January 2005, it took Tal and Avital Yarus-Hakak another year until they finally received the adoption orders for their children. The Supreme Court only declared that adoption was, in principle, possible under the circumstances at hand and sent the case back to the family court in Ramat Gan. There, the couple went through thorough examinations by the social workers of the national Child Welfare Service, who assessed whether this was really in the best interest of the three boys. Such examinations are an intrinsic part of adoption procedures in Israel, as any adoption order requires the

recommendation issued by a social worker of the Child Welfare Service. With the Yarus-Hakak case, the social workers were confronted with a new situation, and they took their time to become familiar with the intricacies of lesbian parenthood. In February 2006—almost nine years after submitting their case—Tal and Avital Yarus-Hakak were permitted to register as the two mothers of their children.

This court decision had an immediate impact on my research participants, Tami and Orna, who lived in Beersheva, the largest town in the Negev desert of southern Israel. Their twin girls were born in 2004 and probably were Beersheva's first children in a same-sex family. Back then, when their twins' birth was approaching, the two women met with Ira Hadar to draw a contract. They wrote down their intention to continue their lives as a couple, to raise the children together as a family, and to share the responsibilities. Furthermore, they made clear that if the two women ever split up, the separation would not hurt Tami's status as a mother of the children. They would continue to share all the rights and duties parenthood brings along. Roughly a year later, Tami and Orna met with Ira Hadar for a second time. This time they issued wills where they made inheritance provisions and guardianship arrangements for the twins and any future children. In case of death, the surviving spouse would be the sole guardian or adoptive parent of all their children and maintain contact with the deceased partner's family. Additionally, they defined guardians in case both of them died. They made explicit that the children should not be separated, regardless of whether they were biologically related to each other or not.

When I asked Tami whether she had adopted the twin girls, she replied: "Did you hear about the court decision in Tal and Avital's case? We waited for this verdict and a week later we were at Ira Hadar's office." Accordingly, the two women were among the first couples in Israel—and the very first couple in Beersheva—to ask for a second-parent adoption order. Just as in the Yarus-Hakak case, the judges and social workers dealing with their petition first had to introduce a legal and bureaucratic procedure in order to approve it. In the end, three years passed until they finally got their adoption order. In their first hearing, the judge decided that Tami could not adopt the girls before he declared them to be adoptable in the first place. Hence, he called another hearing. After he decided that the twins were adoptable because of their conception by anonymous donor sperm, Orna and Tami started the procedure at the Child Welfare Service, only to discover that because of internal problems, all cases were shifted to the

Jerusalem branch. In the meanwhile, the judge in charge of Tami and Orna's file left court for a sabbatical year and transferred the case to another judge.

After waiting several months for their second hearing in court, they learned that their new judge had severe reservations against same-sex parenthood and requested the recommendation of a psychologist. They themselves could propose a psychologist of their choice, and Tami, who personally knew a psychologist and psychiatrist at the Soroka Medical Centre in Beersheva, filed a request for the judge to accept his expert opinion. In the end, however, the judge withdrew her request for this additional recommendation. After years of waiting, hopes, and disappointments, Orna and Tami found themselves in court for the third time, both of them terribly nervous. Their social worker's request to talk over the phone with the couple's parents and the girls' kindergarten teacher just moments before the hearing did not help to calm them down. Then the judge started to talk again about how she rejected the idea of same-sex parenthood. Tami summarized these nerve-racking moments with the following words: "Ira Hadar sat next to us and I already told her that we lost the case, but suddenly the judge said that despite all doubts she had decided to authorize the adoption order."

Following this cumbersome process, the authorities concerned have become accustomed to the adoption requests of lesbian couples and developed a standard procedure with the adoption order as its foreseeable outcome. Between 2009 and 2012, Israeli family courts issued 463 second-parent adoption orders for same-sex couples, with yearly increasing numbers. Over a two-year period, from 2010 to 2011, the number of same-sex couples that submitted an adoption request doubled from 75 to 155 (Ministry of Social Affairs and Social Services 2010, 254; 2011, 264). Issues that were unclear for the judges and social workers in the early years were clarified over time. Courts no longer require psychological reviews. And, as I learned from Ira Hadar, children of lesbian women are now eligible for second-parent adoption, simply because they are born out of sperm donation. Hence, for lesbian women, the procedure became less complicated. Until 2007, they first had to receive a guardianship order before they could even apply for adoption. In contrast, those interlocutors who became mothers during my period of research applied directly for adoption. One couple from Jerusalem did not even hire a lawyer: They submitted the necessary forms to the court and then made the necessary arrangements directly with the social worker.

It also took patience and many nerve-racking encounters with governmental institutions until the requirements and procedures for children born to gay couples through surrogacy abroad were clarified. At the beginning of my research in 2009, the Israeli public authorities only had meager experience of these kinds of arrangements. While the public authorities had established legal and bureaucratic procedures for the DNA tests, the recognition of the second father was still a matter of dispute. A number of lawyers were in contact with the Ministry of Social Affairs and Social Services in order to shape a procedure that would facilitate second-parent adoption for their clients. One of them was Victoria Gelfand, a lawyer who has established herself as an expert in surrogacy arrangements and whom I encountered at almost every lecture, panel, or conference concerning the topic. When I met her in August 2010 for an interview, I asked her what the state's arguments were against these adoptions. I had touched a sensitive issue and she exclaimed: "There are no arguments against it! They simply search every time for another document that they can require and justify by law." Then she elaborated on their struggles. In the spring of 2010, the first gay couples had finally passed the interviews with the social worker. Subsequently, it turned out that the Ministry of Social Affairs and Social Services required additional documents. Gelfand explained:

Now they brought up the issue of child kidnapping. Although in the United States parenthood in the context of surrogacy is established by a court order and the surrogate mother is not registered on the birth certificate, they require more proof that she has no motherhood rights toward the child.

In contrast to anonymous sperm donation, in surrogacy there is an identifiable woman who might have a claim over the child, and the sheer possibility of her claiming a position as a mother would put the child's status as adoptable into question. In order to clarify the matter, the Ministry requested that the couples present an additional form, in which the surrogate mother declared in front of the consul that she agrees to the child's adoption. Additionally, they required the statement of a local notary, confirming that the legal procedure was finalized and that the surrogate mother had no legal standing toward the child. Just before my interview with Gelfand, she had received another letter from the ministry. Apparently, the documents she had submitted on behalf of her clients did not fulfill the requirements, and the Israeli consulate also had to verify the lawyer's

signature. Gelfand was infuriated: “Not only do they have to pay one thousand dollars to a notary so that he writes a statement! Now they also have to pay him a plane ticket and two days salary in order to fly him to the consulate?”

As for sperm donation, the public authorities clarified and standardized the adoption procedure over time. On 16 December 2010, The TV Channel *Arutz 2* reported in the Morning News that the Jerusalem Family Court had provided the first adoption order for a child born to a gay couple through surrogacy abroad. By the spring of 2013, my research participants in Mumbai knew exactly what documents they needed for second-parent adoption back home. In fact, their surrogacy agency provided a special form concerning the second-parent adoption order. This form, which was signed by the local lawyer in Mumbai, confirmed that the surrogate mother had no legal standing toward the child, and that the child was therefore eligible for second-parent adoption.

As the adoption procedures for lesbians and gay men became clearer, the interactions with the social workers of the Child Welfare Service also changed. In earlier cases, social workers often wanted to meet the couples a number of times, visit their homes, and conduct interviews with both partners separately. With an increase from 70 to over 150 adoption requests per year, second-parent adoption for same-sex couples generated quite a volume of work for the Child Welfare Service. As Ira Hadar explained to me, the additional work has not led to an increase in the institution’s financial resources and manpower. In the central area of Tel Aviv, where most adoption requests were submitted, couples have waited up to twelve months for the Child Welfare Service to contact them. While my interlocutors sometimes expressed annoyance with these delays, they never blamed the social workers. In contrast, they interpreted the low priority they received as proof of the normalization of their families (Bronovski 2010). I was often told that children in disrupted families were in much greater need of social workers’ attention than my interlocutors, whose adoption requests were easy cases that did not require too much inquiry on the part of the social workers. This assumption was supported by the fact that over the years, social workers slowly reduced the number of meetings with same-sex couples.

This does not mean, of course, that same-sex couples were not anxious about these meetings and concerned about the impression they gave as parents. In the summer of 2014, when on a short trip to Israel, I visited Ben and Amit, a couple I befriended during my fieldwork in Mumbai. The

two men had just had their first appointment with the social worker in order to facilitate Roi's adoption through Amit. Telling me about this encounter, they recalled that when they arrived at the office, Ben went to wash his hands while Amit took the one-year-old boy to a room with toys. When Ben came back from the men's room and saw Roi sitting on the floor playing, he exclaimed that the toys were rather filthy. Only half joking, they wondered whether this had been a test, and whether they had failed it: maybe because Amit did not notice the grunge, or rather because Ben was overly concerned with cleanliness?

Indeed, dependencies and insecurities continued to exist, as Kareen and Avigail painfully understood when they applied for second-parent adoption of their fourth child. When I first met them, the two women were both 34 years old and worked hard to make a living. They lived in the agricultural *moshav* where Avigail had grown up, in two blue, little cabins on a land parcel that belonged to the family. They had enlarged their family during a few years only, as they took turns in entering pregnancy. Not even five years separated their oldest son from his youngest sister, who was 10 months old when I met them in spring 2010. Avigail and Kareen had already received second-parent adoption orders for the older children. With a lot of anger in her voice, Avigail told me about their struggle with the adoption order for the baby girl. They had received the first three adoption orders smoothly, but then the woman who used to take care of their files retired. Her replacement, an intern who had just finished her studies in psychology, did not agree to consider the three previous reports about the functioning of the family, insisting, instead, on going through the whole process all over again. From the intern's perspective, it probably made sense to get to know the case in detail. But for Avigail, this was insulting. She felt that she was dependent on an inexperienced woman who cast her ability as a mother into question, even though she was already raising four children.

It is no surprise then that the women started to wonder why there was a need for these adoption procedures at all. While they acknowledged second-parent adoption as an important step for the recognition of their families, they felt that there could be less expensive and time-consuming ways to achieve the same end. Between 2010 and 2012, lawyers such as Ira Hadar and Victoria Gelfand were in contact with the head of the Child Welfare Service and legal advisors in different ministries, pushing for the recognition of same-sex parenthood without adoption orders. The ultimate recognition, of course, would be to register same-sex couples right

after the child's birth as parents—just as in the case of heterosexual couples. Indeed, the changes in juridical practice pertaining to the recognition of same-sex parenthood point to this direction.

While in the Yarus-Hakak case, Ira Hadar did not dare to invoke paragraph 3.1 of the Adoption of Children Law, according to which a man or woman may adopt the spouse's (*ben zug*) child, this changed with the Ministry of Justice's adaptation of its adoption policy in 2008. As described in Chap. 3, this change has not placed same-sex couples on an equal footing with heterosexual couples. But at least the Attorney General's decree provided same-sex couples with access to second-parent adoption on the basis of being *bnay zug* (Yoaz 2008a, b). From then on, same-sex couples received adoption orders not in spite of, but rather *because of*, their relationship. Accordingly, the application for a second-parent adoption order made by Gili and Noa, which they submitted to the family court in 2011, read:

21. The law defined the protection of the family core as a constitutional right [...] Such said the president of the Supreme Court, Justice Aharon Barak: "Indeed, the family is a 'constitutional unit.' The constitutional task of the society is to sustain the family, and to protect it from damage. The individual has a constitutional right to found a family unit, to sustain it, and to protect it. This is part of the human dignity of every individual. This is part of the human freedom of every individual." (Quoted from: Mediation in family disputes—a bridge between family courts and rabbinical courts? In: Gaifman, Yehoshua 1998: Family law in Israel in the era of family courts, p. 1149)

22. The facts fall under article 3.1 of the adoption law, that allows adoption to a singular person, since petitioner 2 is the spouse (*bat zug*) of petitioner 1, who is the singular parent of [the child].

This line of reasoning is very different from the careful approach in the Yarus-Hakak case. While the child's best interest is still the central argument, this is not a peculiarity for same-sex couples, but rather the adoption law's guiding principle. The difference is that in the petition that Noa and Gili submitted in 2011, they did not try to downplay the meaning of the relationship between the two women. With the Attorney General's announcement, the fact that the two women were a couple became a positive part of the argumentation.

In 2014, the Tel Aviv Family Court went even a step further and accepted a lesbian couple's petition to have their child's nonbiological

mother registered on the basis of a judicial (*psikati*) parenthood order and without having to go through the adoption process at the Child Welfare Service.⁸ The court reasoned that it has the authority to decree such a parenthood order in the case of a child that is born to a common-knowledge couple and that has a genetic relationship to one of the partners. Since then, family courts throughout the country have adopted the same approach for children born through sperm donation and surrogacy, thereby adapting the procedures and criteria.⁹ Thus, if the couple placed their request within 90 days from the child's birth, no expert opinion is necessary, and the parenthood order is valid retroactively from the day of the child's birth. In addition, parenthood orders are now granted even in cases of couples having separated.

But while these developments clearly show that the recognition of same-sex parenthood is today a matter of fact in judicial practice, here too the path has been rocky. Thus, in 2018, *Haaretz* published an article describing how, after submitting the parenthood order to the Ministry of Interior, lesbian couples wait for months until they are finally registered as mothers (Hecht 2018). In a meeting of the Knesset Committee for the Advancement of the Status of Women where the issue was debated, the representative of the Ministry of Interior explained that ministry officials who receive a parenthood order to register are supposed to examine the circumstances of the case as well as of the parenthood order and to decide according to their judgment. This explanation was met with harsh critique. The committee chairman, Aida Touma-Suleiman from the Joint (Arab) List, replied: "If you received a judicial order, you have no discretion on the matter and nothing to examine." It appears that since the publication of the article, things were clarified again. And yet, the ministry's change of policy indicates that despite all the legal fights and achievements, same-sex couples remain vulnerable and cannot take their recognition for granted. The next section elaborates further on this point and shows how this vulnerability manifests in situations of separation.

4.4 SEPARATION AND STORIES OF LOSS

Aviram and Tim were among the few couples I got to know in the course of my research who had become fathers through adoption abroad. Roughly ten years before I met them, they had adopted their son Oren, and they had struggled to find an adoption agency that would agree to

work with them. While the agency people knew that they were a couple, they hid their relationship from the public authorities in the Eastern Europe adoption country. They feared that their relationship would have made the adoption impossible. Hence, Aviram, who was better established in Israel than his Canadian partner Tim, made the adoption as a single father. In order to remove any doubts, a female friend accompanied him when he went to Eastern Europe for the adoption. It was hard for Tim to be excluded from this emotional moment. But a few years later, the family moved to Canada, and there Tim received his own second-parent adoption order.

In 2010, Tim, Aviram, and Oren were living again in Tel Aviv, and they became not only important informants for my research but also friends with whom I had regular contact. Only over time did I start to understand the legal struggle they had gone through in order to have Tim's status as a father recognized. One day in June 2011, when I was having lunch with Tim, he told me about a recent visit at the Ministry of Interior. He wanted the ministry to finally register Oren in his own identity card. But the clerk who attended to his case claimed not to know what to do. Neither could she explain what the necessary procedure would be, nor whether he would have to sue the ministry in court. Now, Tim told me, she did not answer his phone calls, and he was thinking about going to the ministry again in order to push things along. Two and a half months later, he was still postponing it. He was not very fond of dealing with bureaucracy and dreaded that things would get complicated. By the spring of 2012, things had not progressed much. The couple had in the meanwhile consulted with Ira Hadar and decided that she would write a request to the Ministry of Interior in order to finally receive an official answer. Neither Tim nor their lawyer could assess how difficult the struggle would be. "It is impossible to know," Ira Hadar explained to me when I asked her about the case. She was very annoyed with the ministry, and exclaimed: "Once they get the court's order they comply. But why do we have to go to court every time again? It is simply outrageous that they do not recognize the Canadian adoption order."

When I finished fieldwork in 2012, Tim's legal situation had not changed. While he feared that one day an official would require an explanation as to why Oren was not registered on his identity card, on an everyday basis, other things were more important. Because of the public recognition he enjoyed, in most daily interactions, the legal struggles did not limit his role as a father. Even when the couple separated and Tim

moved out to his own apartment, he continued to be a father to Oren. For him and Aviram, it was clear that they would share custody and continue to spend family time together. Throughout the years, Tim had become a steady part of Aviram's family, and the couple's separation was no reason for him to stop spending Shabbat dinners and holidays at Aviram's parents.

I got to know several men and women who maintained cordial relationships with former spouses and who established arrangements of shared custody for the children they had brought into being while they were a couple. But this cannot disguise the fact that separations constitute moments in which the lack of formal recognition introduces material threats to parents and children. Without formal recognition, Aviram could have contested Tim's position as a father, and Tim could have stopped supporting Oren's education financially. They could have contested such unilateral decisions in court, but without security regarding the litigation's outcome, as I will demonstrate in the following paragraphs.

Due to the insecurities caused by separations, Ira Hadar took upon herself the task of raising lesbians' and gay men's awareness of the importance of legal protection through second-parent adoption. The increased number of second-parent adoption orders that Israeli family courts issued for same-sex couples between 2009 and 2012 and the new possibility to achieve recognition through a simple parenthood order indicate that many couples share this view. But according to Hadar, who had represented several women who found themselves in custody struggles, there were many more children born to same-sex couples who lacked this legal protection. These women thought that everything was working well, and for one or another reason postponed the formalization of their parenthood. However, when they broke up, they found themselves fighting their former partners in court. These women had a hard time winning custody struggles against the will of the birth mothers, particularly since courts have started to reason that if a woman did not insist on an adoption or parenthood order, apparently she did not really intend to be a mother.

In a lecture on 4 February 2011, in the context of the second Rainbow Family Conference in Tel Aviv, Hadar presented various cases in which birth mothers took advantage of their former partner's weak legal position (Hadar 2011). They enforced their preferred custody and visiting arrangements or even cut off the relationship between the children and their unrecognized mothers. In an early case that had already reached the courts by 1998, the non-recognized mother of a one-year-old child sued her

former partner, who was preventing her from seeing the child. This woman, in turn, argued that they had never agreed to raise the child together, and that the family court had no authority to adjudicate the matter, since two women cannot be considered a couple or a family (Hadar 2005, 31). The family court, however, decided that two women can indeed constitute a family, and that only a detailed examination could establish the child's best interest. The plaintiff's former partner did not accept this verdict and appealed to the district court, and later even to the Supreme Court. While all three courts supported the claimant and ordered a detailed examination, the litigation took too long. When the case finally returned to the family court where the child's best interest was established, he was almost four years old and had no memory of the plaintiff. The court therefore reasoned that it was against the child's interest to renew the contact with the non-recognized mother. In a more recent case, Ira Hadar represented another woman who had sued her former partner, who had severed the relationship between her and the baby girl. This time the family court realized the urgency of the suit. Hence, the judge immediately ordered a psychologist's expert opinion and a detailed examination of the child's best interest. But with all the formalities, it still took almost a year until the psychologist finalized his report. Again, the plaintiff lost any visiting or custody rights, because the judges found that renewing contact with the plaintiff was not in the child's best interest. In a third case, after examining the best child's interest, the family court decided against shared custody. The judge argued that this would only intensify the fights between the two women and place the child in the middle of their crossfire. When Hadar, who represented the non-recognized mother, saw that they were losing the case, she sought an agreement with the other party's lawyer to at least save her client's visiting rights.

It is important to note that in all these cases, the courts neither rejected the possibility that a child could have two mothers, nor did they deny in principle the plaintiffs' custody or visiting rights. However, in practice, birth mothers were in a much stronger position, and the court failed to balance out this asymmetry between the women. Daphna Hacker (2005) has found that when heterosexual couples get divorced, legal professionals often discourage fathers from seeking custody, an endeavor they perceive as chanceless in light of a rather conservative family law system. Judges, lawyers, and divorced mothers agree, however, that relations between children and fathers continue to be important. This supports Hadar's doubts

that the courts would have come to the same conclusion if her clients had been fathers:

I believe that if in a similar case where a mother refused to grant visitation rights to the child's father, if he was the child's biological or legally recognized father, the court would have claimed that it is necessary to do everything in order to maintain the relationship between him and the child... It would probably even allow the father to renew the relationship with the child after not having seen each other for several years. (Hadar 2011, author's translation)

As I have shown in this chapter, when same-sex couples stick together, they have a good chance of influencing such legal interpretations. However, in the cases I presented in this current section, the situation was particularly difficult, as the parents themselves did not agree with each other. Since there is no encompassing legal recognition of same-sex unions, and because the concept of *ima lo-biologit* does not designate a legal status, the child's best interest easily falls on the side of the recognized mother. Non-recognized lesbian mothers, in turn, enter the custody struggle from a very weak position.

I realized this most clearly when a befriended couple with a two-year-old boy split up during my research. Laura and Adi were in a unique situation as Laura, who had given birth to the boy, was not an Israeli citizen. She had moved to Israel because of her girlfriend, and thanks to the Ministry of Interior's policy that allowed residency rights to same-sex partners of Israeli citizens, as long as they are not citizens of an enemy country or residents of the West Bank and Gaza. The relationship between my friends had been conflictual for a long time. After their boy was born, struggles over their positions as mothers, the organization of their daily life, and the relationship with Adi's family intensified the conflicts. At one point the situation exploded, and within ten days Laura took the boy and moved back to her home country. I knew the problems and fears of both sides and was torn between the two. While I understood Laura's desperation with the relationship and her situation in Israel, I could hardly bear Adi's suffering. For weeks she stayed in bed, took tranquilizers, and cried. Later I asked her whether she had not considered fighting against the separation in court. She had, but eventually decided against it. She feared that this would squander Laura's goodwill and any chance of staying in contact with the child. Judging by the court decisions quoted earlier, her

assessment of the situation was realistic. Hence, her only chance not to lose the boy completely was to cause as little trouble as possible and to hope that this would make it possible for them to maintain contact.

It is not my place to apportion blame to one or the other of my friends. I have spent many good hours with them and enjoyed their great hospitality. I went through their crises, saw how both of them tried to find solutions, and how they suffered. Their break-up was my saddest field experience. It confronted me for once not with happy parents, but with personal tragedies that caught me off guard and involved me, this time not as an outsider but as an insider. My attempts to mediate were not successful, and in the end, the feeling that I failed both of them has stayed with me. Adi's decision not to go to court, in turn, made me realize that despite the lawyers' and political activists' emphasis on legal fights, they did not provide practicable options in all situations.

4.5 CONCLUSION

To conclude this chapter, I would like to argue that the described legal developments and struggles constitute a huge balancing act. Politicians, judges, and civil servants are confronted with same-sex couples' increasing claims for family rights as well as growing social acceptance. These parties negotiate and try to feel out to what extent they should and can recognize same-sex couples—and the families they and their children form—even though they fall outside the norm and status that accompanies marriage. Not surprisingly, they reach many diverging conclusions rather than a single one. Yet, the Rabbinate's battle cries against court decisions and bureaucratic protocols bestowing family rights to same-sex couples are usually rather short-lived. It seems that as long as religious control of marriage and divorce is not openly challenged, politicians affiliated with the Rabbinate are willing to accept and allow for a parallel reality. At the same time, secular forces have not united to introduce civil marriage; rather, they have accepted religious marriage as a pillar of the current Zionist definition of the state.

In this situation, Israeli family law is best perceived as a free-floating body of regulations, in which inherently conflicting norms coexist in a fragile balance. I have demonstrated that in the last two decades, disputes over the definition of 'family' have taken place in courtrooms rather than in parliament. Lesbian and gay activists have mobilized a discourse of civil rights, equality, and the child's best interest. They could thereby rely on

an already existing juridical tradition committed to the principles of liberal political theory (Mautner 2011, 38), precedents in other countries, as well as a globally spreading academic discourse supporting same-sex couples' parenthood rights.¹⁰ As Bourdieu (1987) has argued, turning to the courts in order to claim family rights shifts the power of defining kinship relations to legally trained experts. With the precedents that I discussed in this chapter, civil courts and the Supreme Court in particular have increasingly been perceived as a political force that sides with secular interests and liberal values.

My analysis of the legal, political, and bureaucratic processes surrounding same-sex couples' family rights casts a slightly different light on the situation. At least when it comes to family matters, the Supreme Court's task is more complicated than simply championing liberal values. The primacy of the Knesset—and ultimately the (Orthodox) Rabbinate—to define marriage constitutes a clear line, which the Supreme Court does not cross openly. Hence, I want to argue that it is also a stabilizing force between diverging and indeed opposing claims. If the institution of common-knowledge couples is necessary to maintain Orthodox control of marriage and divorce, the Supreme Court is the institution that time and again draws the line between the formal status of marriage and pragmatic concessions to those who do not fit the framework. Solving disputes over family law on a case-to-case level reduces the tension between the conflicting ontologies without resolving the inherent contradiction.

The price that same-sex couples pay for this is a confusing, opaque, and inconsistent legal situation. The scope of the legal chaos is not always apparent. In the daily life praxis of bringing children into the world, the couples deal with one authority after another. They fill in the forms for receiving sperm donation, the forms for being recognized as parents, and go to court for the adoption order. Step by step. Not that the bureaucracy does not bother them, but the full size of the monster only becomes apparent when you dig into it, day after day, just like anthropologists and lawyers. I have spent many hours in the library of Tel Aviv University. I have read court cases, the Knesset protocols, and newspaper articles in order to uncover the underlying logic of the manifold policies. Yet I struggled, as I could simply not find it.

In an interview with the political activist and lawyer Michal Eden, I shared with her my difficulties in compiling an overview of lesbian women's and gay men's family rights. I was relieved when she explained to me that most public authorities do not publish guidelines regarding their

approach to same-sex couples and same-sex parenthood. It is not that I have overseen something! The different offices themselves do not know about each other's policies. I do not assume that this is a conscious strategy to conceal the wide range of family rights that same-sex couples have gained so far. But the result is, of course, that the different pieces never amount to a complete picture. The situation remains ambiguous and therefore does not pose a solid and powerful challenge to religious marriage and divorce. For same-sex couples, in turn, it is hard to assess the rights they have and to judge whether they receive equal treatment.

Many of my interlocutors were aware of the incoherencies they encountered when dealing with different public authorities. Meirav and Eti provided not only the most beautiful illustration but also an accurate analysis. It all started with the tax authority. Mothers and fathers receive tax credit points, but different amounts. Mothers can claim a bigger amount than fathers. After Meirav received the second-parent adoption order for their little daughter, she approached the tax office in order to get her credit points. But since Eti had already received credit points as a mother, the civil servant put a mark on Meirav's file and granted her the amount of fathers instead. "You see?" Meirav concluded. "For the Ministry of Interior we are single. For the income tax authority I am a father. And for the health insurance company Eti is a single mother and I am nothing." Then the two women explained the situation:

- Eti: "Each office does not know what the others do. The state does not know what it does."
 Meirav: "It should not be like this."
 Eti: "But this is the way it is. And it will not change until they make some order."
 Meirav: "But it is complicated to make order here. It is particularly complicated because this is a halakhic state. This is why it is very difficult to make all the changes, the change of perception. It is a world war, a civil war. The religious will not accept same-sex marriage. It could really end in a war. It is not only about same-sex marriage, it is in general about marriage and divorce. It is a little bit archaic."

The inconsistencies that my research participants experienced when dealing with public authorities did not always work to their disadvantage. Thus, Ruth and Noga were glad about the financial benefits that Ruth

received from the National Insurance Institute because they counted her as a single mother, although they felt that this was a rather absurd situation. When I talked with the couple about their financial situation, Ruth told me: “Fortunately the state is stupid enough to help with our expenses for kindergarten.” Noga counts as a single mother even after Ruth received a second-parent adoption order. Therefore, the couple pays only 700 shekel per month instead of 1800. In the form, which Noga submitted in order to apply for financial benefits, she was asked whether she lived with a *ben zug* (male spouse). She entered “no,” and added that she lived with a *bat zug* (female spouse) instead. But apparently the civil servant in charge did not think that this was a valid category and registered her as a single mother.

I heard similar stories from other couples. For some of my interlocutors, taking financial advantage of the inconsistent legal situation brought with it feelings of satisfaction and revenge on the state’s unwillingness to recognize their family unions. “The state does not help couples like us [to become parents],” Yuval argued. “So we said, at least we take now what we can.” As long as there is no all-encompassing recognition of their relationships, they were completely in line with Israeli family law. Indeed, in 2008, when the Knesset discussed single-parent employment benefits, MK Nissim Zeev (*Shas*) requested a clarification of the term “single-parent” (Knesset 2008, 77). He suggested including same-sex couples in the category, as he considered their children to be orphaned. In order to uphold the singularity of heterosexual couples, he accepted the financial advantage of same-sex couples. While his proposal has not caused any change of the law, in practice, some same-sex couples indeed encounter this reality. But since there is neither consistency nor transparency, it depends on how much energy same-sex couples were willing or able to invest in order to get recognition of their parenthood or to receive financial benefits. Israeli family law therefore works to the advantage of those couples that are well connected and familiar with the legal situation, or those who have the financial means to hire a lawyer.

NOTES

1. *Tipat Halav* is the popular expression for mostly public health clinics that provide first and foremost basic health services for babies and toddlers, such as vaccination and development monitoring.

2. *El Al Israel Airlines Ltd. v. Danilowitz* (Hebrew), HCJ 721/94, 30 November 1994. <http://www.lgbtlaw.tau.ac.il/sites/default/files/field/judgment/file/721-94%20Danilovich.pdf>. Accessed 11 June 2020.
3. New Family. "Domestic Union Card. The Solution for Civil Marriage in Israel (Hebrew)." <http://www.newfamily.org.il/services/civil-union-card/>. Accessed 14 January 2019.
4. Interestingly, the organization's English website is, in this respect, much clearer. See: <https://www.newfamily.org.il/en/>. Accessed 20 December 2019.
5. See also: *Yossi Ben-Ari v. The Director of the Population Administration in the Ministry of Interior* (Hebrew), HCJ 3045/05, 21 November 2006. Found on: <https://www.pskadin.co.il>.
6. See also: *The Attorney General v. Dr. Tal Yarus-Hakak*, SC 10280/01, 10 January 2005. Found on: www.nevo.co.il.
7. *The Attorney General v. Dr. Tal Yarus-Hakak*, SC 10280/01, 10 January 2005, paragraph 25–31.
8. *Plonit v. The Attorney General*. FC Tel Aviv 245-01-14, 4 September 2014. https://www.nevo.co.il/psika_html/mishpaha/SM-14-01-245-22.htm. Accessed 15 January 2020.
9. Detailed information about the courts' handling of requests for parent-hood orders is available on the Hebrew Website *Kol Zkbut* (2019).
10. In the Yarus-Hakak case, the Supreme Court referred to 32 cases that reached the Israeli Supreme Court dealing with questions of discrimination and family rights, 14 court cases from other countries dealing with adoption through same-sex couples, 10 Israeli books and articles about Israeli jurisdiction and family law, and 25 foreign books and articles, mainly on same-sex parenting and its impact on children.

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Making Jewish Children and Questions of Belonging

From the moment I entered Tami's and Orna's home for the first time in the summer of 2010, I was drawn to the two women for their warm and uncomplicated attitude. The three of us sat at the little table that separated the kitchen from the spacious living room. During the interview there was always food on the table. We laughed a lot, and the two women did not shy away from discussing issues they did not agree upon. At times, the couple's seven-year-old twins, Nufar and Maya, sat with us on their mothers' knees, and at times they played or watched TV next to us. Every now and then we took a break, either because Orna wanted to smoke or because the twins demanded their mothers' attention. Toward the end of that first interview, the couple told me that Tami was undergoing fertility treatments with the sperm of the donor that Orna had already used when she became pregnant with the twin girls. They had only two portions left, and Tami hoped very much that the treatments would be successful in November. "It would be perfect," she argued. "The delivery would fall exactly at the beginning of the twins' summer holidays, and we all can be at home together." And indeed, Tami entered pregnancy in November, and on 27 July 2011, she gave birth to a baby boy.

Yoni's ritual circumcision (*brit milah*) took place eight days later, in accordance with halakha and Jewish tradition (see Krohn 1985, 52–70). Orna and Tami had rented a hall in a hotel, pompously furnished and equipped with a kosher finger-food buffet in the front, and big round tables with silver tablecloths and massive candelabras in the main hall. A big

wooden chair with the epigraph “This is prophet Elijah’s chair” was positioned in the middle of the hall. The 250 guests—aunts, siblings, local gay and lesbian activists, friends, their parents, and colleagues from work—were standing around in groups, chatting and eating, while the children played tag. Tami and Orna had hired a *mohel*, a man who performs Jewish ritual circumcisions. This *mohel* was an elderly rabbi, dressed in the classical Orthodox manner, with a black suit and a black kippah. He and his assistant prepared the equipment on the table next to Elijah’s chair: They poured thick wine into a cup, disinfected the knives, and covered the table with mistletoe. Friends of Tami and Orna changed Yoni’s clothes and dressed him in a white cloth. Then, one of the friends put Yoni on an ornate pillow and brought him to Tami’s father. He was wearing his prayer shawl and sitting on “Elijah’s chair”; he held the child during the ceremony. There was a short moment of confusion, when the *mohel* instructed that Yoni’s father should put on the prayer shawl, too. Usually, the father of the boy to be circumcised takes an active part in the ritual and says part of the prayers. The *mohel* seemed simply to have forgotten that Yoni had no father. Quickly, Orna asked one of her brothers to put on the prayer shawl. In the end, however, it was agreed that Tami’s father would say the prayers. Right after the circumcision, the *mohel* took the child, placed with his finger tiny drops of wine in the baby’s mouth, and made the final blessing. Here he announced Yoni’s name and welcomed him to the covenant of the Jewish people. Usually, the blessing starts with the following words:

Our G-d and G-d of our fathers, preserve this child for his father and mother, and his name in Israel shall be called [the baby’s name] the son of [the father’s name].¹

While the *mohel* did not find it necessary to change the complete wording, he simply skipped the last part and ended the sentence with Yoni’s full name: Yoni Yosef. Later, Tami told me that Yosef was the name of her father. They had kept his name a secret right up to this very moment, and Tami’s parents were visibly moved. After the circumcision, Tami, her sister, and a friend accompanied the *mohel* to take care of the wound. In the meanwhile, Tami’s father remained sitting on “Elijah’s chair.” A crowd of guests gathered around him. One after another stepped forward, and he put his hand on their heads and gave a blessing. Orna and the twins were among them. “Come, he wants to bless his granddaughters,” I overheard her saying to the girls. Puzzled, I asked a friend what was going on. “We

say that during the brit milah the heavens opened and sanctified Tami's father," she explained to me. Later, Tami and Orna chuckled about how seriously he and the guests had taken the blessing. The week before the brit milah, Tami's father had especially consulted his rabbi to prepare for this task.

Attending Yoni's brit milah was a key moment during my research. It directed my attention to the ongoing importance of religious rituals for the making of Jewish children and the reproduction of Jewish collective identity, as well as to the flexibility that exists within Judaism to absorb the children of same-sex couples. In this chapter, I discuss how same-sex couples—together with their families, friends, and ritual experts—bestow their children with a Jewish identity. To do so, I first elaborate on the halakhic status of children born with the help of sperm donation to lesbian couples on the one hand, and of children born through surrogacy to gay couples on the other. I focus here on how the parents' gender has diverging impacts on the children's religious belonging. In the case of lesbian motherhood, the women's relationship remains functionally invisible, and their children are considered to be fully Jewish because they are born to a Jewish mother. Children of gay couples, in turn, have no Jewish mother and therefore need to undergo conversion in order to be recognized as Jewish. This additional step renders their fathers' same-sex relationship visible to the rabbinical court that oversees all conversions of minors. As the (Orthodox) Rabbinate in Israel refuses to convert the children of gay men, my research participants have found alternative routes to turn their children into Jews. In the last part of this chapter, I return to life cycle events such as the brit milah and childbirth celebrations. Discussing my interlocutors' decision-making with regard to whether and how to perform these events, I show how same-sex couples make sense of their own and their children's position vis-à-vis the Rabbinate and their social environment. The events themselves, in turn, are powerful manifestations of same-sex couples participating in the reproduction of networks that constitute the fabric of Jewish Israeli society.

5.1 THE RELIGIOUS STATUS OF CHILDREN BORN TO LESBIAN COUPLES

As seen in Chap. 2, sperm donation is problematic from a rabbinic perspective. Although the children receive their Jewishness from their mothers, sperm donation introduces insecurity into the web of pedigrees that connects Jews to each other as well as to past and future generations. I have also demonstrated that rabbis have nevertheless found ways to kosher sperm donation, for example, by sex selection or the use of sperm of a non-Jewish donor. However, the bulk of my research participants used sperm from a Jewish donor. Indeed, despite the rabbinic provisions, the sperm available in Israeli sperm banks is usually from young Jewish men. As I learned from my interlocutors, sperm banks recruit their donors mainly from among medical students and soldiers. While for some time, Israeli sperm banks offered sperm from non-Jewish kibbutz volunteers (see Kahn 2000, 108–109), today sperm from non-Jewish donors appears to be rare (Doron 2011).

According to the majority of Orthodox rabbis, children conceived with sperm from Jewish donors are not *mamzerim*. *Mamzerut*, we may recall, is a halakhic stigma carried by children who were born of either an adulterous or an incestuous relationship. The rabbis largely ruled out the problem of adultery, as unmarried Jewish women cannot, of course, commit adultery. But even for married women, most rabbis reason that adultery is a “physical act that occurs between two people, [and not] a biological act that occurs between a sperm and an egg” (Kahn 2000, 96; see also Halperin 1988). The fear of incest constitutes a much greater problem. The legislator has, every now and then, attempted to regulate sperm donation by law and to introduce bureaucratic protocols to firstly rule out that women unwittingly use sperm from a relative, and secondly to prevent children conceived with donor sperm from unwittingly marrying a genetic half-sibling.

The first such attempt was made in the early 1990s, when the ministers of justice and health appointed a public-professional commission (commonly known as the Aloni Commission), with experts in the fields of medicine, law, social work, and halakha to outline the possibilities for regulating surrogacy (Weisberg 2005). In order to do so, the commission discussed “social, ethical, halakhic, and legal aspects of the treatment methods involved in IVF, including that of sperm donation” (Knesset Research and Information Center 2005, 6). In July 1994, the Aloni Commission presented its final report. According to the majority opinion, patients should

receive all the pertinent information with regards to the halakhic problems involved in anonymous sperm donation, leaving the decision to their private discretion (Kahn 2000, 78). Rabbi Dr. Mordechai Halperin, the chief officer of medical ethics at the Ministry of Health, harshly objected to this point in his minority opinion and in several other papers (e.g., Halperin 2002). He not only recommended the establishment of a sperm donor directory that would allow rabbis and marriage registrars to know the paternal identity of these children, he also opposed the idea of anonymous sperm donation more fundamentally. To make his argument, Halperin mixed halakhic arguments with psychology and the United Nation's Convention on the Rights of the Child (1989). But here, rabbinic reasoning had no chance against the fear that such measures might cause a reduction in donors.

In the course of my research, the Knesset member Otniel Shneller of *Kadima* made another attempt to regulate sperm donation more thoroughly. He therefore prepared a bill to replace the "Rules as to the Administration of a Sperm Bank and Guidelines for Performing Artificial Insemination" that have regulated sperm donation for 25 years (Knesset 2011). Shneller's primary concern was to clarify the status of children born out of sperm donation. To do so, he differentiated between halakhic parenthood that transfers the religious status of the child and juridical parenthood that regulates the parent-child relationship in civil matters. According to paragraph 24 of the bill, the donor should have no legal position as a parent (ibid. 9). But at the same time, Shneller explicated that the law would neither impinge upon rabbinic marriage prohibitions nor challenge the jurisdiction of the religious courts. He further acknowledged the donor's non-negotiable position as a halakhic father by introducing two databases: one registry for donors to guarantee that donors and recipients are not categorically prohibited to each other and consequently prevent the birth of children conceived in an incestuous relationship, and a second registry for children born through sperm donation that would include information about children born to the same donor (paragraph 21–23, ibid. 7–8). Thereby, Shneller sought to minimize the risk of relatives unknowingly marrying each other and, again, giving birth to blemished children. When I met Shneller in November 2011 for a short interview in his office at the Knesset, I learned that in the end he had not submitted the bill. Apparently, the minister of health hesitated because sperm bank managers opposed it. They brought forth the same argument as in 1990, maintaining that such registries would scare potential donors away and drastically reduce the number of donors. Shneller hoped instead

that the ministry would eventually take up aspects of his bill and include them in a new version of the ministerial regulations.

These unsuccessful attempts to introduce databases into the practice of sperm donation point to the limitations of rabbinic influence in Israel's family law. It seems that when it comes to sperm donation, physicians are in a stronger position than rabbis. But it is probably also true that the rabbinic interest to introduce such databases is limited. Interestingly, such databases were introduced in the Egg Donation Law that the Knesset passed in 2010. With the technical advancement in the field of fertility medicine that allows for the extraction and use of viable spermatozoon even in the most severe cases of male infertility, married couples are much less dependent on sperm donation than they were two decades before. Since, in these cases, the Rabbinate anyhow recommends the use of non-Jewish donor sperm, a database for sperm donation is probably at the bottom of their list of priorities.

For my lesbian research participants, this means that their children are from a rabbinic perspective *shtukim*, as they remain silent when asked about the father's identity (Ross 1998, 58).² As Ross states, halakhic scholars do not agree on the concrete consequences for a *shtuki*. How grave is the fact that a donor could be a *mamzer*? Given that the *mamzer* status passes from generation to generation, could a *shtuki* be a *mamzer* without anyone knowing about it? What does this mean for the marriageability of a child conceived through anonymous sperm donation? And how valid is the marriage of a *shtuki*, considering the risk that two half-siblings could accidentally fall in love and end up in a halakhically prohibited marriage (ibid. 58–60)?

To clarify these questions, I asked Rabbi Katz and Rabbi Burstein from PUAH to explain the situation to me. According to Rabbi Katz, who also works as a rabbinic judge (*dayan*), a *shtuki* may face difficulties when planning to get married. In order to get married, couples undergo a bureaucratic procedure in which marriage registrars not only verify the spouses' identities but also scrutinize their marriageability under Jewish law. As Miller (2014, 30) writes, "the couple must present their parents' *ketuba* (marriage contract) to prove that they are Jewish [...]" In case the marriage registrar has any doubt whether the couple may marry according to halakha or not, he must (after allowing the couple to make their case) report them to the Ministry of Religious Services and instruct the couple to obtain a ruling from a *Bet Din* [rabbinical court] permitting them to marry." According to Miller (ibid.), marriage registrars are often "willing

to bend the rules when their judgment and conscience allows it.” Rabbi Katz further asserted that rabbinical courts would usually find a solution to confirm the legitimacy of a *shotuki*, in order to authorize the marriage. It is therefore possible that children born to lesbian couples with the help of anonymous sperm donation will not face problems once they wish to get married. Ultimately, however, they will depend on the discretion of the marriage registrar and the rabbinic judges in charge.

Throughout my research, I had several conversations with my friend Debbie and her partner at the time, Efrat, about their options for having children and the family relations this entails. The two women both came from religious homes and, at that time, strictly structured their lives according to halakha. We often met for coffee or attended events of the LGBT organization. Thanks to my own interest in Jewish law and in the topic of procreation, they found in me a person with whom they could consult and talk about their dilemmas. Debbie wanted a known donor, as she herself was not sure whether she would be ready to be in a relationship with someone whose parentage was unknown. Hence, we made a list of gay friends with whom they could enter a shared parenthood arrangement. However, they dropped the idea, since they did not want the potential donor to play an active part in their children’s lives. Like many other research participants, they feared that a father would introduce asymmetry into their relationship and challenge the position of both women as mothers (see Sect. 2.4). For a while we talked about importing sperm from the United States, where the child would have the opportunity to contact the donor at the age of 18. Yet, Debbie was not completely happy with this solution either, since she wanted the donor to be Jewish. To import sperm of a Jewish donor is not allowed, as we learned in a lecture held by the medical staff of a private sperm bank.

Like the Rabbinate, Debbie and Efrat asked themselves what kind of relation obtains between the sperm and the child’s Jewishness. In addition, they had to take into account yet another set of considerations, which relates to the precarious status of same-sex parenthood within society. A known donor has the power to seriously impede the women’s positions as mothers. As I discussed in Chap. 4, it is only in the absence of a potential father that lesbian couples can achieve legal recognition of their motherhood. For most of my interlocutors, this was *the* major reason why they opted for anonymous sperm donation from one of Israel’s public or private sperm banks.

And still, the absence of any donor database bothered them, too. Judging from the waiting periods at sperm banks and donor lists, my lesbian research participants gained the impression that there was already a shortage of sperm donors in Israel. For Aya and Revital, all this was a good enough reason to buy sperm from abroad. Revital explained to me:

Israel is such a small country. And I already saw two babies who looked exactly the same. The same donor! The families do not know each other, but I know them and I looked at the babies and suddenly I said: 'Wow! Aha!'

Other research participants, too, feared that donors might be active in several sperm banks and that no one could really know how many children were born of the same donor. In fact, the latest version of the "Rules as to the Administration of a Sperm Bank and Guidelines for Performing Artificial Insemination," (2007) introduced a central registry of donors, preventing them from being active in more than one sperm bank. However, as I understood from the presentation of Cryobank Israel in 2011, no such registry had yet been established. There, a woman in the audience asked the manager how he could guarantee that a man only donates at his sperm bank. He answered that they pay their donors a lot of money to bind them to Cryobank and that each donor had to sign a form declaring that they had never been active as donors before. The woman was not satisfied with the answer and asked whether there was communication between the different banks. Only then did he admit: "No. But the State now wants to create a central registry." As of 14 September 2014, this private sperm bank pointed on their website to a new—more expensive—option for recipients who did not want to share a donor with others.³

For many of my research participants, it was important that their children be Jewish. But they did not care that much about the halakhic intricacies. They had some vague knowledge that their children would not be *mamzerim* but struggled to explain to me what this category exactly meant, being confused if it was associated with children born out of wedlock or with adultery alone. When, for example, Eti struggled to explain to me how sperm donation could cause the birth of a *mamzer*, her partner Meirav intervened: "But this is halakha! For us this is not relevant." Eti supported her and argued that, anyway, only the sperm bank would ever know if there was a halakhic problem, and that this was not related to the world in which they lived.

5.2 THE CONVERSION OF CHILDREN WHO WERE BORN THROUGH SURROGACY

Due to the proliferation of egg donation and surrogacy, the question of who counts as the child's halakhic mother has acquired considerable urgency for rabbis in Israel and outside of it. As Kahn has demonstrated, the Rabbinate faces a problem when discussing the matter: "ova were not thought to exist in the traditional rabbinic imagination, and there are therefore no precedents for deciding the question" (2000, 129). In light of the absence of ova in early rabbinic literature, Kahn has found that most rabbis maintain that the woman who carries the pregnancy and gives birth is the halakhic mother of a child (2000, 129–131). Interestingly, however, the definition of motherhood seems to be changing. Less than a decade after the publication of *Reproducing Jews*, Rabbi Dr. Mordechai Halperin publicly announced that "the country's most influential rabbinical arbiters have gradually changed their minds" and now consider the provider of the egg to be the halakhic mother (Siegel-Itzkovich 2010). Two years later, Rabbi Burstein explained to me that rabbinic opinions are more or less equally divided.

The rabbinic disagreement over the attribution of motherhood is highly relevant for Jewish practices of egg donation and surrogacy. They are manifest in the Embryo-Carrying Agreements Law (1996) regulating surrogacy and the Egg Donation Law (2010), which both prescribe religious matching when Jewish women are involved (See Kahn 2000 for an in-depth discussion of the Surrogacy Law). The question as to who counts as the halakhic mother of a child also matters for women and heterosexual couples who turn to surrogacy arrangements abroad, as women who had provided their own eggs for conception have successfully challenged in court the state's refusal to recognize them as mothers (Weiler-Polak 2011, 2012).⁴ It appears that the rabbinic disagreement about the definition of halakhic motherhood has left the state attorney and the Ministry of Interior without rabbinic backing for their refusal to recognize their motherhood. The courts, in contrast, have found in the gradual rabbinic shift to a genetic definition of motherhood a further argument supporting the plaintiffs. In July 2013, for example, Judge Ben Shahar of the family court in Rishon LeZion underlined his decision with an opinion paper drafted by the Center for the Implementation of Hebrew Law at the Netanya Academic College.⁵ The authors of this paper emphasized Rabbi Halperin's

statement that the majority of contemporary rabbinic decision-makers define the provider of the egg as the halakhic mother.

For gay couples, the situation is far different, as their need for an egg *and* a womb is visible to everyone. I became acquainted with a handful of men who used the eggs of a Jewish donor. Among them, one couple tried to have their twin girls' Jewishness recognized on the basis of the egg donor's halakhic status. Their problem was that the egg donation was anonymous, and they wondered how they could prove that the donor was Jewish while she remained anonymous. Hidden behind this question is a whole set of concerns that relate to matters of lineage, similar to the context of sperm donation: Can Jewishness be transmitted if the mother is not known? To put it differently, can Jewish eggs replace halakhic motherhood? Or is Jewishness, just like priestly status, dependent on clearly traceable lineages? And if the eggs of an anonymous Jewish woman can transmit Judaism, is the resulting child a *shtuki*, even though the concept originally means children whose fathers are unknown?

For the bulk of my research participants, however, these questions were irrelevant, as in their case neither the egg donor nor the surrogate mother was Jewish. Their path of making Jewish children passed through the institution of conversion. *Giyur*, the Jewish concept of conversion, is conceptualized and structured as a rebirth. Through *giyur*, converts are born into the web of Jewish pedigrees. They not only receive a new Hebrew private name but also a fictional filial relationship to the founding parents, namely, Abraham and Sarah. As Kunin (1995, 216) has argued, "[t]he convert is a new creation, recreated upon his conversion." In this sense, *giyur* must be understood not merely as an inner faith-transformation, but as a complete change of identity (Sagi and Zohar 1995, 65). Nor is *giyur* only a matter of personal will: "According to halakha a Gentile (a non-Jew, a *goy*, in Hebrew) who wants to convert must be accepted by the Jews" (Sagi and Zohar 2007, 8). The conditions under which a Gentile is accepted into the Jewish collective therefore express the definition of what it takes to be a Jew (Sagi and Zohar 1995).

These conditions are also important for the situation of gay couples with children born through transnational surrogacy arrangements. The rabbinic concern with preventing kinship catastrophes and unclear pedigrees has moved the reproductive practices of same-sex couples out of the rabbis' mind and sight. The moment gay couples want their children to be recognized as Jews, however, their same-sex relationships become a matter of rabbinic interest. Every conversion has to be approved by a rabbinical

court, which examines whether the convert's life and values correspond with their standards. In the case of minors who cannot yet take responsibility for their religious lives, the rabbinic focus is placed on the social environment and particularly on the parents.

In Israel, conversions of minors are conducted in a rabbinical court that is specifically assigned to this task. In its current practice, this rabbinical court only converts minors when their parents can make a plausible case that they maintain the rules of Shabbat and Kashrut, belong to a synagogue and attend services once in a while, and send their children to an Orthodox school. The rationale behind this approach is that accepting the Torah and its commandments is a requirement for conversion, and that the parents are the ones who will mostly influence whether the child lives according to halakha or not (Finkelstein 2006, 283–293). The dominant opinion here is that converting children who will most certainly violate Torah prohibitions is not to their benefit.

It appears that in the case of heterosexual couples, the rabbinical court is satisfied with the parents' promise to observe the commandments and does not investigate the family's lifestyle; nonetheless, this can, of course, be highly frustrating for heterosexual couples who identify as secular (Erich 2019). The problem of gay couples, however, is graver. The rabbinical court for the conversion of minors and the Chief Rabbinate under whose authority it stands, view their families in and of themselves as irreconcilable with religious life. Thus, even gay couples that fulfill all of the court's formal criteria cannot openly convert their children through the Rabbinate. Confronted with this exclusion, my research participants found other ways to convert their children. In the subsequent paragraphs of this section, I discuss the different paths that my research participants had found, and place their reasons and experiences in the wider context of the contestations surrounding Judaism in Israel. Whichever way my research participants chose, they all dismissed the authority of the Chief Rabbinate over the definition of Jewishness. However, they did carefully assess the societal consequences of the different paths and levels of recognition for their children.

I met Zvi and Daniel for the first time in 2012, a year after they became fathers of a boy and a girl who were born through surrogacy in India. The two men were then in their mid- and late forties and a couple for over twenty years. At the time of our first meeting, Zvi and Daniel had already started the process of converting their children through the rabbinical court for the conversion of minors. They did not think that it would be a

tragedy if the process ultimately failed, but still found it worthwhile to give it a try, even if it meant pretending to be single. Each of them had contributed sperm for one of the twins, and at that time the children officially had two different fathers. Daniel explained: “I will [lie] wholeheartedly! In my opinion, it is politics. They play a game with me, so I play too.” By presenting the whole conversion issue as a political game, he did not construe their decision to go through the Rabbinate as an act of succumbing to Orthodox definitions of what constitutes a legitimate Jewish family. He would only act as if he accepted the Orthodox requirements, when in fact he was subverting them.

Daniel and Zvi started the conversion process for their baby girl. The two men reasoned that her conversion had priority: As she grew, she would face potential partners who, like many Israeli men, would want to have Jewish children and hesitate to marry a woman with an insecure religious status. If the Rabbinate did not recognize her Jewishness, it would likely contest the religious status of her children too—non-Jewish women cannot give birth to Jewish children, and her status as a non-Jew may be reproduced from generation to generation. When I met Zvi and Daniel again in the spring of 2017, I learned that their plan had not quite worked out. In the end, they had only managed to convert their baby boy, with Zvi pretending that he was single, thanks to the supporting letter of a rabbi whom they knew through Zvi’s extended family. The rabbinical court had refused to convert the baby girl, not because of suspicions about Daniel’s status as a single man but rather due to a particularly strict interpretation of the rule of *yibhud* that forbids a man to be alone with an unrelated woman. They have not yet explained to their daughter the details of her religious status. But every now and then they hint that she would still have to do some things to complete her Jewishness. They explained to me that the easiest way for her would be through the army’s special conversion program (see Krael-Tovi 2017), but that they would also accept her decision not to undergo a conversion at all.

For most of my research participants, conversion was important for their children’s position in society and the state. Some reasoned that their children were Jewish simply because they were born into a Jewish family. Yet, they too felt that, thanks to the certificate from the rabbinical court as well as the registration at the Ministry of Interior, the conversion process was formalized and therefore completed their children’s religious-national belonging. But unlike Daniel and Zvi, they fiercely rejected the prospect of lying about their relationship. They perceived this to be a regressive

move that would put them back into the closet. “For me, this is a matter of principle,” explained Michael, for example. “I have lied enough about my sexuality, so I am not prepared to do this anymore.” And Tomer made clear:

I think that I do the best I can. Really. We gay men who came out of the closet, we’ve lived for so many years in lies. Now I got to the point where I do not have to lie anymore, to anyone. I will not sit in front of a rabbi and start to lie or hide Eli, only to convert them. If my girls will not be able to understand that, I have failed [in their education]. Because they need to know that I brought them into this world with true love and desire. And I did everything for the wellbeing of us all.

Gay men who, like Michael and Tomer, did not want to convert their children through the Chief Rabbinate had two options: Most of my research participants conducted the conversion through a Reform synagogue in Tel Aviv. Those men who grew up in Orthodox homes and continue to identify as religious, in turn, have found for themselves an Orthodox congregation in New York that agrees to convert their children according to Orthodox custom. Thus, on their way back to Israel, they include a stopover in the metropole. Although the Chief Rabbinate does not recognize these conversions, my research participants did not treat this alternative as a second-best option, but rather as a Jewish practice with which they could identify. Nadav, whose religious mother and siblings have for many years failed to accept his relationship with a gay man (see Chap. 6), hoped that an Orthodox conversion certificate would help his family to accept his daughter as part of their family. He himself has long stopped identifying as religious. But he still recalls the tears that welled in his eyes during the prayers and songs, which he knew so well from his childhood and with which the congregation concluded the conversion. At that moment, he felt at home. Similarly, Tomer, who says that his distance from religion amounts to thousands of light-years, recalls the conversion of their twin girls at the Reform synagogue as a positive experience: “They treat you as a couple and make you feel at home, like really comfortable. They accept you as you are. And this was the nice side of Judaism.”

In Chap. 6, I discuss in detail the controversies surrounding homosexuality and same-sex parenthood among Orthodox rabbis. Here, I focus on the friction between Orthodox and Reform Judaism. Reform Judaism has its beginnings in late eighteenth- and early nineteenth-century Europe,

when laymen and rabbis introduced a number of changes, mainly in the aesthetics of synagogue worship, to stop Jews from cutting their ties with the Jewish collective (Neusner 2000b, 1240–1248). What began as minor changes, however, led to a conscious redefinition of the fundamentals of Judaism. Reform Judaism, as it is known today, understands Judaism as a constantly evolving organism that has a history and can change (Encyclopaedia Judaica 1972, 25). Orthodox Judaism, in turn, became a distinguishable movement as a response to the reformers' emphasis on change (Neusner 2000a, 995). Rabbis who felt that the reformers went too far, "insisted that Judaism derived from God's will at Sinai and was eternal and supernatural, not historical and man-made" (ibid. 994). Over time, the Orthodox Rabbinate has come to view Reform Judaism as completely disregarding halakha and Judaism's basic principles. Accordingly, Rabbi Moshe Feinstein, a leading Orthodox authority of North American Jewry in the twentieth century, rejects them as heretics. And even Rabbi Ron Yosef, who has become Israel's first Orthodox rabbi who is openly gay, claims that the Reform movement is not part of Judaism at all, as it does not treat the Talmud or the Shulchan Aruch as binding codes of Jewish law.⁶

Their emphasis on change has allowed Reform Jewish associations and congregations to open their doors to lesbians and gay men from the 1970s onward (Kaplan 2000, 209–230). Rather than regarding them as a threat to Jewish continuity, their leadership quickly recognized that LGBT Jews constituted a population group that may be interested in joining Reform congregations (ibid.). The willingness with which Reform congregations agree to convert the children of same-sex couples constitutes a continuity of the movements' LGBT-affirming approach and serves the movement as an instrument to strengthen its position in Israel and vis-à-vis the hegemonic Orthodox Rabbinate.

In the course of my research, I was able to observe the conversion procedures of eight children in the Reform synagogue in Tel Aviv, which took place on two Wednesday afternoons. Rabbi Segal, who has long been responsible for the conversions in that particular synagogue, had readily agreed to meet me for an interview and invited me to observe the conversions themselves. Thanks to her, I knew that I was going to observe the hearings of the couples and children by the *bet din*, the congregation's rabbinical court of three Reform rabbis. If these rabbis were satisfied with the hearing, they would approve the conversion and then conduct the ritual immersion (*tvilah*) at a nearby beach.

The synagogue was a modern, inconspicuous building with a big glass entrance door. The reception hall was furnished only with a couple of chairs. A stairway, doors, and corridors led from there to offices, wash-rooms, and community rooms. On these Wednesday afternoons, the reception hall was crowded with different kinds of families: I met heterosexual couples and single mothers with adopted children, heterosexual interreligious couples, and Yaniv and Shay, who came for the conversion of Sheli, their two-year-old daughter born through surrogacy in India. One after another, the families entered the tiny room—packed with a huge wooden table and bookshelves—where the interviews took place. The families, the three rabbis, and I pretty much filled the room and sometimes had to move close together to make space for everyone.

Rabbi Segal had already met the couples beforehand and had prepared them for the hearings. Thus, they were rather technical and hardly lasted ten minutes. One rabbi took care of administrative matters. After making sure that the families had paid the 500 shekel conversion fee and that the boys were circumcised, he started to fill out the conversion certificate. In the meantime, the head of the *bet din* asked the parents what kind of Jewish education they intended to give to their children. Most parents emphasized the holidays and the values their own parents taught them when they were young. Yet, some of them got nervous. When one couple explained that they did not keep a kosher kitchen or used the car on Shabbat, the rabbi tersely clarified that he had not asked them what *mitzvot* they did not keep. And when another couple apologized that they did not recite the blessing over the wine on Shabbat, he helped them out and explained that once their children were older, they themselves would bring customs such as lighting candles from the kindergarten back home.

Once the conversions were approved, the rabbis and all the families drove to a nearby beach for the *tvilah* (ritual immersion) and the short ceremony that would finalize the conversion. Yaniv and Shay gave me a lift in their car. In contrast to Tomer, they were not particularly thrilled about how the rabbis had managed the conversion process so far. “It was too profane, not ceremonial enough,” Yaniv complained. Everything had happened too fast, and he wished the rabbis had shown more respect toward the process. “After all, this is about Sheli becoming part of the Jewish people,” he argued. At the beach, the conversion process continued to be hectic and informal. The rabbis rushed Yaniv and Sheli into the choppy water. Some of the other families had already left the water again and others were in the middle of immersing their children. The rabbis themselves

made sure from the shore that all children were immersed completely and three times, as the procedure prescribed. Yaniv and Shay were clearly annoyed about the rush as the two-year-old Sheli, who had fallen asleep in the car, was screaming. Then, the head of the *bet din* called everyone together, blessed the converts, and recited the prayers that are part of the conversion process, including the *shema yisrael*, the most important part of the Jewish prayer service. If conversion is the rebirth into the Jewish collective, the immersion is the moment when it actually happens. Or, as Sagi and Zohar (2007, 277) have phrased it: “Emerging from the waters of the *mikveh*, he is newly-born, as an infant emerging from a mother’s womb—a Jewish mother’s womb.”

On the way back to town, Shay and Yaniv mulled once more over the conversion process and its consequences for Sheli’s future. Yaniv claimed that he was glad that Sheli would have the possibility to undergo Orthodox conversion in the army. “You never know what will happen in a few years and what she will want to do,” he argued. Although Yaniv did not make it explicit, he referred to the question of whether Sheli would want to have an Orthodox wedding. This is at least how Shay understood the remark and he sounded a note of caution. In any case Sheli would probably have problems having an Orthodox wedding, he argued. After all, she has gay fathers, and it is not certain whether they would find an Orthodox rabbi who would accept a same-sex couple standing with their daughter under the *chuppah* (wedding canopy).

Like Tomer, Shay did not consider it a handicap that Sheli might not be able to have an Orthodox wedding. These gay men have experienced what it means to be excluded from Orthodox marriage. As we have seen in the previous chapter, exactly because Orthodox marriage excludes a broad range of people, Israeli family law provides for additional means to recognize family unions and bestow family rights. Indeed, for many of my research participants, it was the State’s rather than the Rabbinate’s recognition of their children’s Jewishness that mattered. Defying the Reform movements’ hope to find in gay couples a basis for new members, they chose a Reform synagogue for the conversion process, not because they felt spiritually or emotionally close to this movement but because it allowed them to register the conversion with the Ministry of Interior (Hacker 2009, 186). After registration, these children’s religious affiliation appears on official documents as Jewish. According to a number of surveys, most Jews in Israel support the definition of Israel as a Jewish state and take for granted Jewish religious symbols and rituals in the public sphere (Sharot

2007, 672; Tressler 2009, 196–210, 215). Or as Liebman and Yadgar have put it, “in the minds of most Israelis, being Israeli and being Jewish are inseparable” (2009, 159). Jewish is in this view first and foremost a national rather than a religious category. And it is telling that while treating Orthodox conversion as optional, Yaniv, Daniel, and Zvi take it for granted, like many other of my research participants, that their children will join the army.

But as Daphna Hacker (2009) has shown, the question of whether their daughters will count as respectable marriage partners without an Orthodox conversion is not inconsequential. Conversion practices in Israel follow a gendered pattern: 77% of the almost 25,000 persons who underwent Orthodox conversion between 2001 and 2006 were female (ibid. 179). The reason for this impressive imbalance lies in the social pressure to convert that is put on non-Jewish women who are in a relationship with a Jewish man (ibid. 180–184). Hacker shows that this social pressure is motivated by concerns for the children’s religious status (ibid. 185–186). For girls, Jewishness is a precondition for an uncontested status in society, not only in the present but for future generations as well. Thus, the question remains whether the bulk of Jewish Israelis recognize Reform conversion as a valid alternative to Orthodox conversion. Will they think that Sheli or Tomer’s twins are Jewish enough, or will they be exposed to social pressure like Hacker’s interviewees?

For Rabbi Segal and her fellow rabbis in the Reform synagogue, this question was essential and tightly connected to their marginal position in the State. It had required a verdict of the High Court of Justice in 2002 to force the Ministry of Interior to “register as Jewish those converted by the Reform and Conservative movements in Israel” (Hacker 2009, 186). The recognition of Reform and Conservative conversions remains fragile. As of 2010, a new bill threatened to give the Chief Rabbinate the sole authority to approve the appointment of conversion judges (Ettinger 2010a). Reform and Conservative rabbis feared that this would lead the Ministry of Interior to refuse the registration of their converts as Jews (Ettinger 2010b). Two years later, when I interviewed Rabbi Segal, the enactment of the bill had come to a halt. According to the rabbi and the newspapers, Jewish organizations in the United States—where the Reform and Conservative movements constitute the majority—had helped to sink the bill. They argued that the law might not only prevent Jews who converted in a Reform or Conservative synagogue outside Israel to receive

Israeli citizenship but also turn more than 85% of US Jewry who belong to a Conservative or Reform synagogue into second-rate Jews (Ravid 2010).

In light of these controversies, it was important for Rabbi Segal to send a strong signal to the State. Thus, after the hearings at the *bet din*, she urged the families to pursue official recognition of their conversion certificates. To do so, they would have to let the certificate be authorized through a civil court and bring it together with the court decision to the Ministry of Interior for the registration. This, she argued, was not only important for the child's civil status. More importantly, it showed the public authorities that there is a demand for Reform conversions that cannot be easily disregarded.

5.3 BELONGING MARKED IN FLESH

Besides conversion, I found in my research the practice of male circumcision to be another strong marker of societal belonging. While there is some talk of increasing numbers of Jewish Israeli parents who maintain their children “intact,” they remain a tiny minority (Gradstein 2018). From a halakhic perspective, circumcision is a precondition for male converts and a commandment for Jewish fathers. But, for many Jewish Israelis, circumcision is not imbued with religious meaning. They have so integrated Jewishness into their Israeli identity that they hardly distinguish between them. Thus, they perform the rite “because this is the way that boys are initiated into *Israeli* (non-Arab) society” (Tabori and Erez 2003, 173, their emphasis). This does not mean that they do the brit milah to explicitly manifest their own and their sons' national belonging. Thus, when Orna and Tami celebrated Yoni's birth, they invited their Jewish and Arab friends alike. They did the circumcision because this is what everyone else does and even though Orna would have preferred to skip it altogether.

When the *mohel* started to prepare his instruments for Yoni's circumcision, Orna disappeared to the bar at the other end of the hall. She could simply not watch the procedure, she explained to me, and preferred to ease her discomfort with a glass of vodka. The lesbians and gay men who sat with me at the table laughed amicably when after watching the procedure I stepped outside to breathe some air, and commented on their own unease with the ritual. An old friend of Orna and Tami argued that this was a barbaric tradition and that people were just performing it so that their children will not feel different. Revital, another friend whom I knew well from my research, added that like Orna, she would have rather not

circumcised her son. In the end, however, she could not withstand the pressure from her family and gave in.

For many of my research participants, having a brit milah was an integral part of their own and their children's lives as being part of the Jewish collective. Others reasoned that their boys would most likely run around naked at the beach and wash themselves in common showers during school trips or in the army. Rotem and Galit, for example, did not agree with each other on whether to circumcise their boy. Galit would have preferred not to, but Rotem insisted. She argued: "It is enough that he has two mothers. And he should be like everyone else. We live here. And I want his life to be as easy as possible." Rotem did not phrase her reasons for circumcision in terms of Judaism or national belonging. Rather, she and other research participants did not want their children to be *too different* from the other children in an environment that happened to be Jewish Israeli. All the same, "being different" points clearly to a collective, and the brit milah is a symbol of belonging within that collective. In this reasoning, having same-sex parents *and* being uncircumcised would place these boys at its margins. Not being circumcised "creates *harigut* [something irregular, exceptional, strange, anomalous]," as a father of twins explained to me. The suffering from this *harigut* outweighs the physical pain of the procedure.

The stories of the four couples that did not circumcise their children show just what an important cultural schema circumcision is. Two of these couples had reached the conclusion that societal belonging did not depend on circumcision. Tim and Aviram had neither circumcised nor converted their adopted son to Judaism, but nevertheless insisted that he was completely Jewish due to growing up with Jewish fathers and Jewish traditions. They encountered a lot of criticism and incomprehension on behalf of family and friends. But, their experiences convinced some of their friends to refrain from circumcision, too. Kareen and Avigail were among them. The two women reasoned that in being born to a Jewish mother, their four children were Jewish enough. For Gili and Noa, in turn, the decision not to circumcise their son was a statement against Judaism as a patriarchal religion and the dominant category of belonging in Israel. The birth mother was born to Russian immigrants and herself not halakhically Jewish. Like Aviram and Tim, they had not converted their twins, and identifying as radical left-wing feminists, they harshly criticized the position that Judaism has in Israel. Laura and Adi, in turn, did not take the decision against circumcision together. Rather, their struggle over the question ended with Laura, the

non-Jewish and non-Israeli birth mother, canceling the event half an hour before it was supposed to start.

Laura and Adi's case was exceptional in that Laura had her way against Adi's similarly strong wish to have a circumcision. In all the other cases in which the partners had different views on the issue, the couple ended up doing the circumcision. Laura's and Adi's conflict over the circumcision indicates that the status as birth mother provides a degree of entitlement and power that might not be felt in daily life, but matters in situations of conflict. For Orna, Tami's position as birth mother was indeed an important reason why she agreed to the circumcision. After the event, back at their home, we sat together on the balcony. Orna was still exhausted and shaken. She remembered the celebration they had organized for the twin girls years ago as a thoroughly happy event. Reflecting on why she felt different now, she told me that she did not understand why people continue to circumcise their children. When I asked her whether she consented because of her family, she explained that it was mainly because she did not want to fight with Tami. "After all, Yoni is Tami's son, and for her not to have a brit milah was out of the question." Yet, there were cases where the birth mother would have preferred not doing the circumcision but gave in to her partner's will. Upholding the decision against circumcision appeared to be a strenuous effort that was almost impossible to maintain if both spouses did not stick together to deflect criticism and social pressure.

I realized best how strong the social pressure can be in my conversation with Lili and Michal. The two women are friends of Noa and Gili and, like them, they identify as radical left-wing feminists. Unlike their friends, however, they felt that the family pressure was so strong that in the end they circumcised their son despite their dislike of the ritual. In our conversation, Lili explained to me that she simply did not have the strength to do the exceptional, the abnormal thing once again. "I said that I did not want to deal with this dilemma, that I did not want to fight with my parents over this. Let's just get it over with. I did not want to think about it, I did not want to talk about it. So we cried for a whole night. I just did not have the strength to fight against all these expectations and dictates." Michal replied that she would have had the strength, but only together with Lili. Her family, in particular, had made a fuss about the matter, and even threatened to cut ties if they would not circumcise the boy. Recalling their fights about it, Michal said: "At some moment, I understood that there was nothing to talk about. That I had

to deal with it and that at that moment the family was very important to me. We were very close to them. So it had to be.”

Remembering all the stories of women and men whose coming out had seriously severed their relationships with parents and siblings, I was stunned that in the case of Lili and Michal, it was not the same-sex relationship but the *brit milah* that was the reason for the fight with Michal’s family. But if we understand reproduction in Weiner’s sense (1978) as a process that concerns more than the definition of parenthood and the question of what is given and what is made, Michal’s and Lili’s struggle with their respective families ceases to be a curiosity. Rather, Michal’s family asked, just like my other research participants and their families, what principles were necessary to become part of the collective with which they identified and to what extent was it possible to bend them. Thus, negotiating the status of their families and children in society was for my research participants a constant balancing act between affirming their own difference and ensuring the children’s social belonging at the same time.

5.4 MARKING BELONGING THROUGH TRANSFORMED RITUALS

Hadas and Ana were living in London, where Ana was pursuing a postdoctoral fellowship, when Hadas gave birth to their first son, Eliav. As the couple was actively involved in a local Reform congregation, they used this network to find a *mohel*. Nevertheless, when they finally had to choose between a Reform and an Orthodox *mohel*, they preferred the latter—the Reform *mohel* had insisted on performing the ceremony in his clinic, where no more than six persons could be present.

This was a crucial matter for the two women. During the interviews and informal conversations that I had with Ana and Hadas, the fear that Ana’s parents would not recognize Eliav as their grandchild was a recurrent topic. Thus, they were glad when both Hadas’ and Ana’s parents announced without hesitation that they would come to the *brit milah*. With this matter being settled, Hadas and Ana took great care not to differentiate between the two sets of grandparents, neither with regard to their accommodations nor their role during the ceremony. In a lengthy preparatory meeting with the *mohel*, they discussed how they could structure the event so that it would meet their own and the *mohel*’s ideas. He did not accept all of the changes they proposed, but together they found

a compromise. Their first challenge was the father's blessing that blesses God for sanctifying the Jewish people with his commandments and for commanding them (the fathers) to enter their sons into the covenant of Abraham. Due to its gendered character, neither Hadas nor Ana was allowed to say it, and hence they decided to leave this part out. The *mohel* insisted, however, on the part of the prayer that says:

May the father rejoice in his offspring, and his mother be glad with the fruit of her womb, as it is written: May your father and mother rejoice, and she who bore you be glad.

Still, he agreed to say this part quickly and silently, and allowed Hadas and Ana to add their own blessings and songs at the beginning and the end of the ceremony. Accordingly, they left the heart of the Orthodox ceremony almost untouched, but framed it with their own elements. These included the couple's blessing as mothers, another blessing for the grandmothers, and the grandmothers' blessings to Eliav. The grandfathers pronounced no blessing, but together they held Eliav during the circumcision. Hence, Ana, Hadas, and the *mohel* transformed a ceremony that is primarily about Jewish men—and can therefore be read as a symbolic marginalization of Jewish women (Glanzberg-Krainini 2003)—into a ceremony of mothers. It carried a clear message to Ana's parents: The ceremony affirmed the equality of the two women's motherhood and their own position as grandparents. Hence, the *mohel's* openness to an extended ceremony made it possible to bolster kinship relationships across generations in families that do not fit the genealogical structure of Judaism.

Among my research participants, Hadas and Ana went furthest in actively involving their *mohel* to create a religious ritual that affirmed their family constellation. It is probably no coincidence that they were my only research participants affiliated with the Reform movement, where transforming rituals has become a tradition in itself (Lustenberger forthcoming; Ochs 2007). But even in the cases, in which couples did not change the ritual, the involvement of *mohalim* deserves attention. Unlike the officials in rabbinical courts, Israeli *mohalim* are not appointed by the Chief Rabbinate. Yet, *mohalim* can undergo a special training to be certified by a joint committee of the Ministry of Health, the Ministry of Religious Affairs, and the Chief Rabbinate (Ministry of Health 2018). When Susan Kahn conducted in the mid-1990s an ethnographic research among unmarried women who had children through sperm donation, she found that they often had to ask around to find a *mohel* who would agree to

perform a circumcision on a boy who has no father listed on his birth certificate (Kahn 2000, 41). Fifteen to twenty years later, none of my research participants recounted similar problems. Indeed, most of them chose a religious *mohel* rather than a physician. As Tami explained their choice: “Physicians perform maybe one circumcision in a month. This rabbi, in contrast, performs almost two circumcisions per day. It is his profession. He is an expert.” Several friends of hers had engaged him, and she herself had seen how he worked during these occasions. Other interlocutors told me similar stories. Zvi and Daniel, for example, engaged a *mohel* who had already circumcised their nephews. Thus, the *mohalim* who performed these children’s circumcision neither belonged to a specific liberal group nor offered their services explicitly to same-sex couples.

The *mohel* who performed Yoni’s brit milah was probably unaware of the particularities of the family constellation. Tami had approached him alone and did not mention Orna. As Orna also remained in the background during the circumcision itself, the *mohel* could therefore assume that he did the ritual for the boy of a single mother, which is remarkable itself. Orna doubted that the *mohel* would have agreed to perform the circumcision if they had been open about their relationship. But in other cases, the couples had approached their *mohel* together. Furthermore, at the time of my research, same-sex parenthood had gained such visibility at all layers of Israeli society, that the Rabbinate could not treat it as a non-issue anymore. Hence, it is reasonable to assume that *mohalim* at least suspect that there are same-sex couples among their unmarried clients.

In light of this, not inquiring into the relationships of a child’s unmarried mother or father may be an important strategy to circumcise these children without facing an ethical dilemma. I do not imply that when *mohalim* prefer not to know the intricacies of their clients’ family constellations, they circumvent ethical judgment altogether. They simply decide that performing the circumcision has value in its own right, which makes it unnecessary to know more about these children’s parents. This was exactly Tami’s argument when she claimed that rabbis should only consider the fact that they circumcise Jewish children. “Even more,” she continued, “performing the circumcision for fatherless children is a *mitzvah*, as in these cases the *mohel* takes the place of the father and gives the boy his Jewish name.” Rabbi Ron Yosef, Israel’s first openly gay rabbi, used a similar line of argumentation when, in my interview with him, he contemplated whether to attend the brit milah of a boy who was born to an Indian surrogate mother and raised by a befriended gay couple. He was

tempted to follow the advice of relatives and friends, who prompted him to refuse the invitation. “The question is whether I want people to see me at such an event,” he justified his hesitation. Yet, having given the matter further thought, Rabbi Ron Yosef decided to attend. He explained:

First of all, here is a baby boy who will be converted. He is a Jew. He is on the way to becoming a Jew. The brit milah is about the baby. What reason do I have not to go? Quite the opposite, I have reasons to go... It is not the boy's fault [that he is raised by a gay couple].

Rabbi Ron Yosef's explanation strongly resembles Rabbi Ben-Zion Meir Uziel's (1880–1953) responsa on the conversion of children born to religiously mixed couples. There, Israel's first Sephardic Chief Rabbi reasoned: “[T]hey are the seed of a Jew, and they fall into the category of wayward sheep [who need to be protected]. I am afraid that if we reject [the children] altogether by rejecting the parents, we will be brought to Judgment [before the Master of the Universe], who will say to us, you have not brought back the strayed, or looked for the lost” (quoted in Ellenson and Gordis 2012, 127). Concentrating on the boy's fate allowed both rabbis not to pass judgment on the parents' illicit relationships. It is likely that *mohalim* use the same kind of rationale to circumcise children, even though they disapprove of their parents' relationships. It is telling that *mohalim* are able to follow this rationale, while the rabbinical court for the conversion of children, which operates under the direct authority of the Chief Rabbinate, does not. It indicates that the extent to which the children and families of same-sex couples can receive a place in Orthodox Judaism is less a matter of halakha—which allows for diverging views—and more a result of the structure and politics of the Chief Rabbinate, which dramatically minimizes the room for pluralism.

More important than the *mohel* were, for most of my research participants, the guests: their families and friends with whom they wanted to celebrate their children's birth. Some, like Tami and Orna, turned the circumcision into a big event. Some kept the brit milah small and only invited the closest members of their families. Others organized a big event in addition to an intimate brit milah. Parents of girls often organized a big event to which they included a blessing or other more or less religiously inspired rituals. Like Ana and Hadas, who used the religious ritual to affirm their parents' roles as grandparents, they all brought together

people who constituted the social network that my research participants wanted to (re)produce for their children.

Noga and Ruth made this point when, after many years of fertility treatments, their daughter Ma'ayan was born. To mark the event, the couple organized a big picnic that included a commitment ceremony and blessings for the baby girl. Noga explained their reasons for the event as follows: "This was the moment when it was important for us to declare [our relationship]. The moment we had a daughter, everything had to be clear, open, and declared." Announcing their relationship was intertwined with social recognition. The wedding ceremony, as Kathleen Hull (2006) has argued, is a statement to the community, a claim for the relationship to be recognized. However, the moment Noga and Ruth chose for their ceremony—their daughter's birth—indicates that what really mattered to them was the community's recognition of their family and the status of both spouses as mothers. Accordingly, this was a family celebration, and indeed they called it a *brit mishpaha*, an event that does not formally exist in Judaism. *Brit mishpaha* literally means "family covenant" and alludes to the brit milah. The ceremony itself took place under a *chuppah* (a traditional wedding canopy) and was a colorful mix of songs, blessings, and readings. References to Jewish traditions made clear that for Noga and Ruth, this was a Jewish ceremony. The couple's friend who led the ceremony blessed Ma'ayan with the following words:

Ma'ayan, beloved, today we all celebrate with you the family covenant.

At this occasion, you join your mothers' existing covenants:

Their covenant as a couple and a family,

The covenant of the People of Israel and the Jewish culture,

And the covenant with the world and the environment.

Your joining these covenants renews their validity. Today your mothers introduce you to their covenants. When you grow up, you will find your own covenants in the world.

Noga and Ruth's ceremony touched me for expressing so beautifully what is at stake when we think about reproduction. The ceremony affirmed and renewed the women's covenants—their relationships and commitments to a wide range of human and nonhuman beings. The guests in these occasions are not merely an audience, but co-creators of the event. My interlocutors expressed the importance of the guests when pointing to the unusual degree of joy. Tomer and Eli called the festive dinner they had

organized after the birth of their twins a “family enlargement event.” Eli recalled with excitement that everybody, including the Orthodox part of the family (his mother’s cousins and their children), came to the party. While it is usual for guests to bring sums of money as gifts, he emphasized that their guests brought even higher sums of money than usual, “as if they understood what we went through to get to this point.” The guests’ participation is political, even if they only came to express their joy. As Hull has suggested: “[M]erely showing up constitutes active participation ... [It] is a way of affirming the reality and seriousness of the event” (2006, 72). In this sense, childbirth ceremonies are always acts of recognition. They simultaneously demonstrate these families’ exceptionality and their social belonging.

For several of my research participants, the *brit milah* or childbirth celebrations constituted an occasion to negotiate and redefine the relationships with their family. Daniel’s parents, for example, had refused to recognize Zvi as part of the family for over twenty years and requested him not to tell anyone from the extended family. Daniel says that he largely respected their wish—until the twins were born. Then, he called his aunts, uncles, and cousins one after the other and invited them to their childbirth celebration. His parents refused to attend, and the relationship with them continues to be difficult. But, when talking about the event, Daniel recalled with delight that everybody else came. He said: “I felt that the people were really happy for us. They came for us, not like, ‘Ugh, another of these events.’ They came to be with us.” Nathaniel had a similar experience during the childbirth celebration that he and his partner organized for their twins. His parents, too, refused to attend the event. For Nathaniel, this was nevertheless the moment he suddenly felt normal, as he expressed it. “I got so much negative feedback from my family,” he reasoned. “And suddenly you see that most people are fond of you and support you. And you feel such a strong connection to everyone.” It is important to note that Nathaniel continued to consider his parents and siblings to be family, even though they failed to provide him with a feeling of belonging. Just as Lewin (1998, 121–122) has argued in respect to the United States, in Israel too, parents and siblings do not become irrelevant when homosexuality disrupts the workings of kinship. While in daily life friends could be as close as or even closer than family, my interlocutors invested most of their energy in the relationships with their parents and siblings.

In the case of Ruth and Noga’s *brit mishapaha*, Ruth’s father did not want to invite his friends and family to the event. For Ruth this was proof

that he had never completely made peace with her sexual orientation. She did not accept his position and gave him an ultimatum. "If he wants to be a grandfather to Ma'ayan, and if he wants Ma'ayan to recognize him as a grandfather, he cannot be ashamed of our life," she argued. With her threat to cut the relationship between her father and his granddaughter, Ruth turned the power relation between herself and her father upside down, and in the end he complied. The incident is remarkable because it adds details to the role that parents—and to a lesser degree siblings—play in these events. Ruth's struggle with her father was not about his attending the event, which he had agreed to from the beginning. Ruth expected him to take a more active part, to take up his role as a grandfather and be on the inviting side. He needed to come and to bring his friends too. In Israel, this is not an unusual request. Life cycle events concern the whole family, and parents are often deeply involved in their organization and financial backing. In this way, parental involvement in organizing and inviting was often a final litmus test, giving evidence of how comfortable they actually were with their children's same-sex relationships.

When we place these life-cycle events in the context of reproduction—understood as the regeneration of societies—the difference between merely attending and actively inviting becomes even more significant. The difference is not only about varying degrees of support but also about the reproduction of a whole set of enduring relationships. When guests accept an invitation, they take upon themselves the responsibility to invite the hosts to their own future festivities. By bringing a present or, more typically in Israel, a check, the guests further establish the expectation that the hosts will accept future invitations and bring a check as well. In the same way that Godelier (1999, 48) has argued about the exchange of gifts, here too, counter-invitations create new obligations that regenerate social relationships. The same-sex couples I described in this section take an active part in this reciprocal system, and the recognition they received as a couple was enhanced with every future invitation and counter-invitation.

It is important to understand that in large events as the one organized by Ruth and Noga or by Tami and Orna, social relationships are reproduced that extend beyond the same-sex couple's immediate network. When parents of same-sex couples invite their own siblings, cousins, and friends, they attribute to the families of same-sex couples the power to reproduce their social network, too. Thus, not one, but rather a whole range of interwoven social networks is reproduced in these events. After Yoni's brit milah, I sat with Orna, Tami, the twins, and another friend at

the kitchen table in their home. Together, we counted the money they had received from the guests. When Orna opened an envelope containing a check of 1000 shekels, she laughed. This aunt of hers was just giving back the money her daughter had received from Orna's mother a few weeks ago. While the direct exchange took place between the mother and aunt, it also embraced the families of Orna and her cousin, as well as the relationships between all of them. This reproduced and indeed expanded networks of enduring social bonds, of which same-sex couples and their children were an integral and legitimate part. These expanding networks provided such strong inclusion, that the Rabbinite's rejection of these families faded into the background.

5.5 CONCLUSION

In this chapter, I have discussed how Judaism—as a legal system and as a religious tradition—shapes the status of the children born to same-sex couples in Jewish Israeli society. I use the term “shape” to emphasize the leeway that Judaism, in its diverse manifestations, provides. While halakha ascribes seemingly unequivocal religious statuses to the children of lesbians and gay men, already the status of lesbians' children as *shtuki* is ambivalent. The picture further changes when we shift our glance to same-sex couples' conversion practices and the brit milah. In the moment of birth, we find that Judaism in its manifestation as halakha disregards same-sex relationships as a meaningful unit for reproduction. This alone does not impede the children's religious status, but rather renders their parents' same-sex relationship irrelevant, and indeed invisible. In the moment of conversion, however, we encounter an institutionalized manifestation of Orthodox Judaism that treats the fathers' same-sex relationship as a reason for denying the children entrance to the Jewish collective. At the brit milah, again, Judaism appears in its most inclusive form that allows same-sex couples, *mohalim*, and their guests to affirm the children's *and* their parents' societal belonging regardless of their halakhic status and the Chief Rabbinite's rejection of same-sex relationships. Here, Judaism makes room for a form of belonging that depends on acts of kinship that forge networks of enduring relations and sympathy.

To dig further into Judaism's capacity to ingest same-sex parenthood, I would like to conclude this chapter with some reflections on the gendered nature of Jewish reproduction. Kahn (2000) has already beautifully shown how the complementary roles that halakha attributes to mothers and

fathers for the making of Jews allow single women to participate in the reproduction of the Jewish collective. Here, I have expanded on Kahn's insights and added a perspective on the children of gay men. In an early work on same-sex parenthood, Corinne Hayden argued that replacing genitrix with genitor or genitor with genitrix changes the character of the union between the parents (1995, 48). In Judaism, however, not only the parents' union but also the children's position in society is at stake. Furthermore, and I think that this is crucial, not only the parents' but also the children's gender matters.

This point is most visible in the context of the *brit milah*, a ritual that concerns boys alone. Bourdieu (1991, 80) has suggested that rites of passage such as circumcision separate "those who have undergone it [...]" from those who will under no circumstances undergo it." Hence, circumcision reproduces the difference between woman and man. According to Hoffman (1996, 25), circumcision expresses the "equation of 'man' and 'Jew.'" For Reconstructionist Rabbi Glanzberg-Krainini (2003), circumcision marks the symbolic marginalization of Jewish women. She asks where she and her daughters are left if a (circumcised) penis is the central requirement for participating in the covenant between God and the Jewish people (*ibid.* 198–199). From the perspective of most of my male and female research participants, however, circumcision emphasized not the superiority of men over women, but the likeness between their boys and other boys. Some couples even wished for the birth of a girl, which would release them from the decision to perform this "barbaric" ritual, as they expressed it. Truly, for girls, there is no mark on the flesh that symbolizes belonging. At the same time, however, their belonging cannot be questioned on the grounds of a mark that is missing.

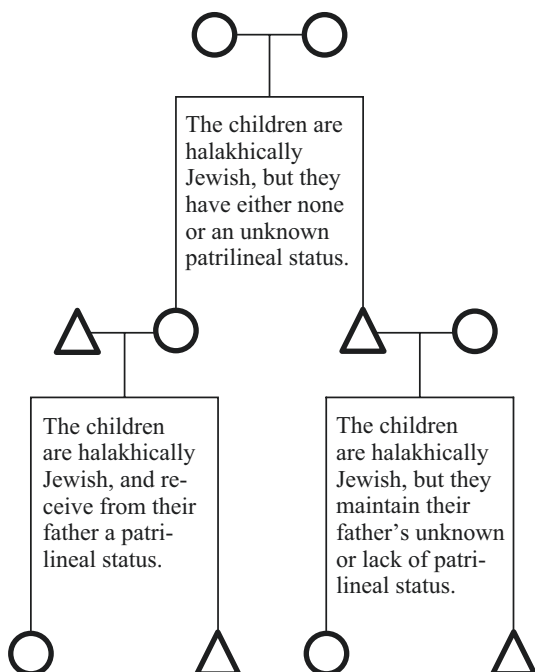
Circumcision is particularly interesting in the case of boys who were born through surrogacy to gay men and are thus halakhically not Jewish. Circumcision provides here for a way of belonging that undermines the heterosexual matrix of Jewish reproduction. Nevertheless, the belonging of these boys remains ambiguous; they are not completely inside, but also not completely outside. As Sagi and Zohar have observed, the *brit milah* erases the boy's gentilehood and makes him ready for the *tvilah* that symbolizes his birth into Jewishness (2007, 271–285). According to this reading, the circumcised boys of gay men remain in a liminal state that, in rabbinic cosmology, can only be temporary. But, as the Rabbinate does not agree to convert them to Judaism, this liminal state becomes permanent. Interestingly, it may be exactly the gendered dynamics within the

genealogical structure of Judaism that renders these boys' ambiguous status unproblematic. Contrary to girls who will not be able to give birth to Jewish children and who therefore might face pressure to undergo conversion, their liminal status does not impede these boys' ability to father Jewish children. Their liminality is not reproduced in the next generation.

The concern with marriageability and the transmission of Jewishness makes clear that to fully grasp the importance of gender for Jewish reproduction, it is necessary to adopt a transgenerational perspective that encompasses more than two generations. Such a perspective reveals an interesting pattern that is best rendered visible with kinship diagrams that trace the religious status of the descendants of same-sex couples over two generations.

Figure 5.1 has at its starting point a lesbian couple that mothered two children that were conceived with the help of anonymous sperm donation. As the mothers are Jewish, their children are Jewish too, but because of the anonymous sperm donation, their patrilineal status is in doubt. A generation later, the patrilineal status is clarified in the case of the daughter.

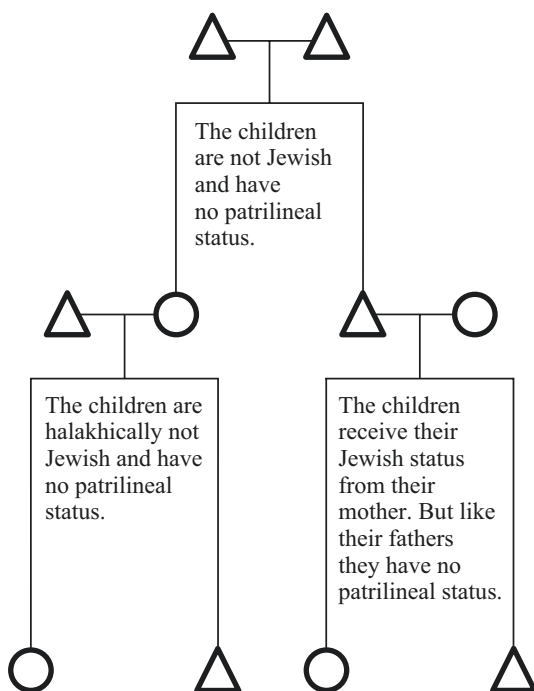
Fig. 5.1 Kinship diagram. Religious status of a lesbian couple's descendants



She passes her Jewishness to the children, and her husband contributes the patrilineal status. Thus, already after two generations, the lesbian relationship becomes functionally invisible in the transgenerational web that constitutes the Jewish people. In the case of the son, the uncertain patrilineal status is reproduced in the next generation, and depending on the gender of his children and children's children, it takes time until the lesbian relationship becomes functionally invisible.

Figure 5.2 has at its starting point a gay couple that fathered two children with the help of a transnational surrogacy agreement. It is assumed that both the egg donor and the surrogate mother are not Jewish and that the children were not converted in a rabbinical court recognized by the Chief Rabbinate. Here it takes longer until the fathers' same-sex relationship becomes functionally invisible. In the case of the son, the children receive the Jewishness from their mother, but it requires another generation (in the case of girls) or even more (in the case of boys), until

Fig. 5.2 Kinship diagram. Religious status of a gay couple's descendants



a patrilineal status is acquired. As discussed earlier, the gay couple's daughter position is the most problematic, as she cannot provide her children with a Jewish status.

Despite the difference that the gender of the parents and the children makes for the reproduction of the Jewish collective, the two diagrams also indicate that sooner or later, same-sex relationships become in all cases functionally invisible and their lineages absorbed in the web of Jewish pedigrees. As the generations pass, girls and boys are being born and thus reassemble the properties that are necessary to make full-fledged halakhic Jews, including a patrilineal status. That the perpetuation of lineages does not necessarily strictly follow kinship norms is, of course, neither a new phenomenon nor unique to Judaism. Indeed, anthropologists have long showed that the accommodation of genealogies helps to maintain the perpetuity of lineages, and that people around the world alter genealogical memories by attaching one's lineage to a prestigious name, forgetting less illustrious ancestors, or even incorporating illustrious maternal ancestors into patrilineal (e.g., Arena 2011; Conte 2003). It is therefore not inconceivable that at some point in the future, there will be Orthodox rabbis who are the descendants of lesbians and gay men. Whether by that time same-sex parenthood will be a halakhically accepted path for the reproduction of the Jewish people is another question.

NOTES

1. For further explanations on the naming practice in Judaism, see for example Dovid Zaklikowski (n.d.) on Chabad.org.
2. The word *shtuki* (masculine) is related to the verb *lishtok*, to remain silent.
3. Cryobank Israel: The Limitation of Births per Donor (Hebrew), <http://cryobank.co.il/פרותל+תודיל+תומכ.html> (accessed 15 September 2014).
4. Similar rulings include: *A.A. v. the Attorney General* (Hebrew), FC Rishon LeZion 35590-03-12, 07 July 2013, published on www.nevo.co.il; *S.Z. v. the Attorney General* (Hebrew), FC Rishon LeZion 35569-03-12, 24 July 2013, published on www.nevo.co.il.
5. *A.A. v. the Attorney General* (Hebrew), FC Rishon LeZion 35590-03-12, 07 July 2013, published on www.nevo.co.il.
6. For some background information on Rabbi Ron Yosef, see, for example, "Israeli rabbi speaks out on being gay" (AFP 2013), published on *ynetnews* on 6 July 2013. His remarks about the Reform movement stem from a personal correspondence on 23 August 2010.

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CHAPTER 6

Transformations from Within

In December 2007, representatives of Orthodox parties were outraged when Isaac Herzog of the Labor Party (then Israel's minister of social affairs and social services) proposed that same-sex couples should have access to joint adoption. In an article in the national newspaper *Haaretz*, Eli Yishai, chairman of the *Shas* Party, stated: "Permission for same-sex couples to adopt redefines what a family is among the Jewish people. This is a definition that contradicts Judaism and has not existed to date" (Yoaz 2007). Two months later, *Shas* parliament member Shlomo Benizri condemned political attempts to advance the rights of gay men and lesbian women and argued that homosexuality causes earthquakes (Knesset 2008, 150). In the biblical analogical ontology, the thought of homosexuality causing earthquakes is entirely rational. Here, each being has a clear position that determines its expected behavior and relationships to every other being. The derangement of one piece unsettles the whole web of relationships. For the organized LGBT community and many other Israelis, however, the claim appeared absurd. Thus, the chairman of the Gay, Lesbian, Bisexuals and Transgender Association publicly thanked Benizri for attributing supernatural powers to same-sex couples (Ilan 2008).

Ten years later, same-sex couples' access to joint adoption hit the headlines again. This time, political controversy was triggered by a joint petition to the Supreme Court submitted by the Association of Israeli Gay Fathers and the Israel Movement for Reform and Progressive Judaism. In their petition, the two organizations challenged Israel's adoption policy,

which does not recognize same-sex couples and unmarried heterosexual couples for the purpose of adoption. As seen in Chap. 3, these couples are not completely excluded from adoption. Yet they are only the second or even third priority from the point of view of the Child Welfare Service, which, in general, tries initially to find a married heterosexual couple. Homosexual couples, in particular, often are only able to adopt children who have been turned down by heterosexual couples (Lee 2017).

In July 2017, the Ministry of Social Affairs and the Ministry of Justice published their response to the court petition. They maintained that they do not intend to put same-sex couples on an equal footing with heterosexual couples because being placed with a same-sex couple would add an additional burden on children who—because of the adoption—were already dealing with a feeling of being *harig* (literally: different, anomalous, irregular). This announcement was met with a public outcry that quickly spread throughout the social media.¹ Same-sex couples posted on Facebook pictures of their families and commented that they were completely capable of providing their children with a warm and loving home. National media channels spread their messages empathically. News portals affiliated with Orthodoxy, in turn, remained largely silent.

But then, *Yediot Ahronot*, one of the biggest daily newspapers, and its Internet portal ynet.co.il, directed the public interest to a Facebook post by Adi Galor and her longtime partner Brit Galor Perets, who were raising together two children born through sperm donation. Like many others, the two women took issue with the State's position on adoption by emphasizing the loving atmosphere in their home. What made their post interesting is the fact that Brit Galor Perets was at the time the press advisor of Naftali Bennet, then head of the religious Zionist² party *HaBayit HaYehudi* (the Jewish Home) and minister of education. At that time, *HaBayit HaYehudi* was also the party of Minister of Justice Ayelet Shaked, who stood behind the State's rejection of the court petition.

With these connections, the court petition acquired another level of urgency in the Orthodox public. Bennett himself did not take a position on the matter itself. But he announced that he fully stood behind his press advisor. A couple of days after Brit Galor Perets' public coming out, an open letter signed by forty-three rabbis reached the religious media. The rabbis endorsed Shaked for "steadfastly guarding the values of *Yisrael* [in this context the Jewish people] and the traditional and ethical core of the family, just as it is appropriate for a representative of the religious Zionist party." Some party members took a similar line, when suggesting that

Bennett had capitulated to the “ideological terror” of the LGBT movement or tried to garner votes in the secular sector.

The two public incidents surrounding same-sex couples’ access to adoption illustrate not only that, despite their vast legal gains, LGBT people still have meager standing when fighting for family rights as couples rather than as individuals; they also point to the transformations that Orthodox Judaism has seen in the last decade with regard to the topic. In 2007, struggles over same-sex parenthood were framed by the media as well as by representatives of LGBT organizations and the Rabbinate as running along a religious-secular divide. Ten years later, the need that these forty-three rabbis felt to write their open letter and to publish it in newspapers affiliated with the religious Zionist sector indicates that this divide is not so clear anymore.

Heated struggles are currently being fought within Israel’s religious Zionist sector over homosexuality and conjugal same-sex relationships. The Ultra-Orthodox streams have been less affected by these struggles, but, here, too, changes are occurring (Irshai 2017). This chapter focuses on the struggles in the religious Zionist sector to add a still understudied component to the scholarship on medically assisted reproductive technologies in Israel, which has largely focused on the translation of religious principles into national legislation and medical practice. Here, I address the other side of the coin and show that Orthodox Judaism itself has not remained untouched by this translation processes. Rather, confronted with the increasing visibility of lesbians and gay men in the religious public and in Orthodox institutions, homosexuality has become a new locus for halakha-observant Jews to ask what role the secular values and new forms of identity have in the regeneration of Orthodox Judaism.

To make my argument, I provide first a short overview of the frictions and fractions within Orthodox Judaism and the role that rabbis therein play. This background knowledge is necessary to better understand the diverging solutions that rabbis have proposed to homosexuals, as well as the questions that lesbians and gay men from Orthodox homes ask and the issues that arise when they struggle with their sexual orientation, talk about their desires with parents and siblings, enter same-sex relationships, and raise children. I then turn to the growing visibility of lesbians and gay men who have grown up in Orthodox homes, and show how some rabbis, their congregations, and families have found ways to carve out a space for their families in Orthodox Judaism. Exactly this visibility, however, is met with fierce resistance by other rabbis, who increasingly feel that God’s

order of creation is being threatened. I address this rabbinic standpoint, which to this point has surely been the dominant one, through the activities of Rabbi Aharon Harel, who collaborates with Rabbi Burstein's organization PUAH. Harel has made a name for himself with his extensive occupation with homosexuality, both as a facilitator of reparative therapy and as a matchmaker between lesbians and gay men. I show that while attempting to maintain God's order against the "dictatorship of LGBT ideology," secular principles have entered the narratives of proponents of reorientation therapy. Their shrill vocabulary manifests that religious lesbians and gay men have become an undeniable—albeit uncomfortable—part of Orthodox Judaism. I conclude this chapter with the stories of lesbians and gay men who grew up in Orthodox homes. I dig deep into their successes and failures in consolidating their sexual orientations with their identity as halakha-observant Jews and their families' expectations. Through them, I show that Orthodox futures that differ from those proposed by rabbis such as Menachem Burstein and Aharon Harel are indeed possible, but also that doubts remain regarding the extent to which same-sex parenthood may take part in the transgenerational making of a new Orthodox future.

6.1 THE FRICTIONS AND FRACTIONS OF ORTHODOX JUDAISM

Orthodox Jews distinguish themselves from Conservative and Reform Judaism in their recognition of the divine origin of the Torah and their commitment to full observance of the Jewish law (halakha). Yet, halakha does not constitute a set of clear and positivist rules. As Ben-Menahem (1991) has already observed, halakha may best be understood as "the law of men" rather than the "law of rules." In theory, principles of halakha exist and a number of rabbinic commentaries on the Mishnah and the influential Babylonian Talmud have been recognized by the rabbinic community as authoritative. But in practice, halakha is the application of general and indeed often contradicting rules, and this is the task of men (and recently also of some women who have been recognized as halakhic advisors). This is best illustrated in an extract of the Babylonian Talmud (Bava Metsi'a 59a-b) presenting a dispute between Rabbi Eliezer and Rabbi Joshua over the purity of an oven (quoted in Greenberg 2004, 142–143).

As the story goes, Rabbi Eliezer rallied “miracle after miracle to demonstrate the truth of his received tradition” (ibid. 142).

He [Rabbi Eliezer] said to them: “If the halakha agrees with me, let this carob tree prove it.” At which point the carob tree was torn a hundred cubits out of its places (and some say four hundred cubits). They said to him: “No proof can be brought from a carob tree!” Again he said to them: “If the halakha is as I say, let the aqueduct prove it.” Whereupon the water in the aqueduct flowed backwards. They said to him: “No proof can be brought from an aqueduct!” ...

He then said: “If the halakha agrees with me, let the heavens prove it!” [Whereupon] a heavenly voice declared: “What do [you] have against R. Eliezer, the halakha agrees with him everywhere!”

R. Joshua rose to his feet and declared: “It is not in heaven” (Deut. 30: 12)!

What did he mean by “It is not in heaven”? R. Yermiah said: “Since the Torah was given at Mount Sinai, we pay no heed to heavenly voices, for you have already written in the Torah at Mount Sinai: ‘incline after a majority’.” (Exod. 23:2)

As Rabbi Greenberg has observed, God is told here “that the Torah is no longer in his possession” (2004, 143). The Sages overruled him with his own law, and as the Talmud evolves, God takes pleasure in it: “He [God] laughed [with joy] and said, ‘my children have defeated me, my children have defeated me’” (ibid.). Accordingly, Orthodox rabbis legitimize their authority by claiming for themselves the position of guardians of halakha. But rather than being satisfied with the outcome of a dispute, the Talmud presents for every dispute both the majority and the minority opinions as well as all of their arguments. As Rabbi Ron Yosef explained to me, the Sages reasoned that “maybe there will be a day when a great scholar of that generation will follow the minority view and turn it into a majority view.”

Indeed, disagreement has been the halakhic norm both in the past and in the present, primarily because of the splits and fragmentations within Judaism. As Taragin-Zeller (2019, 372) has explained, “Israeli Orthodoxy can be loosely divided into the following streams: the Lithuanian, yeshiva-based Ultra-Orthodox community, the Hassidic Ultra-Orthodox dynasties, the religious Zionists (i.e., modern Orthodox),³ and national-*haredis* (*hardalim*).” Each of these categories is in itself highly diverse or even divided, and the boundaries between them are blurred. Thus, while

Ultra-Orthodox Jews are often imagined as indifferent to the state and the rest of society, many of them are also Zionist. Among the Orthodox, they are known as *hardali*, a term that combines *haredi* and *leumi* (national). On the other side of the spectrum, I came across women and men who call themselves “religious-lite” or who say of themselves that the only reason they identify as Orthodox rather than Conservative is that they grew up Orthodox and continue to belong to an Orthodox community.

While the rabbis of these different sectors within halakha-observant Judaism recognize the same sources and the same legal principles as authoritative, they follow different schools, align themselves with different thinkers, and give the values and principles different priorities. Thus, halakhic references to any topic are usually formulated as debates between different positions (Ivry 2015). In order to give their rulings authority, rabbis align them with precedents articulated by prominent *poskim* (rabbinic decisors).⁴ As anthropologist Tsipy Ivry has explained, rabbinic decision-making is a complex intellectual exercise:

[R]abbis make an informed selection of sources on which to rely and from which to derive relevant definitions; juxtapose a case to precedents, analogies, and contrasts; and make a practical decision. (2010, 665)

When a rabbi selects the relevant sources, he looks at cases that deal, in his opinion, with the same issue of law, as well as at principles of law that he can apply via analogy to the case at hand (Ellenson 1994, 82). The intricacies of the particular case are crucial in this tradition of decision-making. As Ivry (2015) has observed, two people who approach the same rabbi with the same question may receive two completely different answers, depending on their circumstances and ability to deal with the situation at hand. As the summary of answers to concrete questions, the concept of halakha, which is derived from the root *he-lamed-khaf* (“to go”), is probably better understood as “the way of walking” or the way of living rightly rather than as law.

Understanding halakha as a framework for ethical guidance pays heed to the fragility of rabbinic authority and its limitations in halakhic decision-making. As Taragin-Zeller (2017) has shown, the students and members of their community decide whether and at what time of their life to approach them and how to present their circumstances in order to be able to accept the rabbi’s decision. Or as Daphna and Sari, a lesbian couple explained to me, in Orthodox Judaism, there is the saying “Make for

yourself a rabbi (teacher).” Rather than acquiring their authority from a higher instance, rabbis rely on those who choose to trust them and follow their rulings, on those who accept their decisions and give them weight. This in itself is not a new development. Rather, the historian and scholar of Jewish philosophy Shaye Cohen (1999) has observed that rabbis as prominent as Rashi (eleventh century) and Maimonides (twelfth century) reported their failures to convince women to follow their rulings regarding purity. As Cohen (*ibid.*) shows, these women were not ignorant of the laws, but interpreted them differently from the rabbi.

In the twentieth century, Orthodox Judaism made an unprecedented turn to written halakha and formal religious education (Cahaner 2012; Ferziger 2011; Fischer 2012; Heilman 2006; Soloveitchik 1994; Sperber 2002). While this written halakha tends to be stricter than the halakhic guidance rabbis provide behind closed doors (Irshai 2014), the turn to writing had the unintended effect that women also started to study Talmud and engage in the making of halakha. They did this at the beginning, often by themselves or under the private guidance of tutors, but increasingly also in educational institutions that were founded for this purpose (El-Or 2002; Hartman 2008; Henkin 2006; Israel-Cohen 2012; Ross 2004). The spread of the Internet has further boosted the democratization of halakhic knowledge. Rabbis themselves use the Internet to facilitate Torah learning, spread their messages, and provide halakhic rulings and guidance on “ask the rabbi websites” (Englander and Sagi 2015). At the same time, however, a quick search on Google allows observant Jews today to learn about alternative halakhic rulings and to juxtapose them with insights and opinions provided by other professionals, lobbying groups, participants of online forums, and bloggers. As I show in the next section, these developments have been crucial for the visibility and self-organization of halakha-observant lesbians and gay men.

6.2 STEPS TOWARD INCLUSION

Probably the first Orthodox rabbi in Israel who wrote a halakhically elaborated empathic view on lesbians and gay men was Ronen Lubitch, the rabbi of a small community near Haifa. In two articles, which he published in 1996 and 2001, Lubitch promoted a distinction between the act of *mishkav zakhar* and homosexuals. The articles leave no doubt that *mishkav zakhar* is prohibited and that this has to be a central message in the

religious education system. And yet, Lubitch maintained already in these early publications that men who are known to engage in *mishkav zakhar* should be treated with the same tolerance that religious people display to other Jews who do not live their lives entirely according to halakha. He further argued that the prohibition of *mishkav zakhar* does not include physical intimacy like a hug or kiss (e.g., 1996, 248). In the 1990s, finding an Orthodox publisher for his halakhic position was not a simple matter. All the journal editors whom he approached replied that the article was irrelevant for their readers since homosexuality was only an issue in the secular part of society. Looking back to this time, Lubitch says that in a sense they were right. Orthodox Jews who identified as gay or lesbians felt that they had no place in their communities. As a consequence, they largely left the Orthodox world or remained deeply in the closet.

One of them was Steven Greenberg, an Orthodox rabbi from the United States, who says that he understood that he was attracted to men while he was undergoing religious training after high school in the 1970s (Greenberg 2004, 6–7). It took him another twenty years of dating women, until he came to the conclusion that he was gay and that he did not want to hide this part of his identity anymore. From 1996 to 1998, he lived in Jerusalem and became engaged in loosely organized groups of a still small and mostly closeted gay community. Greenberg publicly came out of the closet in the run-up to the opening of the Jerusalem Open House for Pride and Tolerance in 1999, of which he was a founding member (ibid. 11–12). Five years later, Rabbi Greenberg published *Wrestling with God and Man: Homosexuality in the Jewish Tradition* (2004), where he inquired into the biblical, Talmudic, and rabbinic engagement with homosexuality to finally reconcile his sexual orientation with his faith.

Around the same time, Avigail Sperber, the daughter of Rabbi and Professor Daniel Sperber, went public with her sexual orientation and started to gather around her other lesbian women from Orthodox homes. In 2008, this group of women founded *Bat Kol*, an organization that does not only provide a safe space for lesbians from Orthodox homes but also seeks to enhance their visibility in Israel's Orthodox sector. A couple of years later, *Bat Kol* was joined by Rabbi Ron Yosef's *HOD – Homoyim Dativim* (religious gays), as well as *Havruta*, two organizations that addressed their activities to gay men from Orthodox homes. While ideological differences distinguish these organizations, they have all shared the same aspiration of breaking the silence surrounding homosexuality in Orthodox Judaism. The spread of the Internet proved to be crucial for the

establishment of these organizations. Online forums and “ask the rabbi websites” allowed Orthodox lesbians and gay men to realize that they were not alone, to connect with each other, and to approach rabbis anonymously (Englander and Sagi 2015). Slowly and almost unremarked by the public, a movement emerged that today the rabbis cannot ignore.

HOD has recently ceased its activities, but *Bat Kol* and *Havruta* are more visible than ever. With their purple balloons, their joyful traditional religious music, and euphoric dancing, they form an unmissable block at every Gay Pride Parade in Jerusalem. In addition, they spread their positions via the media, online campaigns, and in direct encounters with rabbis, educators, and the people of their local communities. Among their most important outreach activities are the annual events of *pesach sheni* (second Passover). According to Jewish tradition, *pesach sheni* has its roots in biblical times. On *pesach sheni*, men who had failed to perform the Passover sacrifice due to ritual impurity received a second chance. Members of the religious LGBT community take from this tradition the theme of “making room.” They invite their neighbors and colleagues to their homes and tell their stories in an informal atmosphere. From 2016 to 2019, these informal gatherings have not only dramatically increased in numbers but also reached religious settlements in the West Bank.

Lately, the public activities of *Bat Kol* and *Havruta* are increasingly joined by heterosexual allies. For the organized religious LGBT community, this visible support is very important, not only for themselves but also as a message to others. Thus, in a 2017 campaign, they published a series of photos showing religious LGBT people together with family members and friends. Their message was clear: they not only have a place in the Orthodox world but also families and friends that support them. They demonstrated in this campaign that homosexuality does not necessarily lead to disruption, and thus raised the question whether it is not, rather, homophobia that posits a threat to the Jewish family.

Among their allies are also a number of rabbis and women who work as halakhic advisors. Finding ways to endorse same-sex couples is a tricky matter for them. As women and men of halakha, they are committed to maintain halakha as the ethical guidance for Jews. Thus, they need to figure out how and to what extent they can accommodate LGBT people, including their desire to live in conjugal same-sex relationships and have families of their own, within an Orthodox framework. A recently published responsa by Rabbi David Stav and his son Rabbi Avraham Stav

provides a good example of this balancing act (Stav and Stav 2017). In their responsa, the two rabbis address the question whether it is halakhically permissible to attend the commitment ceremony or civil marriage of a same-sex couple. They make crystal clear that these events are against halakha and that in principle it is therefore forbidden to attend such events. They reason that attending such an event would mislead the transgressor into believing that what he did was right (Wistok 2018). At the same time, however, they acknowledge that halakha also places great value on relationships within families and between friends. Thus, they conclude that there is room for rabbis to give permission to attend such an event if *not attending* would cause the rupture of these relationships.

The rabbis' conclusion that same-sex commitment ceremonies are against halakha, and their solution to abstain from a general position and to propose making decisions on a case-to-case basis is frustrating for Orthodox lesbians and gay men. They experience on a daily level how the rabbinic unwillingness to recognize their same-sex relationships causes rifts and even ruptures in their families. At the same time, we need to remember that deciding on halakhic questions on a case-to-case basis is a widespread rabbinic practice (Ivry 2015). As Irshai (2014) has observed, this can be highly problematic if rabbis maintain a stringent position in public and show leniency only behind closed door. But with their public responsa, the Rabbis David and Avraham Stav are working exactly against this problem. They provide here arguments and ways for rabbis and family members to signal recognition of same-sex relationships, and they do it in such a careful manner that they do not risk provoking a fundamental opposition that would delegitimize their halakhic decision from the very outset. As Malka Pietrokowski, an established halakhic counselor in family matters explained to me, this is not trivial. Sometimes it is better to wait with publishing a halakhic position, as the rabbinic objection would most likely hinder people from following it at all.

Rabbis David and Avraham Stav's responsa is also important because it posits that preventing ruptures within families is more important than the refusal to signal recognition of same-sex couples. Rabbi Binyamin (Benny) Lau from Jerusalem has come to a similar conclusion and decided to attend a same-sex wedding himself. In an interview about the incident to the newspaper *Kipa*, which is affiliated with the religious Zionist sector, he made clear that in contrast to the rabbis David and Avraham Stav, he encourages lesbians and gay men to find a partner. He reasoned: "The idea that two people are committed to living their lives together (*likrot brit zugiut benehem*) is in my view nothing less than saving someone from

death. To live alone is like a death sentence and we have to do everything to save people from this death” (Wistok 2018). Asked whether his endorsement of same-sex couples does not lead gay men to engage in *mishkav zakhar* and thus violates the commandment “do not put a stumbling block in front of the blind,” the rabbi did not deny the halakhic dilemma. Yet, he argued that because not endorsing same-sex couples drives lesbians and gay men into loneliness and suicide, this position, too, constitutes a stumbling block. Rabbi Lau thereby does not deny the biblical prohibition of *mishkav zakhar*. But in juxtaposing it with the commandment to preserve life, he pushes it to the background of considerations.

An Orthodox congregation that has already found a way to bestow recognition upon same-sex couples is *Yachad*, located in a public religious high school in central Tel Aviv. Although the congregation does not identify as a “gay synagogue” or even as a “gay-friendly synagogue,” it has become a spiritual home for many same-sex couples. In fact, *Yachad* was founded in 2009 in the aftermath of a conflict over the recognition of same-sex couples in another synagogue. In contrast to the leadership of that synagogue, the founding members of *Yachad*—heterosexuals and homosexuals alike—came to the conclusion that despite the halakhic discomfort, same-sex couples should be able to manifest their relationship with a religious ritual in the synagogue. They do not perform same-sex weddings, but they do allow their members to celebrate their marriages abroad or their commitment ceremonies with a *shabbat chatan*. On these occasions, the two brides or grooms are called up to the Torah and organize the *kiddush* that takes place every Saturday after the prayer service in the school yard and where a personal blessing is followed by food and beverage. As more and more lesbian and gay members of *Yachad* are having children, the congregation has also started to celebrate their births with a *kiddush*—just as they do for any other child.

6.3 MAINTAINING GOD’S ORDER OF CREATION

The move of lesbians and gay men from Orthodox homes into the open and their request that rabbis and Orthodox congregations recognize their conjugal same-sex relationships and their own families have been met not only with sympathy but also with a great deal of opposition. While for many of my research participants the solution proposed by the Rabbis Stav is too defensive, for many rabbis the mere idea of a same-sex commitment ceremony is unthinkable. One of them is Rabbi Aharon Harel, a rabbi who

has gained some renown for his extensive occupation with the topic of homosexuality. I discuss in this section how Harel and others try to maintain God's order of creation against the requests of same-sex couples, but also how secular ideas have entered the very same order they aim to protect.

Rabbi Harel caught my attention in the summer of 2011, when a number of newspaper articles on the online platforms of *Yedioth Ahronot* and *Haaretz* described his activities as a rather unconventional matchmaker (Ettinger 2011; Merilus 2011; Polak 2011). Harel understands that the family is the heart of Jewish life. "The whole structure of [Orthodox] society is built upon couples. A single person has no place in this society," he told me when I met him for an interview at his home. According to Harel, this social reality causes many lesbians and gay men to end up in unhappy heterosexual marriages—a situation he describes alternatively as a crime and a catastrophe. At the same time, however, he firmly rejects the idea that Orthodox congregations should embrace same-sex couples or even the notion that homosexuality may be compatible with halakha. In order to solve the dilemma that this situation creates for lesbians and gay men, he promotes reorientation therapy, and when the attempt to overcome a homosexual orientation remains unsuccessful, he offers matching gay men with lesbian women for the sake of marriage.

I had no problem making an appointment with Rabbi Harel. Every Wednesday evening, he held a seminar in *Rosh Yehudi* in Tel Aviv, a center of Jewish learning for those who do not lead an Orthodox life but want to get closer to Jewish spirituality. In these meetings, to which he invited me, I got to know Rabbi Harel as an engaging and charismatic person. He was very accessible and open to talk about his work and to discuss my research. And in the fall of 2011, I drove to the small settlement where he lived with his family for a first interview. Rabbi Harel abides by the Orthodox rule that forbids men and women who are neither close kin nor married to be alone in a room together. As his wife was at work and his children in school, my partner accompanied me to this interview.

The small settlement, where Rabbi Harel lives, is located in Area C as defined by the 1994 Oslo Accords between Israel and Palestinian representatives. Area C is a territory in the West Bank that remains today under full Israeli civil and military control. A bus line run by the national Israeli transport company connects Harel's place of residency with Jerusalem and with other settlements. My interview with Rabbi Harel was the first occasion I entered a settlement in the Occupied Territories. As my partner and

I drove through the hilly landscape, it struck me how easy it was to forget the political context. We drove on roads with Hebrew signs. Cars with Israeli number plates and minibuses with Palestinian ones shared the road in apparent harmony. Only an unoccupied checkpoint indicated that we were in the West Bank. Driving in an Israeli car and looking neither Arab nor Muslim, we were able to enter and (more critically) leave this territory freely. The settlement, too, evoked what was, for me, a disturbing normality. The small village is picturesquely situated between olive groves. A religious school, divided into a separate wing for boys and one for girls, is at its center. No wall or gate separates the settlement from its surrounding area. While we sat in Harel's living room, drank tea, and talked about marriage, homosexuality, and halakha, I could not help but think of how this all contrasted with the many restrictions and vulnerabilities that the Palestinian inhabitants of the same area encounter and which makes the movement and settlement of Jewish (and other non-Palestinian) Israelis possible in the first place (Tawil-Souri 2011a, b).

Rabbi Harel maintains that halakha prohibits not only same-sex intercourse but also same-sex relationships. He reads the prohibition of *mish-kav zakhar* through the "becoming-one-flesh" principle in Genesis, and argues that it is the Torah's way to prohibit same-sex couples. "It is not possible to disconnect couplehood from bodily intimacy," he clarified his position. Genesis makes clear that appropriate intimacy can only exist between husband and wife, because it completes God's work of creation. To be sure, he does not claim that every heterosexual marriage reaches holiness. Nevertheless, because of its inherent potential to take part in the work of creation, seeking a heterosexual marriage is still a worthwhile aspiration and surely better than entering a same-sex relationship. Rabbi Harel therefore urges every man and woman who approaches him to first try out reparative therapy, and he offers his help in finding a suitable, professional, and certified therapist.

Reorientation therapy is the attempt to heal gays and lesbians from their sexual orientation and is a practice that has increasingly come under pressure in the last decade. In the United States, a number of gay men from Orthodox homes launched in 2010 an unprecedented lawsuit against JONAH, a Jewish organization offering reorientation therapy. In 2012, the jury found JONAH liable and forced the organization to shut down its entire operation and to dissolve as a corporate entity. Probably inspired by the developments in the United States, Rabbi Ron Yosef, who himself publicly came out of the closet in 2008, and his organization

HOD – Homoyim Datiyim (religious gays) spearheaded the fight against reorientation therapy in Israel. On his initiative, the Israeli Psychological Association published in 2011 a warning against reorientation therapies. In 2014, the National Association of Social Workers endorsed the position and asked professionals to refrain from performing reorientation therapy.

The same year, the Ministry of Health took the topic up. Emphasizing the dangers of reorientation therapy, Minister Yael German, from the secularist party *Yesh Atid*, pushed for a bill to forbid the treatment of minors. Her bill reached the Knesset for the first time in February 2016, where it was rejected. A year later, when German was not in the government anymore, she made a second attempt with a slightly mitigated bill. In her introduction to the bill, German clarified that this bill was not only about reorientation therapy but also about normalizing homosexuality once and for all. Thus, she explained rather boldly: “Religion has for years tried to convince us that homosexuality was improper, something to erase from society. [...] The whole world has understood that this is nonsense, that outlawing homosexual orientation and gender identity is impossible. Around the world, homosexuals can get married and receive equal rights. But here, here religion has caused us to treat homosexuals as abnormal, as people who require change” (Knesset 2017, 85).

The Knesset rejected the bill again. But as a side effect, the public discussion of reorientation therapies triggered an extensive occupation with the topic in Orthodox circles. Since 2016, newspapers affiliated with the religious Zionist sector have published an unprecedented number of articles, in which rabbis, gay men, and lesbians talk about their opinions and experiences. These publications show an interesting shift in the position of the proponents of reorientation therapy: rather than arguing that it is possible to control and alter a same-sex orientation simply because “the Torah does not forbid something which is impossible to avoid” as some proponents of JONAH claimed (see, for example, Committee for the Declaration of the Torah Approach to Homosexuality 2011), they defend reorientation therapy using the language of civil rights.

In this debate, Rabbi Aharon Harel was one of the most outspoken defenders of reorientation therapy. Only a day before the Knesset discussed German’s bill for the first time, *Arutz 7*—a media network that is associated with Israel’s settler movement—published Harel’s arguments against the bill: “It is important to fight against homophobia,” he made clear. “But this dictatorial bill against reparative therapy oppresses individuals and harms their rights (Tucker 2016).” When I met with Rabbi

Harel for a second interview in the summer of 2017, he made the same argument. As he talked about his work in the field, he explained to me that it had become difficult to find therapists. “This is because of the dictatorship! I call it the straightophobic dictatorship,” he said furiously. “It is forbidden to talk about reorientation therapy. It is terrible! The attempt to ban it by law is simply oppressive. So many therapists are scared. They offer these therapies, but they do not come out of the closet.” Later, he came back to that point and exclaimed: “It is legitimate that someone decides that he does *not* want to be gay. To take this right away from him is catastrophic. Yes, the Western culture wants to take away the right not to be gay. You are and stay gay! We decide for you.”

Other rabbis and proponents of reparative therapy use the same line of arguments. In February 2017, *Olam Katan*, a weekly magazine that is distributed in 5500 synagogues and in roughly 560 Orthodox educational institutions, launched a portrait of four men who claimed that they had successfully undergone reparative therapy. Their life courses are different from each other, but they share a similar story line that includes a peak of suffering and self-hatred that caused them to seek help through therapy. Importantly, their narrative embeds the suffering in the homosexual orientation itself rather than in societal norms and pressure, and thus challenges the claim that homosexuals do not need to change. If German insisted that nothing is wrong with homosexuality, *Olam Katan* suggests that talking about societal norms misses the point because the desire to change comes from deep inside these men’s emotional struggles.

Rabbi Harel is not only convinced that trying to overcome homosexual desires is the right thing to do, he also insists that for many women and men, this path proves to be successful. But he distinguishes his service from organizations like JONAH and highlights the professional principles that he follows. Firstly, he maintains that the therapists he is working with are all certified and apply recognized methods. Secondly, he emphasizes that he only recommends treatment when this is the woman’s or man’s own wish and not that of the parents. And finally, he does not promise the therapy’s success. Indeed, he has reached the conclusion that there are lesbians and gay men who, even after many years of hard efforts, cannot overcome their sexual orientation. Thus, he argues that the goal of directing lesbians and gay men to therapy is not sexual reorientation in a strict sense, but to achieve well-being and happiness. At some point, it is better to accept a homosexual orientation and find other halakhic solutions.

In these cases, Rabbi Harel offers his service as an unconventional matchmaker. The roughly 70 heterosexual marriages that Harel has so far helped to form are, so he claims, not much different from those in the Ultra-Orthodox sector of society. There, marriages are usually arranged by a matchmaker (*shadkhan*), and the prospective spouses hardly get to know each other before the wedding. Maurice Lamm (1980, 7) praises the *shadkhanim* (male, plural) of past centuries as preservers of Jewish values, since knowledge in halakha and unblemished pedigrees were important for good matches. While *shidukh* was most likely never thought to serve gay men and lesbian women, from a rabbinic perspective, Harel's matchmaking project fulfills the same purpose.

Harel says he himself had thought for a long time that these marriages must be unhappy, but through family members who belong to the Ultra-Orthodox sector he came to the conclusion that they can be as satisfactory as marriages built on romantic love, simply because the expectations are different. Indeed, his concern for the structure of Jewish society goes together with a commitment to the happiness of Orthodox gay men and lesbian women. Their well-being derives from the possibility to become, through marriage and parenthood, a full part of Orthodox society and to live a life according to halakha. The formation of such couples is therefore a way to achieve a good life and happiness. This understanding of well-being speaks to the observation that in Orthodox Judaism, individual interest is non-detachable "from the wellbeing of the person embedded in his or her 'couplehood,' family, and community" (Prainsack and Sigal 2010, 169). Thus, Rabbi Harel asserts that there is love in the marriages he helps to form. It is a kind of love between friends or partners, a kind of love that may be not perfect but that rests on the spouses' shared project and trust.

Taking up the role of a *shadkhan* is a serious business. Just like a conventional *shadkhan*, he personally meets with his clients to learn about their religious backgrounds and family histories and about their expectations toward the marriage. But differently from other matchmakers, Harel also discusses with them their sexual activities and expectations with regard to sexuality within the marriage and beyond. For Rabbi Harel, it is clear that in order to prevent activities that can "wreak havoc on the marriage" (Rapoport 2004, 97), both spouses have to agree with each other whether and to what degree they accept extra-marital relations. Accordingly, he explained to me:

As a rabbi, I reject such activities of course. Any kind. But I do not come here with this attitude. Marriage will not prevent it. If he is sexually active, he will continue to be active. If she is active, she also continues. What interests me pertains to their relationship, whether it disturbs them or not.

Even more, since the spouses agree with each other to accept extramarital sexual activities, Harel strongly opposes the notion that this falls under the category of “cheating” (*bagad*). Thus, when talking about a newspaper article that was published in *The New York Times*, he explained to me:

For this article, the journalist interviewed one of the couples and the husband told her that he had already cheated on his wife three times. After that I said to her that this was simply not true. ‘Cheated’ is not the right word here. [...] He did not cheat on her. She knew everything.

He therefore maintains that in these cases, such activities are morally less severe than in regular marriages: “It still spoils the basis of the Jewish family, but at least it is not hidden.” While working on the interview with Rabbi Harel, it struck me time and again how skillfully he switched between Jewish learning, psychological concepts, and in this case even notions of ethical behavior that one would expect from feminist or queer activists, rather than from an Orthodox rabbi. He expertly knitted this myriad of principles together and thereby created flexible and workable understandings of love, partnership, marriage, and even sexuality. What a harsh contrast to the rigor with which he rejected any halakhic leniency toward same-sex unions!

But Harel’s assertion that all the facts are on the table applies, of course, only to the couple. For society, these are regular couples, and Rabbi Harel adheres to strict confidentiality. In order not to raise suspicion, he does not even attend their weddings. Most of the men and women that he matches are in the closet, and even though secrecy is not an explicit requirement, he argues that men and women who are open about their sexual orientation have a smaller chance of finding a match. Getting married to such a person would automatically generate rumors about the sexual orientation of the spouse. Hence, Harel’s matchmaking project does not merely provide the possibility of remaining in the closet; it is actually built upon it. Harel’s matchmaking service aims at upholding the prerogative of heterosexual marriages as the only unit that holds the web of the Jewish people together. It allows the individual person to avoid the stigma,

but it does not fight the stigma itself. The lesbian activist Bat-Ami Neumeier-Potashnik (2011) therefore maintained in a blog post published on 23 August 2011 that Harel's initiative keeps Orthodox lesbians and gay men in the closet, where they remain invisible.

Confronted with an increasing number of lesbians and gay men who come out of the closet and live in a same-sex relationship, Harel maintains that parents and siblings can and even should endorse their homosexual family members. Indeed, he emphasizes that it is important for lesbians and gay men to have a circle of trusted and supportive persons, regardless of whether they live in a heterosexual marriage, enter a same-sex relationship, or remain alone. His tolerance reaches an end, however, when lesbians and gay men turn their homosexual orientation into a matter of pride and politics. When talking about the activities of LGBT organizations like Havruta and Bat Kol, he explained to me: "If my son was gay and lived with another man, I would accept him. But if he went to march at the gay pride and made his homosexuality public, I would not be his father anymore. I say this with all the pain in the world. But it is not us who cause this pain. [It is the LGBT organizations.] If they would keep a low profile and stop demanding recognition, the rabbinic world would have a much easier time to embrace them."

But while Harel and the authors of *Olam Katan* position themselves as the defenders of the liberty and right to form or change one's sexual identity, the options that they offer to homosexuals are rather limited. Homosexuals may undergo or not undergo reparative therapy, and they may enter a heterosexual marriage as Harel proposes in his matchmaking project. But maintaining a homosexual orientation comes at a high price. They might be accepted as members of Orthodox congregations, but only as long as they neither seek to realize their sexuality and desires for a same-sex relationship nor try to change the social norms.

As Englander and Sagi (2015, 197–198) have elaborated, even rabbis who are critical about reorientation therapy and who advocate the inclusion of homosexuals in their congregations often couple the inclusion to a new form of exclusion. Thus, the British Rabbi Chaim Rapoport maintains that rather than trying to push homosexuals into reorientation therapy and heterosexual marriages, they should be encouraged to maximize their contribution to the Jewish people and their congregations (2004, 100). Similarly, a statement of principles initiated by Rabbi Ron Yosef suggests:

The homosexual who does not marry should be encouraged to devote himself to Torah, to observe all the commandments between a person and God and between people, and to develop his various powers for the sake of the great goals that the Holy One, blessed be He, intended for the Jewish people. (Quoted in Englander and Sagi 2015, 199)

According to Englander and Sagi (*ibid.*), this solution is nothing more than a request to be “martyrs who sacrifice their lives for the sake of the community. [...] The homosexual is required to pay for his inclusion in the hard currency of his identity and his actual existence. He must bear the cross of the stigma of one eternally denied self-realization.” Importantly, neither Rabbi Rapoport nor the Israeli statement of principles makes it a condition that homosexuals completely live up to the requested self-denial. And yet, the principle remains the same. Even if it is accepted that homosexuals are—just like other Jews—not always strong enough to resist the temptations of life, their sexuality and same-sex relationships have in this phrasing no room in God’s order.

The dramatic terms such as “LGBT dictatorship” or “LGBT ideology” that defenders of reorientation therapy use, bespeak—and maybe dramatize—the feeling that this order is increasingly under threat. This feeling and the respective terminology is not unique to Orthodox Judaism but can also be found in Christian circles in the United States and Europe. But in Israel, the rhetoric of a “war of culture” between a conservative religious sector and a liberal secular sector (Mautner 2011; see also Chap. 4 in this book) that has accompanied the political struggles for gay and lesbian rights has probably contributed to hardened fronts. Faced with statements like Yael German’s sweeping accusation of “religion” being responsible for the ongoing discrimination of lesbians and gay men, it is not surprising that the struggle for LGBT rights is perceived by many as a fight against Orthodoxy itself. An event that took place in March 2018 in the southern town of Sderot at a yeshiva affiliated with religious Zionism summarized this feeling under the title: “The Jewish Family in the Face of LGBT Propaganda.” In the announcement of the event, the organizers clarified: “Against the attempts to use the ‘LGBT phenomenon’ to hurt Jewish family values in Israel, we gather to clarify the matter and to take an explicit stance in accordance with the Torah.”

The terminology evoked by the organizers of the event and the defenders of reorientation therapy unveils how strong the feeling and fear of being marginalized is, but also indicates that the cosmological order they

are trying to protect has already changed. Indeed, Harel and the men speaking in *Olam Katan* frame their arguments in a naturalist framework that places the emphasis on the individual's inner self and has little to do with earthquakes and analogical relations. As Englander and Sagi (2015) have observed in their analysis of rabbinic online responsa, there is a new religious-Zionist discourse on the body and sexuality, in which the rabbi becomes more and more like a pastor who decodes the questioner's inner life (ibid. 48). This focus on the questioners' inner life and well-being should not be mistaken with leniency in matters of sexuality. Rather, rabbis try to turn the strugglers' feelings of guilt and despair into a productive and positive energy that helps them to comply with the halakhic commandments (ibid.). Accordingly, the true change in the new religious-Zionist discourse on the body and sexuality lies in the depiction of modern subjects who, like the four ex-gay men in *Olam Katan*, become the heroes of their own life stories (Sagi and Englander 2012, 276).

In addition, the changes in their vocabulary indicate a shift of power. Commenting on the event in Sderot, Zehorit Sorek, who is one of the most prominent activists in the religious and national LGBT community, pointed to this shift on Facebook. In her post, Zehorit wrote that when she read the announcement for the event, she had to smile. She smiled not only because the event showed just how an important political player the religious LGBT community had become. She smiled also because the event uses the term "LGBT" and thus helps to entrench the understanding of homosexuality as an integral part of the self, and not a distortion or vice that can be suppressed or repaired.

6.4 SILENT TRANSFORMATION AND FRUSTRATION IN DAILY LIFE

Lesbians and gay men from religious homes acknowledge that transformations in the Orthodox sector take time, and many of my research participants felt that they were on the right path. And yet, they cannot wait fifty years for the Rabbinate to find a way for inclusion. They are living right now, and they are now entering same-sex relationships and having children. They want to integrate their partners into their families and congregations now, and they wonder what kind of religious education they want and can give to their children.

In this section, I present the stories of lesbians and gay men as well as of members of their families, whom I had the chance to meet in my research. On the basis of their stories, I discuss how in this situation of open contestations, lesbians and gay men try, succeed, and fail to build families that have a place in the Orthodox world. Some of them still identify as religious, regularly pray in a synagogue, and structure their daily life according to halakha. Others say that they are not religious anymore. But even those who no longer live their lives according to halakha have not entirely left the Orthodox world. Through their families, rabbinic decisions and religious norms continue to influence their lives. At the same time, for many of my research participants, the exclusions they continue to encounter have made maintaining a religious life a constant struggle. This casts doubt as to what extent they manage to transmit their transformed religious knowledge to the next generation and thus contribute to the continuity of Orthodox Judaism.

6.4.1 Debbie

Debbie grew up in a religious settlement near Jerusalem in a family and general environment that she describes as extremely religious and right-wing. In retrospective, she can identify several moments during her teenage years when she fell in love with or felt attracted to women, but at that time she did not attach any importance to that. After two years of national service, she studied for a year in a *midrasha*, an institute of Torah study for women, in order to become more religious. Looking back at that time, she explained to me: “I felt that everyone around me was very religious and a much stronger believer than myself. I felt that the religion was part of me. But I did not really believe, [...] I kind of lived beside it.” Debbie says that during that year, she strengthened her religiosity, although it still felt external rather than internal. As part of this process, Debbie started to date men in order to get married. But she could neither understand why her friends were so nervous about their dates nor why they wanted to go for a second or even third date with the same man.

And then, at the end of that year, Debbie understood that she was in love with her best friend at the *midrasha*. After many doubts and turns, the two women started a secret romantic relationship that Debbie remembers as very passionate but also as unhealthy and difficult. At some point, she started to talk with a couple of people about it and also consulted with

a rabbi. This rabbi told her to cut her ties to this woman as she was just wasting her time: “Get married, you will be alright.” Debbie says that today she is not sure anymore whether this was really what he meant to say. She rather thinks that he only tried to comfort her.

But at that time, she interpreted his words as an unequivocal call to get married and that was what she did. But even though she really wanted and tried to love her husband, it did not work out. According to Debbie, they were just too different from each other and there was nothing that connected them. She remembered the passionate relationship with her girlfriend and understood how much she was missing out in her marriage. They tried couple therapy to save their marriage, but ultimately got divorced. Only after the divorce, Debbie started to seriously deal with her sexual orientation; she entered *Bat Kol*, had her first serious relationship with a woman, and came out of the closet. This was a step that Debbie had very much feared. At the end, it turned out that her parents had less difficulties to accept her sexual orientation than she had anticipated. Some of her siblings and most of her friends, in turn, thought that this was either a reaction to her unsuccessful marriage or simply a phase that would pass.

When I met Debbie for an interview, ten years had passed. Today, Debbie emphasized, she is in a completely different situation. She is in a stable and healthy relationship with Yael, and the couple raise two children in an environment of family, friends, neighbors, and work colleagues who are fully accepting of their family constellation. As Debbie emphasizes, this is not self-evident. After all, they live in a rather conservative religious neighborhood in Jerusalem and she works as a teacher in a religious-secular school in a neighborhood beyond the Green Line. Thus, Debbie feels that her life is pretty good today, even though she acknowledges that it is necessary to continue to fight for an improvement of the situation of LGBT people in Israel, and in Orthodox Judaism in particular. She herself would like to raise her children in a religious settlement (*yishuv*) or a village (*moshav*) like the one where she grew up, rather than in a town. But she thinks that although things are changing, this is still not realistic.

In Jerusalem, she and Yael have found for themselves a “partnership minyan” (Fuchs 2018), a congregation that promotes gender equality and where there is no differentiation between the tasks that men and women fulfill. The people who belong to this congregation all come from Orthodox homes, and their prayers follow the Orthodox tradition. According to Debbie, it would still be a joke to call themselves Orthodox.

They are not. But they are not part of Conservative Judaism, either. As she clarified: “We are simply gender equal. There is no name, no definition.”

Debbie does not look like a religious woman. She has short hair and wears neither headscarf nor skirt. And she is sure that this allows her to be flexible with the degree to which she sticks to Orthodox norms and prescriptions. She can sit in a restaurant that has no kosher certificate without misleading anyone into thinking that this place conforms with religious requirements. And she can talk with her students about dinosaurs even though according to the Torah, the world is only 5000 years old. Being religious is still an important part of her life. But today Debbie has also accepted that to her, religion is not a matter of inner belief. She rather finds the beauty and meaning of religion in its particular lifestyle and in the rituals. Thus, she says of herself: “I think that I am too much of a brain-person for faith. I like the religious life. I feel comfortable with it. And today I am not ashamed to say this anymore. It feels good to keep Shabbat and to do the religious rituals. [...] I like to make a kiddush and I like to keep Shabbat. But I do not do this out of some deep and strong faith.”

6.4.2 *Nadav and Noam*

I met Noam for the first time in September 2010, when working on my PhD. He was one of my first halakha-observant research participants and a central figure in the still young religious (Orthodox) LGBT community. Noam describes his family as typically religious Zionist and actively engaged in the settlement movement. He was sure about his sexual orientation already toward the end of high school, but he waited with telling his parents until he moved away from the settlement where he had grown up. Noam says that he quite quickly reached the conclusion that he was who he was and that he had to do the best with the situation. He never seriously considered to stop living a religious life, but rather accepted the tension between his existence and the Torah’s very clear passages about *mishkav zakhar*.

Noam’s parents, in turn, had a hard time to come to terms with his homosexuality, and Noam recalls a lot of fights with his father over the matter. Thus, for several years, Noam stopped doing Shabbat and the holidays at their home. He preferred to spend them in Tel Aviv with his own “urban family”: his partner at that time and their closest friends. The relationship with his father only improved after he met Keren, a halakha-observant unmarried woman, with whom he eventually entered a shared parenthood arrangement. Before they started artificial insemination, Noam

and Keren scheduled a meeting with Rabbi Yuval Cherlow, who is well known and esteemed in the religious-Zionist sector. They wanted to clarify the halakhic implications that such an arrangement would have for their child. In the aftermath of their consultation with Cherlow, Noam's parents also met with the rabbi. Noam is sure that this meeting has been crucial for his father to accept the situation. When the birth of Noam and Keren's first son was approaching, Noam's parents told their own siblings and friends about his homosexuality. And at the brit milah, Noam's father held a speech, in which he signaled his full endorsement of his son.

Noam and Nadav met after Noam's mother had died of cancer and two weeks before Noam and Keren's second child—a daughter—was born. At the time of my interview with Noam, their relationship was still quite new, but Nadav had already become a part of their family that then consisted of three adults and two children. He was a welcomed guest in the home of Noam's father and his second wife and had met most of Noam's extended family. Nadav's parents, in turn, knew about their son's homosexuality, but were unaware of the two men's relationship. I personally met Nadav in 2017 in the context of my postdoctoral research. There, I not only learned that their family had further grown and consisted now of three adults, three children born to Noam and Keren, and the baby girl Rotem, who was conceived with Nadav's sperm and born to a surrogate mother in the United States. I also understood how complicated the situation with Nadav's family continued to be.

Nadav too grew up in a religious home. Nadav describes his family as *hardali*, as Ultra-Orthodox, and as militantly nationalist. But in contrast to Noam, he stopped identifying as religious after the army, when he also came out of the closet. In my interview with Nadav, I understood that it took him four years into the relationship, until he finally talked with his parents about Noam, Keren, and the children. He says that he knew that they would not approve of the relationship, and he feared that if he told them they would make him choose between them and his life with Noam. Thus, he lived a "double life," a term that lesbians and gay men have long used to describe the segregation of gay and straight friendship or family worlds (see, for example, Ponse 1976, 327–329; Weston 1991, 44–46). Nadav only unfolded his family life in Tel Aviv, when his father dropped a hint that he suspected his son to be in a relationship because he seemed so happy.

Since then, Nadav has put a lot of effort into making his parents and siblings accept Noam and the children as part of the family. But as time passed, he increasingly felt that all his efforts were futile. In a first step, he arranged for him and his parents to meet with Rabbi Binyamin (Benny) Lau. In this meeting, Rabbi Lau told his parents that even if currently they could not imagine it, one day, things might change and then they would have a Passover Seder with Noam and the children. But for Nadav's parents, the rabbi's words did not carry weight. In his halakhic positions and in his support for Nadav, he was too remote from their own rabbis. And thus, they did not consider him to be a real halakhic authority. Then, Nadav's father was diagnosed with an incurable cancer that drew the two of them closer. In the three years between the diagnosis and his father's passing away, he not only came to accept Nadav's live but also supported his wish to raise his own children together with Noam. And when the end of his life was approaching, he even insisted that Nadav bring Noam and the children to their place, where they also met with Nadav's mother.

Nadav remembers well this first meeting between Noam and his mother. He says that he could physically feel how his mother was torn between her liking of Noam and her conviction that this was all morally wrong. The next encounter between his mother and Noam occurred at the moment of his father's death. When he received the phone call that his last hours were approaching, Nadav drove with Noam to the hospital without thinking much about what the others would say. As they arrived at the hospital, his mother came to meet them at the lobby, welcomed Nadav, and told him that she was glad that he had come. All of them, along with Nadav's siblings, their spouses, and the father's Ultra-Orthodox uncles stayed up the entire night. They sang together and bid farewell to his father until he died at sunrise. For Nadav, this was a deeply spiritual moment, in which all the rejection and disagreement drifted into the background, making way for people to follow their heart.

Nadav hoped that this moment of closeness and sympathy would last or at least set a process in motion. But although his siblings at some point agreed to meet with Noam, they were willing to do so only in certain occasions, namely, in the absence of their own children and not for events that are sanctified by God's presence. This unresolved situation gained additional urgency when Rotem's birth was approaching. Nadav wanted her to grow up as part of his extended family, in close contact with her grandmother, uncles, aunts, and cousins. He therefore arranged for all of them to meet with Rabbi Aharon Harel, who offered them his services as

a mediator. He had hoped that with the help of this rabbi, they would manage to overcome some of their differences, and he was disappointed when he felt that the rabbi did not really try to understand his side.

The constant rejection of his relationship with Noam is painful to Nadav. At the same time, he knows that his siblings and his mother equally suffer from the situation. His mother in particular yearns for a rabbi who would give her the permission to bring the family together again, to unite them at the Passover Seder table. She has therefore pushed Nadav's siblings to meet with Rabbi Drukman, who is highly revered in the *hardali* sector. In this meeting, they asked what they ought to do with regard to sanctified occasions. According to Ori, the rabbi told them that the problem was not of a halakhic nature but rather a matter of values. He saw no problem in inviting Noam to big events with over 150 guests, where the couple would simply disappear in the masses. But he also recommended them not to invite Noam to smaller events, where their breach with the norms would be plainly visible.

Nadav's ongoing struggle with his family provides a stark contrast to the promise that time heals not only wounds but also ruptures and rifts. Nadav has waited long for his mother's and siblings' endorsement of his relationship with Noam. But at the time of our conversation, he did not dare to hope anymore that things might change, and therefore reduced his own encounters with them. And still, despite all the disagreement, pain, and disappointment, they continued to be an important part of his life. Thus, when I went to interview him for the second time, Nadav had completely forgotten about our appointment. He had just come back from an uncle's funeral and was about to leave again because one of his nieces had been hospitalized. Feeling bad about the situation, he insisted on a short interview of 30 minutes. Yet, he had a very hard time concentrating and constantly exchanged messages with his mother and siblings. In a further conversation, he reflected on the situation and said: "You see how close we were at this moment? This is how things should be every day, and not only in moments of need."

6.4.3 *Naamah*

Naamah is a lesbian woman in her mid-thirties who lives in a small apartment in Jerusalem. When I met Naamah for an interview in the spring of 2017, her son Ariel was five years old. He was born through sperm donation, and Naamah raises him in shared custody with her ex-partner.

Naamah grew up in a religious settlement in the West Bank, where she also received her religious education. She says that she started dating men when she was 19 years old, and continued to do so for many years. At the same time, however, she entered a relationship with a woman—a situation that terrified her. All this time, she thought that God was testing her, that she had to overcome her desires and thoughts, and that God would punish her or her family if she failed: “I was sure that if something happens to me or to my family, it is because of me.” She volunteered with Holocaust survivors and looking back at that time, she thinks that it was at least partly to balance out “that terrible thing.”

Today Naamah has a different image of God: “There is the God of Genesis, and there is God in my life, in my personal mission. [...] And there is the changing God, a renewing Judaism. [...] I am not afraid of the thought that God looks at the Torah and says ‘well, I was very young when I wrote this.’” The transformation of Naamah’s image of God went along with her changing attitude toward her sexual orientation. She says that after roughly ten years of struggling with herself, she started to take responsibility. As she put it: “It is possible that this is God’s test for me. But what I do with it is my responsibility.” This was also the time when Naamah came out of the closet in her family and started to participate in the group that later became *Bat Kol*. Over the years, Naamah became less strict in her religious principles. She wears pants and short hair, does not say the daily prayers anymore, and eats in non-kosher restaurants when she is abroad. And yet, Naamah makes clear that she is very consciously religious. She says: “It was important for me to keep certain things [religious rules] because I knew that if I stop, I will lose them for good.” And even though she wears pants, she has her festive Shabbat pants and her special Shabbat shoes.

For Naamah, it is therefore clear that she is religious. For others, however, it is not. There was a time when this bothered her. Naamah recalls that sometimes when she and Ariel were outside, she would carry his skullcap visibly in her hands, as if it had just fallen down and she was about to put it back on his head. With the skullcap, she wanted to signal that they were part of the Orthodox world. But, Ariel does not like to wear a skullcap. He does not see it at home, and since he is not attending a religious school, he is not obliged to do so. For Naamah, it is clear that he is not growing up the same way she did. Not only does Ariel have two mothers who live in separate homes, one of them—Naamah’s ex-partner—also does not lead a religious life anymore. At the time of our interview, he said of

himself that he is both religious and not religious. Indeed, when he is at Naamah's home, his life is a religious life, and when he is at his other mother's home, he lives the life of a secular boy.

In our conversation, Naamah vacillated between being proud of how Ariel manages to move between the two houses and the different rules on the one hand, and between her concern that she would not be able to transmit to him an important part of her history and identity. She is happy that he knows different ways of doing Shabbat and appreciates that at her parents' and sisters' homes, he learns those Shabbat practices with which she grew up. Naamah is today an active member in a Conservative synagogue, and when he is with her, she takes Ariel to the Conservative synagogue for Shabbat prayers. But while passing on religious knowledge appears here clearly as a shared effort that involves the entire family as well as the congregation, Naamah is aware that with her lifestyle and without a father, there are some aspects in the religious life of boys that Ariel is missing out on. The wearing of the skullcap is probably the most visible part. But there are other daily practices such as the *tzitzit* (the small tallit/prayer shawl) that religious boys wear from pre-school age underneath their clothes, and the *tefillin* that adult men put on for their morning prayers. Thus, Naamah wonders how Ariel will lead his life as an adult. Will the lack of ingrained knowledge of religious practices lead him into a completely secular way of life? Or will the plurality of lifestyles that he is ingesting help him consciously choose a religious life?

In Chap. 5, I pointed to the role of the gender of parents and children for the transmission of religious status. Naamah's story makes visible the fact that gender is also important for the transmission of religious knowledge. With the different commandments and practices that women and men follow, religious lesbians and gay men face a couple of very practical challenges that extend beyond their ability to provide for their children a warm and loving home. These challenges relate to daily practices as described here, but also to participation in public prayers. In Naamah's Conservative synagogue, no curtain separates the women's part from the men's part, *kohanim* say no special prayers, and both men and women read from the Torah scroll. In Orthodox synagogues, however, the separation between women and men places a burden on same-sex couples, particularly if they have children of the other gender. While the children are small, they can move between the different sections. But with whom will they sit when they are older? How can boys become familiar with reading from the Torah scroll when they cannot accompany their father to the

bimah (the podium on which the Torah is read): To cope with these challenges, same-sex couples need more than silent tolerance. Even more than heterosexual couples, they have to rely on their families, neighbors, and congregations to pass religious knowledge on to their children.

6.4.4 Uri

Uri grew up as the oldest child in a family of eight siblings. In my interviews with his sister Mor, his mother, and his grandmothers, I learned about how much they all appreciate him and what an important role he continues to play in his family. But although his entire family has endorsed his spouse and their children, Uri has—like Naamah—long struggled with his homosexuality. When he started to deal with his sexual desires in his late teenage years, he first read rabbinic online responsa on homosexuality, only to discover that they do not provide any realistic solution for him. Although the rabbinic answers deeply bothered him, Uri was used to finding halakhic answers for himself. Indeed, he had learned from his father not to put too much weight on the rabbis' words. As he explained his fathers' approach to halakha to me: "If you have a question, sit down and study. Don't ask a rabbi. Take a book, study, and decide for yourself what is right to do. A rabbi can direct you to books. But a rabbi's words alone do not render them true." Thus, Uri tried to understand by himself what he was expected to do. He, too, dated women for many years and even tried to live a life in celibacy. He was not afraid that God would punish him for being homosexual. And still, he struggled with his homosexuality not just because of God and the Torah, but also because he could not imagine for himself a positive future in which he would bring a partner to his parents' home.

Uri was in his mid-twenties when he started to come out of the closet vis-à-vis his family. He first talked with his father, who was from the very beginning supportive and put great effort into trying to understand the situation. After that, Uri talked with the three siblings, who in terms of age were closest to him, and also with his mother, who he thought would take it all very hard. When Uri finally told her about his homosexuality, she laughed. Thus, he assumed that his father had already told her. But when I asked Reut, she recalled that Uri being homosexual had at that moment been completely unimaginable for her and she had thought that he was teasing her. When she realized that this was real, she mourned all the years that he struggled alone as well as her lost dreams about Uri

having a wedding and a family. Reut did not frame her struggles in theological or halakhic terms. She says that she herself is not an example of halakhic perfection. "We try to do what we can within our limits as humans, as people. It is possible to be religious and to fulfill the commandments as much as you can." But she simply could not imagine that Uri could remain part of her world and was afraid of what the neighbors and friends would say.

Reut never hesitated to open the doors of her home and heart to Uri's partner, Eitan. But even while she endorsed him just like her other children's partners, she hoped deep inside that at some point, Uri would get married to a woman. She could still not talk to anyone about Uri and his relationship to Eitan, and she insisted, together with her husband, that nothing would be told to Uri's four youngest siblings. When I asked Reut about their reason, she made it clear that they did not know how to explain the situation. They did not want to give them the impression that everything goes, nor cause them to lose their respect and love for their oldest brother. Thus, Reut was horrified when Uri and Eitan told her and her husband one evening that they want to have children and plan to enter a surrogacy arrangement. Uri and Eitan's plan to have children completely turned her world upside down, not only because of her picture of Uri's future but also because she felt that this would make their relationship plainly visible to everyone. "When there are children, everyone knows," she recalls her fears. "Imagine, suddenly we come to the synagogue with Uri's children. What are we supposed to tell them? What will they think about the children? And what will they think about me?"

Reut's initial reaction was to reject Uri and Eitan's plan completely, and she told them that she will not regard their children as her grandchildren. But after a long conversation with the two men, many sleepless nights, and the birth of the twins approaching, Reut changed her mind. And after the birth, she and her husband joined Uri and Eitan in Portland to take over some of the night shifts. While there, they received an email from one of the few friends at their synagogue who knew about the birth. It was a custom to announce the birth of children and grandchildren of congregation members, and this friend was asking whether to make an announcement in their case, too. This was not a simple matter, because the announcement usually also names the child's parents. After some thought, they decided to have the birth announced. Reut does not remember anymore whether they wrote the two fathers' names or only Uri's. But she says that the exact phrasing did not matter, ultimately, because the

congregation would understand anyway. Uri and Eitan recall how surprised they were about the amount of presents that his parents received from their friends at the synagogue for their newborn grandchildren. Uri says that this gesture does not express a particularly liberal position on the matter. Rather, they wanted to let his parents know how much they were still appreciated in the congregation.

Despite this important sign of respect from his parents' congregation, Uri felt that in this town, he would not be able to give his children the chance to fully grow up in a religious environment. Although he prayed in a synagogue here, he neither actively participated in its activities nor made any friends there. For his children, in turn, he wanted a synagogue and a school where they could fully participate as a family. Thus, the family moved to Jerusalem the summer before their twins entered the public education system. Indeed, when discussing my research with the two men, Uri shared with me his anxiety that many religious lesbians and gay men give up religion too quickly. He remembered how in a recent weekend organized by *Bat Kol* and *Havruta*, he was the only one who had made the effort to get up early for the morning prayer on Shabbat. Without a *minyan*, the quorum of ten that is necessary for public prayers, Uri eventually joined the prayer of another group. "It is a fact that for them it was important enough to organize the prayer and for the people in our group not," he recalled the situation with some disappointment.

During this weekend, Uri learned that many of his colleagues did not find it important to give their children a religious education. Recalling the conversations with his colleagues, he uses the metaphor of the "generation in the desert"—the Hebrews who, under Moses' leadership, left Egypt but could not enter Israel, to explain their situation:

Most of them have very difficult stories with their religiosity and families. And this burned them to some degree. They were hurt in the desert and cannot enter the promised land. So, many of them stopped living a religious life, and even those who stayed religious bear negative feelings towards religiosity. In fact, I also have negative feelings towards religiosity. But I still want my children to receive a religious education.

Elaborating on this point further, Uri says that having one father who is totally unreligious, there is a good chance that his children will not end up living a religious life. But while he would not consider this a tragedy, it is

important for him to pass on to them the religious knowledge and values that no secular school can provide and thus to give them the chance to live a religious life. In Jerusalem, there is a school that explicitly addresses secular *and* religious families and that tries to integrate the different knowledge and value systems in order to create an atmosphere of mutual respect. Uri feels that here, their children will find a place that endorses their family constellation and follows a religious approach that fits their way of life.

6.4.5 *Daphna and Sari*

The situation of Daphna and Sari provides a stark contrast to the stories of my other research participants. They were the only ones who maintained that they were not seeking recognition of their relationship. Rather, they felt that their relationship was entirely private and no concern of others. In turn, this was the only interview where I did not encounter any negative feelings about religion. When I met the two women at their home in a town near Jerusalem, they had been a couple for about five years and living together with Daphna's two teenage children from a previous marriage. When I asked the two women about the meaning of religion in their lives, Daphna explained: "My religion endorses me. She [the religion] loves me. So, I love her in return." For Daphna and Sari, halakha is an omnipresent guide, and like Uri's father, they consult one of their many rabbinic books whenever they have a question. In addition, Daphna is in frequent contact with her rabbi, whom she writes when she cannot solve her halakhic problems. She has been following this particular rabbi since her early adulthood back in the United States. Indeed, he was the one she first consulted about her sexuality when she was still in her late teenage years. In contrast to Uri's encounter with rabbinic answers that seemed only futile to him, Daphna remembers this rabbi's approach as helpful. He sat down with her to study the topic, and then gave her the following advice:

You are the kind of person who will decide for yourself the path you take. But don't forget that you belong to a community, to parents, and to a family. You can cut these ties and do what you want. But remember that you are not alone and that you have to take your community and family into consideration in whatever you do.

Daphna and Sari's way to follow this advice is to live a quiet life without openly labeling their relationship as lesbian or homosexual, even though they assume that their friends and neighbors know. They do not feel the need to participate in the activities of the organized lesbian and gay community, and they have not turned recognition of their relationship into a matter of principle. Daphna's parents have known for a long time that their daughter had girlfriends and have never really endorsed this part of her life. "I had my fights and struggles when I was twenty. I lived, I tried, I got married, I got divorced. Today I know that all I am looking for is a quiet life," Daphna explains. And while her mother enjoyed Sari's visits before she became ill with dementia, Daphna now visits them alone because of her father's constant anger that he directs, among others, at Sari. The entire family does visit one of Sari's siblings, to whom they feel very close. However, Daphna remains distant from the two other siblings, because she can feel their uneasiness with the relationship. She understands, in turn, that to maintain the relationship with these siblings, it is important that from time to time Sari spends the Shabbat alone with them.

One important reason for their discretion is Daphna's children, to whom they have not explained the intricacies of their relationship either. Elaborating on this point, Daphna told me that she wanted her children to grow up in a completely normative religious environment. She is open to answering questions that might arise one day, but she does not want to impose on them names or frameworks. Thus, they have the freedom to call Sari how it suits them. In their religious schools, Daphna is known as a divorcee and single mother. She often volunteers in school activities and is careful to maintain a good and respectful relationship with her children's teachers. And while Daphna says that she is not hiding anything, it probably helps that Sari works in Jerusalem and is only seldom present at school activities. At home, the two women put an effort into rendering the absence of a father positive, for example, by letting the children recite the kiddush on Shabbat or by decorating the Sukkah together. This way, they hope that the children will grow up loving their religion—Shabbat, the holidays, and blessings—just as much as they do.

Without requesting recognition of their same-sex relationship, Daphna and Sari have found for themselves quite a different way, compared to Naamah and Uri, regarding how to pass their religious knowledge on to the next generation. But while this seems to work well for the two women, their way does not establish same-sex parenthood as yet another way of

making Jewish continuity. Indeed, it appears to me that their way only works because they consciously identify Daphna as a single woman. At the end of our conversation, when telling me that her two teenage children were enthusiastic about celebrating the holidays together, Daphna raised the topic of having more children. She said:

I think that if I had the possibility and our life was calmer with regards to work and [taking care of my parents], I would consider having a child with Sari. I do not think that this is abnormal [*harig*]. Whose child it would be, I do not know. I did not think about the details. But the point would be to raise the child *together*. For me, there could be a thousand children. But it is not realistic. And particularly when *I* am not free. I already have a hard time making a living and at the same time preparing soup for my parents and seeing to our Airbnb guests who are about to arrive. Today this is not realistic. If life was different, I would consider it. I do not know whether I ever told you [Sari] this. But yes, I think that this is the next step in the relationship. To share something like this, a child that you raise together.

Exactly at that moment, the Airbnb guests arrived, interrupting our conversation. For me the question remains, how having a child together would change Daphna's and Sari's way of life, Sari's position toward the other children, and their silent embeddedness in their religious community. Would they still be satisfied with the label "single mother" or would requesting recognition of both women's position as a mother become an issue? Would this force them to redefine and indeed clarify Sari's position in the family vis-à-vis the children, the schools, and Sari's extended family? Or put differently, would they be able to continue their semi-closeted and conflict-free way of life?

6.5 CONCLUSION

Scholars who researched the experiences of non-heterosexual Christian women and men in the United States and in England have used the concepts of "religious individualism" (Wilcox 2002) and "primacy of the self" (Yip 2002). They used these terms in order to describe these women's and men's tendency to turn away from religious authorities and rely instead on their own interpretations of religious texts and figures. The alienation from the Rabbinate, described by Uri and many other of my research participants, points in the same direction. Indeed, anthropologists working

on contemporary Orthodox Judaism have observed a turn toward experiential, individualized, and spiritual religiosity, as well as a trend among some Orthodox to view themselves as “searchers” (Fuchs 2018, 401). Englander and Sagi’s (2012, 2015) observation of rabbis increasingly concerning themselves with the inner life and well-being of questioners indicates that the individual has gained significance not just at the fringes of Orthodox Judaism. And as the stories of Nadav, Naamah, and Uri show, rabbis risk losing their relevance if they fail to address the life realities of halakha-observant Jews.

To conclude this chapter, I would like to suggest, however, that despite these observations, in Orthodox Judaism, the concepts of “religious individualism,” and “the primacy of the self” fail to capture the ongoing importance of societal embeddedness—also for lesbians and gay men—especially when children are involved. “Religious individualism” might be a strategy to consolidate for *oneself* different and seemingly contradicting aspects of identity. But even if they go as far as Nadav, who consciously rejected his identity as religious, they still find themselves in intimate relationships with others—most importantly their families—for whom rabbis continue to have some weight. To be sure, like Uri’s father, these intimate others might also question the relevance of rabbinic opinions. But as Reut’s fears and struggles with Uri and Eitan’s plan to have children show, they cannot ignore the social norms in their surroundings, either.

It appears, then, that the social processes that the coming out of lesbians and gay men and the formation of same-sex parenthood set in motion in Orthodox Judaism are better understood as deeply relational. Like Uri’s parents who welcomed Eitan in their home but insisted on *not* labeling their relationship in front of the younger children, lesbians and gay men, as well as their families and social surroundings, navigate diverging values and commitments in concrete encounters and concrete situations. The question as to whether to ask for rabbinic advice or not constitutes part of this navigation process. The inclination to do so or not depends, of course, also on the individual person’s upbringing, experiences, and self-identification. But my point here is that people are totally capable of finding rabbinic opinions unnecessary for one question, yet rely on them for another. This became clear to me when I met Uri’s grandmother, Malka. If Uri’s coming out came as a shock to her, she never showed it. Rather, she has neither changed her loving attitude to her eldest grandson nor hesitated to open the doors of her home to Eitan and their children. Discussing halakha, homosexuality, and her own approach, she said:

I have nothing to ask [a rabbi]. What should I ask him? Whether I am allowed to invite Uri to my home? I will not ask such a question. There is also no reason to ask such a question, from a halakhic perspective. Ask what? That this [homosexual relationships] is not ok? I know. I have nothing to talk with a rabbi here. I do look for the rabbis. There is a newspaper, *Makor Rishon*, where Rabbi Navon often writes. Sometimes I agree with him and sometimes not.

Malka and many others—lesbians, gay men, their families, and friends—may be labeled as searchers. But this searching does not necessarily replace rabbis. Indeed, rabbis like Binyamin Lau, Ronen Lubitch, and even Aharon Harel appear here as searchers themselves.

In contrast to Christianity, where religiosity is first and foremost a matter of individual inner belief, religiosity in Judaism is built upon the collective and its reproduction. This is the reason that Uri moved with his family to Jerusalem, that Naamah has found herself endorsing a Conservative synagogue, and that Daphna and Sari prefer not to label their relationship. Lesbians and gay couples may make their own kosher home and structure their life according to halakha. But when they want to pass both their religious tradition and their experiences as lesbians and gay men on to the next generation, they need their families and accepting congregations and schools. This is why congregations like *Yachad* in Tel Aviv or the partnership minyan and Conservative synagogue in Jerusalem are important. But it is also important to understand that they cannot provide a new home for everyone. In Tel Aviv, I met a couple of lesbians and gay men who did not pray at *Yachad* because they felt that they had little in common with its mostly upper-class, Anglophone, and Ashkenazi community. If they fail to raise their children as part of Orthodox Judaism, in turn, they remain somewhat outside of the making of Orthodox continuity. Or as Uri said somewhat pessimistically: “The religious LGBT community will not continue to be a religious community as it is today.” If Uri is right, religious same-sex couples have to continue to rely on their siblings and cousins to form a next generation that is both religious and accepting.

To conclude this chapter with a more optimistic view, I would like to return to Nadav’s story. Somewhat paradoxically, it was the conversations with him, who of all my research participants has struggled most with religion and religiosity, that showed me most impressively how room for same-sex parenthood is carved out in Orthodox Judaism, in small encounters. When talking about the wedding ceremony that Noam and he held a

couple of years earlier, he recalled that it was actually their children who pushed them to get married. And when they finally did, their oldest son climbed up to the roof of the classroom at his Orthodox public school and shouted from there as loud as he could: “The seventh of this month, dad and Nadav are getting married!”

NOTES

1. It is interesting, however, that some of my research participants have used the very same line of argument to explain their decision to have their children circumcised (see Chap. 5).
2. The concept of “religious Zionist” (*dati leumi* in Hebrew) usually refers to Orthodox Jews. In Israel, “the term religious is synonymous with Orthodox, religious Jew with Orthodox Jew” (Liebman 1998, 407).
3. As Liebman (1998, 408) has made clear, in Israel, modern Orthodoxy was long associated with the cause of religious Zionism. And while there is today a common understanding that there are also Zionist Ultra-Orthodox Jews, in popular speech, the term *dati-leumi* (religious-national) usually does not refer to the Ultra-Orthodox. In turn, some institutions use the term “modern Orthodox” to distinguish themselves from (right-wing) religious Zionism, that is, to emphasize their openness to the non-Jewish world or to argue on behalf of greater individual autonomy.
4. The term *poskim* highlights the efforts to determine halakha in practice. A rabbi is a *posek* if he does not study *halakha* for its own sake but applies his knowledge to decision-making in concrete and practical cases.

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Conclusion: Same-Sex Parenthood and the Making of Jewish Continuity

As I write the final pages of this book, Israel is preparing for its third elections in a single year, which are about to take place on 2 March 2020. On social media platforms, I find people whom I met during my years of researching same-sex parenthood presenting diverging positions. Many have joined Benny Gantz and Yair Lapid and wave the flag of the *Kachol-Lavan* Party, while others participate in the demonstrations for Netanyahu. Some discuss the rifts within Israel's left or have come to the conclusion to not vote at all. And some sympathize with *HaBayit HaYehudi's* settler politics and are even trying to establish an LGBT-group within the party. The diverging positions that my research participants maintain with regard to the upcoming elections mirror the diversity of LGBT people to the extent that it has become difficult to use the expression "LGBT community" at all. I read this also as a sign that in this situation of two political blocs literally blocking each other, the outcome of the elections does not matter all that much in terms of LGBT people's legal position and possibilities.

I confess that in light of the overtly homophobic statements of some representatives of the religious-Zionist bloc, my reading of the situation appears quite a stretch. And I do not of course suggest that comments such as those of Rabbi Rafi Peretz in favor of conversion therapy carry no weight. Indeed, it is such comments that push Naamah further and further away from Orthodox Judaism and render Nadav's encounters with his siblings increasingly difficult. But I have also shown throughout this

book that as long as Israel's governing parties uphold the principle of religious marriage as a cornerstone of the definition of Israel as a Jewish state, the exact constellation of the Knesset is not that relevant for the shaping of LGBT people's legal situation. Despite shrill outcries, Orthodox parties have not hindered the Knesset from passing laws to protect LGBT people from discrimination, as individuals. In turn, even when the government was headed by more moderate forces, same-sex couples had to bypass the Knesset in order to achieve family rights.

Gay couples' latest attempts to gain full access to surrogacy and adoption confirm these findings. In 2014, the Knesset came very close to passing a somewhat revolutionary bill that would have provided gay men access to surrogacy in Israel. Political discussions about gay men's access to surrogacy commenced in 2010, when Itay and Yoav Arad-Pinkas submitted a petition to the High Court of Justice.¹ There, the couple argued that thanks to the growing number of public authorities recognizing same-sex couples and their family rights, as described in Chap. 4, social acceptance of same-sex parenthood had found expression in legal practice. Thus, they held:

Even if in 1996, when the Surrogacy Law was enacted, it was right to interpret it as not applying to same-sex couples (which is here contested), it is incorrect to keep interpreting it the same way 14 years later, when gay and lesbian parenthood has become an integral part of our lives.²

Rather than waiting for the Supreme Court's decision, the government this time adopted a proactive position. With the court's agreement to adjourn the case, the Ministry of Health established a public committee with the task of examining the possibility of opening surrogacy to same-sex couples and to make a corresponding proposition to the Knesset. The committee, commonly known as the Mor Yosef Committee, published its report in May 2012 (Ministry of Health 2012). There, the committee recommended that men without female spouses (*gvarim lelo bnot zug*) should have access to surrogacy, yet with the limitation that in their cases the surrogacy arrangement had to be on an altruistic level. With this provision, the committee's majority hoped to reduce the risk that gay men would crowd out heterosexual couples or inflate the prices of surrogacy so that it would become an option for rich people only. On the basis of these recommendations, the Ministry of Health redrafted the Surrogacy Law, which was approved by the government on 1 June 2014, and even passed

a first reading in the Knesset. According to the bill, gay men would have the same kind of access to surrogacy as heterosexual couples and single women (Government 2014). Surrogate mothers would not be able to request more than 160,000 shekels for their service, and international surrogacy would be tightly regulated and state-monitored.

Gay men were bitterly disappointed with this bill. They argued that the new regulations did not make their access to surrogacy easier, but rather more difficult (e.g., Tabak Aviram 2014). Most importantly, they felt that in Israel, there were not enough women who wanted to be surrogate mothers, and that therefore international surrogacy continued to be important. They feared that precisely this international bypass was threatened with the State now intervening in the heretofore unregulated market. Despite their disappointment, it is remarkable that here, for the first time, the government approved a law providing parenthood rights to LGBT people. And it is probably no coincidence that this happened when the Ministry of Health was in the hands of Yael German of the secular Zionist party *Yesh Atid*. The phrasing “men without female spouses” (*gvarim lelo bnot zug*), however, points again to the government’s red line. Indeed, by referring to gay men as *single men* rather than constituting them as couples, the bill avoided a discussion over the definition of spouses and couples altogether. The bill ultimately disappeared in the turmoil of the government’s dissolution and reelection in 2015. The final revision of the law, which was ultimately ratified by the Knesset in 2018, provides *single women* access to surrogacy but continues to exclude gay men. This means that in principle, lesbian women, who count here as singles, can now benefit from surrogacy in Israel. But in light of the bill’s history and because lesbians couples’ need for surrogacy is anyway minimal, the access that the bill grants to lesbians does not turn it into an LGBT-friendly law. Rather, it is another statement against the formation of families by same-sex couples.

The petition to the Supreme Court, which was submitted by the Association of Israeli Gay Fathers and the Israel Movement for Reform and Progressive Judaism, to recognize unmarried heterosexual couples and same-sex couples for the sake of adoption seems to await a similar fate. After considerable clamor, demonstrations, and even a strike of lesbians and gay men in the summer of 2017, the Ministry of Social Affairs announced in the beginning of August of the same year that the government had changed its position and was not opposing anymore the idea that a stable relationship, rather than a heterosexual marriage, should be

the decisive criteria for adoption. But while this was widely celebrated as a milestone victory, there were also voices of caution. Thus, legal scholar Haim Abraham (2017) cautioned in an article in *Haaretz* that the government's "Yes, but" is the same old "No" in disguise. I agree with Abraham that the government's insistence that such a change of policy requires a change of the law renders its chances rather low. At the time of this writing, a number of bills pushing for a revision of the law have been submitted to the Knesset. But to my knowledge, none have been passed so far. Indeed, it would not only require a majority but a stable majority in the Knesset to approve this revision in all three readings.

It appears, then, that as long as the definition of what counts as a procreative unit is in the hands of the Knesset, gay couples who want to build "families of their own"³ have to either rely on transnational surrogacy arrangements or hope for the Supreme Court to intervene. In recent years, countries in the Global South have, one after the other, shut the door to international surrogacy clients. Indeed, the group of women and men that I accompanied in Mumbai were among the last ones who could enter a surrogacy arrangement in India. After that, surrogacy agencies moved their business activities to Nepal, Thailand, and Mexico. As these countries have followed suit and also outlawed transnational surrogacy arrangements, Israeli gay couples can currently enter surrogacy arrangements only in the United States or Columbia.

Strikingly, from a viewpoint that focuses on the reproduction of Jews, gay men's turn to transnational surrogacy is highly problematic. With access to surrogacy in Israel, their children would be unequivocally Jewish. In the current situation, however, they are halakhically not Jewish at all. The lawmakers' resistance to providing gay men with access to surrogacy in Israel makes clear that reproducing Jews is not simply a matter of numbers. Rather, I suggest that Israel's family law is better read through the principle of religious marriage that maintains religious affiliation—and indeed Jewishness—as a principle vector of citizenship. The principle of religious marriage ensures that halakhic rules of consanguinity continue to shape the laws pertaining to reproductive technologies and adoption, because no lawmaker wants to be held responsible for a law that makes Jews who are not able to get married. But the principle of religious marriage also impedes reproductive practices such as gay couples' access to surrogacy. Although the children resulting from this practice would be Jews with no marriage restrictions, it appears that for the dominant forces in the Rabbinate, allowing such a practice would amount to the

recognition of same-sex couples as procreative unions—which is something they cannot reconcile with their understanding of what the Jewish people is and how it is reproduced.

At the same time, the Israeli family law also provides legal loopholes and bureaucratic leeway that allow for reproductive practices that do not fit the Orthodox definition, as long as they do not seek to replace the principle of religious marriage. Israeli family law does not, therefore, constitute a unified fertility regime. Instead, it is best understood as a free-floating body of regulations, in which inherently conflicting norms coexist in a fragile balance. For over two decades, Israel's legislation seemed to be steadily proceeding toward a liberal LGBT politics. To what extent LGBT activists' strategy of accessing family rights step by step through litigation in court continues to be successful, however, will be seen.

The developments of the last decades do not point toward a clear direction. With taking the revision of the Surrogacy Law and of the Adoption Law in its own hands, the government has made clear that disputes over the definition of family should take place in the Knesset rather than in the courtrooms. In 2017, the Supreme Court has made a similar statement in its reply to a petition that aimed at allowing LGBT couples to marry in Israel (Davar Rishon 2017). On 27 February 2020, in turn, the High Court of Justice ruled that the revision of the Surrogacy Law from 2018 has been discriminatory and that gay men should have access to surrogacy in Israel (Yaron et al. 2020). The Knesset has now a timeframe of a year to change the law accordingly. In case that the Knesset fails to make the requested change, the Supreme Court has reserved for itself the authority to either cancel or adapt the law. Thus, the relationship between conflicting norms has neither been sorted out nor will the courts cease to play a role in the definition of family relationships.

Furthermore, with the children of same-sex couples maturing, courts will probably be increasingly confronted with questions pertaining to the definition of the family relationships of the offspring of same-sex couples. I turn now to the challenges that the lack of an all-encompassing legal endorsement of same-sex couples provides for further generations to show how a transgenerational perspective enriches our inquiry of the formation of same-sex parenthood.

7.1 THE FRAGMENTED DEFINITION OF SIBLINGSHIP

In order to address the transgenerational implications of same-sex parenthood, it is necessary to shortly return to the adoption law discussed in Chap. 4. Indeed, second-parent adoption and parenthood orders are not only important for the formalization of the parenthood of same-sex couples, they also define the relationships between children born and raised by same-sex couples, as well as between them and the adoptive parents' siblings, parents, nephews, and nieces—relationships that are relevant today and for further generations. Israeli law is ambivalent in this respect, too. Paragraph 16 of the Adoption of Children Law (1981) holds:

16. Adoption establishes between the adopting parent and the adoptee the duties and rights that exist between parents and their children. It grants the adoptive parent the responsibilities parents have toward their children and it ends the duties, rights and responsibilities between the adoptee and his birthparents and their relatives. However:

- 1) The court is authorized to limit the consequences in concrete cases;
- 2) Adoption does not hurt the laws pertaining to marriage prohibitions and divorce;
- 3) This paragraph does not remove the instructions of paragraph 16 of the Succession Law (1961).

For my discussion here, paragraphs 16.2 and 16.3 are particularly interesting. In Chap. 5, I discussed at length the Jewish kinship positions and religious status of children born through sperm donation and surrogacy and the consequences for the marriageability of the children themselves, as well as of their own children. According to paragraph 16.2, adoption does not alter the marriage prohibitions that apply to children born through sperm donation or egg donation at all. The Surrogacy Law posits the same limitation on parenthood orders. I will not repeat here my explanations of the marriage restrictions in detail; rather, I summarize the principles with attention to the children's status as siblings. The standard situations I refer to here are same-sex couples with two children with different recognized mothers or fathers: Table 7.1 portrays the situation of a lesbian couple, with both women having given birth to one child each. Table 7.2 refers to the situation of a gay couple, with both men's sperm having been used for the conception of one child each (Tables 7.1 and 7.2).

Table 7.1 Siblingship of children born to lesbian couples with the help of sperm donation

<i>Parental constellation</i>	<i>Mother's religion</i>	<i>Donor's religion</i>	<i>Siblingship and marriage prohibitions</i>
Both women give birth to one child, using the sperm of the same donor	Both women are Jewish	Jewish	Several of my interlocutors implemented this possibility and used the same donor for all their children. From the Rabbinate's perspective, having the same Jewish donor turns these children into half-siblings. They are prohibited from marrying each other and any other children conceived with the donor's sperm.
Both women give birth to one child, using the sperm of the same donor	Both women are Jewish	Not Jewish	In rabbinic kinship thinking, non-Jewish paternity does not exist for Jewish children (Kahn 2000, 105–106). Accordingly, children of two different Jewish mothers and the same non-Jewish donor may marry each other even if they grow up as siblings. Goldberg (2010, 102) has tested a rabbi on this matter, and asked him if he would consent to a marriage between persons who were conceived with the sperm of the same non-Jewish donor. He did not know, as such a marriage would be problematic from a medical, but not from a halakhic, perspective.
Both women give birth to one child, using the sperm of the same donor	Jewish and not Jewish	Not relevant	Due to their different religious affiliation, the children cannot marry each other, but are also not halakhic siblings. The same applies, of course, to a case in which both birth mothers are not Jewish.
Both women give birth to one child, using the sperm of two different donors	Jewish	Not relevant	If the children were conceived with sperm from different donors, they are perceived to not be siblings, regardless of the donors' religious affiliation.

In any of these situations, the non-recognized parents can adopt the children or receive a parenthood order. But in terms of marriageability, the adoption does not change the children's sibling relationships.

Adoption does influence, however, their inheritance rights, both with regard to their parents and also toward each other. In this respect, an

Table 7.2 Siblingship of children born to gay couples with the help of transnational surrogacy. As I explained in Sect. 5.2, rabbis do not agree with each other as to whether the egg donor or the surrogate mother is the halakhic mother. For the discussion here, this rabbinic dispute is not relevant. I chose the term halakhic mother rather than egg donor or surrogate mother, in order to cover both rabbinic positions

<i>Parental constellation</i>	<i>Father's religion</i>	<i>Religion of the halakhic mother</i>	<i>Siblingship and marriage prohibitions</i>
Both men's sperm was used for the conception of one child each. They hired the same halakhic mother for both children.	Jewish	Jewish	Several of my interlocutors have implemented this possibility and used the same egg donor for all their children. From the Rabbinate's perspective, having the same Jewish mother turns these children into half-siblings. They are prohibited from marrying each other and any other children conceived with the donor's eggs.
Both men's sperm was used for the conception of one child each. They hired the same halakhic mother for both children.	Not relevant	Not Jewish	Regardless of the fathers' religious affiliation, the children are not Jewish. Therefore, they cannot marry each other under Jewish law, but they are also not halakhic siblings.
Both men's sperm was used for the conception of one child each. They hired two different halakhic mothers for both children.	Jewish	Jewish	The children have different halakhic mothers and fathers, and are therefore not siblings according to the Rabbinate.
Both men's sperm was used for the conception of one child each. They hired two different halakhic mothers for both children.	Not relevant	Jewish and not Jewish	Due to their different religious affiliations, the children cannot marry each other, but are also not halakhic siblings.

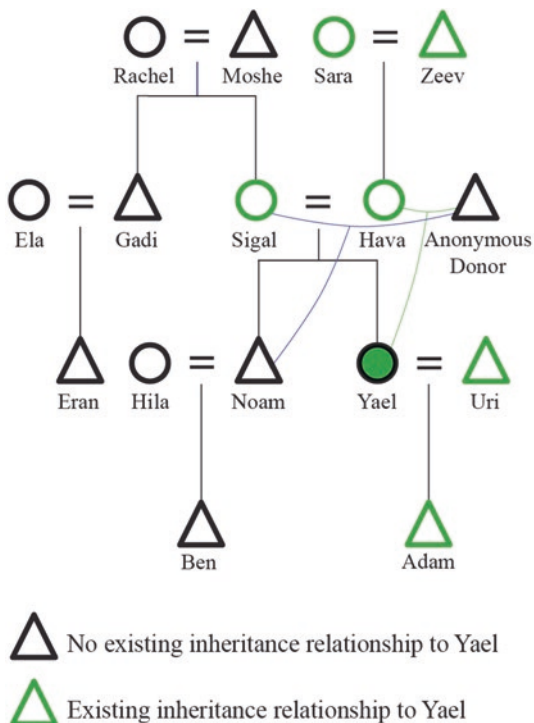
interesting change has taken place in recent years. Paragraph 16 of the Succession Law (1961) originally held that adoption only establishes inheritance rights between the adopting parent and the adoptee, but not with regard to the rest of the adopting parents' and the adoptee's family. It specified that:

- 1) The adoptee and his or her offspring may inherit from the adopting parent;
- 2) The adopting parent may inherit from the adopted child;
- 3) The adoptee and his or her offspring may inherit from their "biological relatives";
- 4) The adoptee's [biological] parents, grandparents, and their offspring may not inherit from the adoptee;
- 5) The adoptee and his or her offspring may not inherit from the adopting parents' relatives;
- 6) The adopting parents' relatives may not inherit from the adoptee.

With these principles, the Succession Law created a rather curious situation, in which adoption neither completely erased nor maintained the adoptee's position in the birth family. At the same time, the law also did not make the adoptee an unequivocal part of the adopting parent's family. For children of same-sex couples, this meant that they would all have the same inheritance rights toward the two mothers or two fathers, but they would not inherit from each other. Further, depending on who was the birth mother—or in the case of a gay couple, the provider of the sperm—the children would inherit from different grandparents, aunts, and cousins. Fig. 7.1 illustrates the consequences of paragraph 16 for the fictive case of a woman, Yael, born to a lesbian couple with the help of an anonymous sperm donor.

The diagram shows just how limited was the recognition of the trans-generational continuity originally established by second-parent adoption. From the perspective of the original Succession Law, no kinship relations exist between Yael and her son Adam on the one side, and Sigal's family on the other. Even Noam, whom she most likely considers to be her brother, appears as a stranger. Although they were conceived with the sperm of the same donor, in the eyes of the law, this does not turn them into siblings because he is not registered as their father. Accordingly, Yael appears to be part of one sole pedigree, being cut off both from Sigal's and the donor's family.

Fig. 7.1 Kinship diagram. Kinship relations according to the Succession Law (1961)

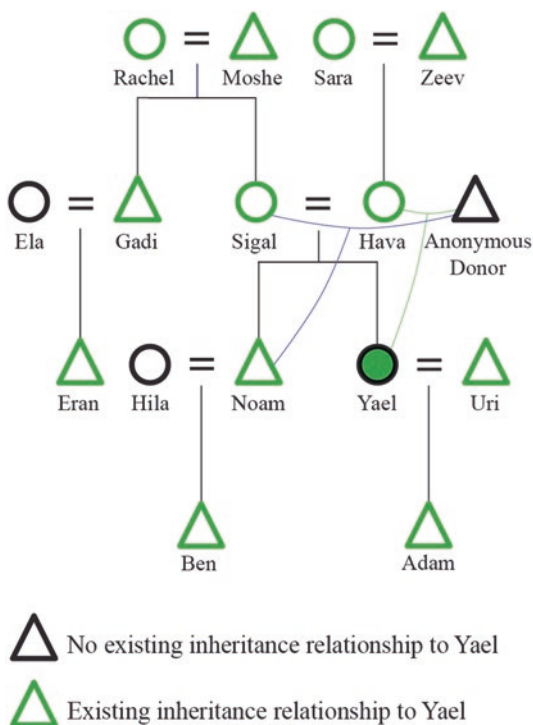


This situation changed on 17 July 2012, when the Knesset passed a bill submitted by Nitzan Horowitz and Ilan Galon from *Meretz* (Knesset 2012a, 127–132). Nitzan Horowitz is a well-known gay rights activist, and it is very likely that the two members of Knesset had the children of same-sex couples in mind when they submitted this bill. The 13th revision of the Succession Law exclusively addressed paragraph 16 and altered the inheritance rights between the adoptee and the adopting parent's relatives. With the adopted change, the law now holds that: "The adoptee and his offspring have a right to the estate of the adopting parent's relatives, as if they were *yorshim* (usually translated as heirs; but it also has the connotation of being descendants), and the adopting parent's relatives have a right to the adoptee's estate, as if they were *yorshim*" (Knesset 2012b, 523). Note that this phrasing, at least formally, does not turn adoptees and the adopting parents' relatives into each other's heirs (or descendants), but rather *equates* them with heirs. In practice, however, this change is

fundamental. In terms of inheritance, the children of same-sex couples can now become, through second-parent adoption, siblings regardless of whether they were born to the same woman or conceived with the sperm of the same man. In Fig. 7.2, Yael's fictive case is presented once more, but this time under the revised Succession Law.

Now, second-parent adoption locates Yael within two pedigrees and thereby constitutes transgenerational continuity, just as if Sigal and Hava were a heterosexual married couple. The legal procedure recognizes the material relationship of children like Yael—and of future generations—to the adoptive parents' siblings, nieces, and parents. This does not, of course, prevent struggles over inheritance and rifts between siblings or cousins. But at least in theory, mediating courts could intervene just as in any other fight between heirs.

Fig. 7.2 Kinship diagram. Kinship relations after the 13th revision of the Succession Law (2012)



△ No existing inheritance relationship to Yael

 Existing inheritance relationship to Yael

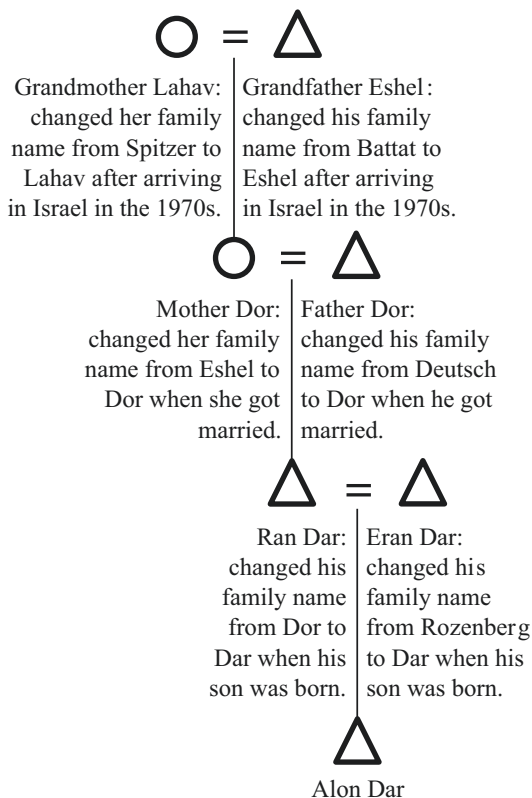
The adoption law and the recent changes in the Succession Law bring about a rather curious situation. They establish siblingship in terms of inheritance, but not in terms of marriageability, and therefore make the coexistence of different ontologies and kinship logics within Israeli family law plainly visible. This state of affairs gets even more complicated when we add the Law of Names (1956), the national law that regulates the giving and changing of private and family names. Article 5.2 explicitly concerns second-parent adoption orders and holds:

A minor who was adopted according to the provisions of article 3.1 or 3.2 of the Adoption Law (1981), will carry the family name of her biological parent, in addition to that of her adopting parent... unless the adoptive parent asks otherwise, or the court decides otherwise.

Accordingly, children of same-sex couples may carry the family names of their two mothers or fathers. Many of my interlocutors, however, preferred to have a common name instead. The Law of Names provides ample freedom to change one's family name. This possibility has a long history and is tightly related to Zionism and Israel's migration history. It was common among early Zionists to change their foreign names into Hebrew. Hence, six years after his arrival in Palestine, David Grün, an immigrant from Congress Poland, which was then part of the Russian Empire, changed his name to David Ben-Gurion (Neuman 2014).

The case of Ran and Eran Dar well illustrates the history of changing family names in Israel. Indeed, in Ran's family, names were changed since the arrival of his grandparents in Israel. The latter, as well as Ran's parents, gave up their family names in order to assume a Hebrew name, an act that was highly encouraged, and sometimes forced upon new immigrants, by the government (Stahl 1994, 279). Accordingly, Ran's grandmother changed her name from Spitzer (German for something sharp, or a sharpener) to Lahav (Hebrew for blade). Ran and Eran, in turn, created a completely new name when their son Alon was born through surrogacy. In order to have a name that circumscribes their family unit, they combined the first letters of their family names "D" from Dor, and "R" from Rozenberg, and thus became Eran and Ran Dar. The following diagram

Fig. 7.3 Kinship diagram. Changing family names



shows from a transgenerational perspective how it happened that Alon carries the family name Dar (Fig. 7.3).

Inquiring into the consequences of same-sex parenthood for the kinship positions of their offspring allows us to understand whether these new family formations establish relationships that endure over generations. Do material goods, names, and religious status pass through same-sex couples to their children and from there to further generations? The tables and diagrams show that due to the lack of an all-encompassing legal status, no single law regulates these issues. Second-parent adoption and parenthood orders have the potential to clarify the children's relationship toward each other and to a network of aunts, uncles, grandparents, and cousins. But the lack of an all-encompassing recognition does

not only create inconsistencies and ambiguities for same-sex couples when they become parents—they are also transferred to further generations. Adoption and parenthood orders do not change the child's marriageability, which is regulated in Israel by the Rabbinate. Hence, a boy and a girl who grow up as siblings and legally have the same mother, can theoretically get married if they were not born to the same woman. At the same time, however, the 13th revision of the Succession Law in 2012 equates adoptees and their offspring with the adoptive parent's relatives, so that they are eligible to inherit each other's estates. Furthermore, same-sex couples can easily merge their family names or adopt each other's names and transfer the chosen common name to their children—a possibility that many of my interlocutors took advantage of. There are a number of possible scenarios pertaining to the family relationships of same-sex couples' children. I use the situation of a lesbian couple with two children to exemplify them:

- ***Born to the same mother + second-parent adoption or parenthood order:*** Being born to the same mother, the children count as siblings in Jewish law. They cannot marry each other or the birth mother's relatives, but they encounter no marriage restrictions if they want to marry one of the adoptive mother's relatives. Based on the second-parent adoption and the Succession Law, they and their offspring will be eligible to inherit from each other, as well as from both mothers and their relatives. Depending on their mothers' choice of names, they will carry the family names of both mothers or of only one of them.
- ***Born to the same mother without second-parent adoption or parenthood order:*** Being born to the same mother, the children count as siblings in Jewish law. They cannot marry each other or the birth mother's relatives, but they encounter no marriage restrictions if they want to marry one of the adoptive mother's relatives. Without second-parent adoption, they and their offspring will be eligible to inherit from each other and the birthmother's relatives, but not from the legally unrecognized mother's relatives. Depending on their mothers' choice of names, they will carry the family names of both mothers or of only one of them.
- ***Born to different mothers + second-parent adoption or parenthood order:*** Being born to different mothers, the children do not count as

siblings in Jewish law. They can marry each other and the relatives of the adoptive mother. Based on the second-parent adoption and the Succession Law, they and their offspring will be eligible to inherit from each other, as well as from both mothers and their relatives. They will carry different family names or a common family name chosen by their mothers.

- ***Born to different mothers without second-parent adoption or parenthood order:*** Being born to different mothers, the children do not count as siblings in Jewish law. They can marry each other and the relatives of the adoptive mother. Without second-parent adoption, they and their offspring will neither be eligible to inherit from each other nor from the unrecognized mother's relatives. They will carry different family names or a common family name chosen by their mothers. While one might think that with same-sex couples' access to simple parenthood orders, this scenario will most likely disappear, I have indicated in Chap. 4 that there might always be situations in which same-sex couples—consciously or not—do not make use of this legal possibility. How will family courts decide if in such a situation the descendants of same-sex couples fight over an inheritance? And will the descendants themselves use the ambiguity of their siblingship to contest each other's inheritance rights?

Sabeian and Teuscher (2013, 9) have convincingly argued that different understandings of generation and conception can exist at the same time, without necessarily cohering “in a singular viewpoint.” The Israeli case is therefore surely not unique. Yet, it is remarkable that these diverging understandings do not stand apart from each other in separate domains. Rather, they constitute a tension-filled web, with various interest groups pulling in different directions. Accordingly, I hope that this study of same-sex parenthood helps to shed light on how the interplay between agency and structure generates and continues to shape the coexistence of diverging viewpoints.

What pedigrees the offspring of same-sex couples will (re)produce remains an open question not only for me, but also for the couples themselves. One evening, I was sitting with Ben and Amit by the swimming pool of our hotel in Mumbai, when Amit started to contemplate their son Roi's future. At the age of thirteen, Israeli children in public schools usually write or draw an *avodat shorashim*—a family tree or essay about their family history. Amit wondered what Roi's work would look like and what

he would write about India. Ben intervened and argued that their boy's *avodat shorashim* would probably not be about India, but rather about the places their own families came from originally. Then, Amit continued to think further. "Besides the *avodat shorashim* there are also *tiyuley shorashim*, the journeys parents make with their children to visit their countries of origin," he explained to me. And jokingly he added that Roi would have a lot of places to visit.

In the end, only time and further research can tell which relationships my research participants' children, their aunts, cousins, and their own children will sustain over the generations. The inconsistent legal situation thereby presents only one parameter. Much will depend upon the willingness of the involved parties, sympathies, and family constellations—as well as societal and political processes—that are not directly related to same-sex parenthood. My research indicates that life cycle celebrations such as marriage, brit milah, and bar mitzvah will continue to play an important role for the children and children's children of same-sex couples. Through these occasions, which often bring together several hundred guests, distant relatives meet each other on a regular basis, even if they do not maintain contact in daily life. Invitations require counter-invitations and gifts create new obligations, thereby regenerating social relationships that are meant to last over generations.

7.2 SOCIETAL BELONGING AND AMBIGUITIES IN DEFINING JEWISHNESS

In an article on the meaning of Jewish genes, Susan Martha Kahn (2005) has asked how biomedical processes such as gamete donation, blood transfusion, and organ donation, which allow bodily substances to be freely exchanged between individual Jewish and non-Jewish bodies, challenge popular understandings of Jewishness as a collective identity. As Kahn makes clear, such practices may be particularly threatening to a secular understanding of Jewishness that is "articulated in terms of 'feeling' or simply 'being' Jewish rather than as an identity that is rooted in concrete Jewish practice" (ibid. 188).

Just as they have no clear answer as to how their children would trace their descent, the gay men who participated in my research are also ambiguous with regard to this question. Indeed, gay men's exclusion from surrogacy in Israel and from Orthodox conversion does not leave their

children beyond the Jewish collective. Depending on the perspective, they are non-Jews who happen to grow up with Jewish customs, Jews who are not fully recognized, or just a different kind of Israeli citizen. For many of my research participants, their children were Jewish because they had Jewish fathers. Conversion, in turn, was a way to complete their children's identity or to simply have them recognized. Thus, the significance they attribute to fatherhood de-genders the halakhic rule that children are Jewish when born to a Jewish mother. Yet, it should not be mistaken as indicating a purely essentialized and geneticist understanding of Jewishness.

For my research participants, having Jewish fathers meant first and foremost *growing up* with Jewish fathers, rather than being conceived with the sperm of a Jewish man. Thus, they would probably answer to Kahn that being Jewish as an embodied feeling or state of being still requires practice. For many of my research participants, this practice is not the daily practice of observant Jews. Rather, it is the daily interactions with Jews, which, of course, is quite unique in Israel, but also the celebration of holidays and life cycle events, and circumcision if male, that make these bodies Jewish. In this sense, even for my research participants who otherwise emphasized the autonomy of the individual, Jewishness is deeply relational. It relies on networks of enduring relations and sympathy that are reproduced in these acts of kinship. Indeed, as my findings on the brit milah show, Jewish traditions provide such a strong way of constituting belonging, that lesbians and gay men have a hard time resisting them.

These networks of enduring relations are not new in the Jewish Israeli collective. In *Our Holocaust* (2012), the late Israeli author Amir Gutfreund depicts the term "law of compression" to describe how Holocaust survivors and their children collected relatives to fill the gaps in their kinship networks. The ascribed kinship positions were not arbitrary, but followed generational patterns: Friends of parents could become uncles and their children cousins. I found Gutfreund's law of compression also in the family histories of my interlocutors. Fig. 7.4 visualizes the case of Doron and gives an overview of the complex web of relationships that connects him and his daughters to a broad range of people:

Doron separated from his partner of many years about a year before I got to know him, in 2010. The two men raised together two girls—at that time twelve and seven years old—whom they had adopted from Vietnam and Georgia. Apparently, the separation had been difficult, and Doron did not really want to talk about it. The two girls stayed with him and visited his former partner once every two weeks. Doron himself had just entered a new relationship with a man who raised a six-year-old girl in a shared parenthood arrangement with a single woman. He invited them all for the

Because Doron's father wanted to become a farmer, the family bought land in a village outside of Tel Aviv. Later, his wife Liora, a Hebrew teacher, joined them to live in the village. Doron and his older brother developed a close relationship with their grandmother. She lived next door, even after her husband—and later her son—died. Thanks to his grandmother and mother, Doron got to know another cousin of his father: a well-respected and educated man, who was homosexual and who was very dear to the two women. In retrospect, Doron is sure that his mother's friendship with this man helped her to accept his own homosexuality.

After her husband's death, Liora married again. Her second husband arrived from Brazil and brought a son and daughter into the family. Doron never accepted this man as a father, and the whole family became estranged from the daughter. Yet he gained an additional brother with whom he maintains a close relationship. For Doron, it is therefore clear that his two daughters and the children of his brothers are all cousins. Liora is now in a relationship with another man. That man, Nathan, is the son of a couple whom Liora got to know just after her arrival in Israel in 1939. This couple had a close friendship with her parents. Liora fondly recalls how they all learned Hebrew together in their living room. She lost contact with Nathan when she grew up. Thanks to her brother, she met him again after her second husband's death. While Doron says that he would not admit Nathan into his own family tree, he is a definitely a grandfather for his daughters.

Doron himself has three cousins who are particularly important in his life. One is the daughter of his father's adopted brother. Then there is a daughter of Liora's brother—herself an adoptee. The two grew close when Doron started to consult with her during the adoption processes of his own daughters. His third cousin is actually a former student of Liora. Since this woman became a single mother, she and her son have joined their Shabbat and holiday dinners on a regular basis. Liora identifies herself as the grandmother of her friend's son, and for Doron they are part and parcel of the family. Thus, he explained to me: "We make now a short movie on the family for my mother's 80th birthday, and it is clear that they are a part of it."

While these relationships have different roots and probably vary in depth, they all share the pattern, which Gutfreund (2012) has already described. Even if at one point or another they disperse and cease to count as kin, these relationships are meant to endure. The habit of

compressing and enlarging kinship networks, as well as the invitations and counter-invitations to life cycle events, provides an established structure of becoming kin that also works for same-sex couples and their children. This constitutes a social pattern where many people are related to children growing up with gay or lesbian parents, therefore placing them not at the margin, but in the center of society.

The question remains, however, whether this relational way of making Jewishness will satisfy prospective marriage partners of gay men's children. A recent survey has reported an increasing number of marriage ceremonies that take place outside of the Rabbinate, as 36,205 couples were married through the Rabbinate in 2017, while at least 2434 couples chose to hold a private ceremony (Brom 2018). According to the survey, 55% of these couples could have had an Orthodox marriage, but decided against it out of ideological reasons. In 33% of the cases, at least one of the spouses was not recognized as Jewish, 8% were LGBT couples, and 4% were not able to get married through the Rabbinate due to other halakhic reasons. In addition, couples might get married in a civil marriage overseas or simply live as *zugot yodeim batsibur* (ibid. 7–9). The intricacies of the concept of *zugot yodeim batsibur*, as discussed in Chap. 4, render an estimation of the number of such couples impossible. Still, the existing numbers indicate that although the children of same-sex couples constitute part of a minority that is not able to get married through the Rabbinate or deliberately rejects such a marriage, this is not a small minority. Even more, having grown up themselves in such a constellation, they will probably not consider the lack of having a recognized marriage to be a handicap.

But will the partners of daughters of gay men accept that their children will not be halakhically Jewish either? Will they, like my research participants, reason that the children born to their partners are Jewish simply because they grew up with Jewish parents? As discussed in Chap. 5, sociologist Daphna Hacker (2009) has found that women are more often pressured to undergo conversion than men, exactly because of the prospective offspring's religious affiliation. Thus, between 2001 and 2005, a total of 5682 men and boys, and 19,026 women and girls were converted to Judaism by Orthodox tribunals (ibid. 179). While these numbers speak for themselves, a note of caution is needed. While Hacker does not give any details about the background of these women, it is likely that most of them were either immigrants from the former Soviet Union or the children of immigrants. In the cases that she studied in depth, the women were all non-Jewish immigrants. Non-Jewish immigrants cannot say of

themselves that they grew up with Jewish parents. And even though children of halakhically non-Jewish immigrants from the former Soviet Union often see themselves as fully Jewish and Israeli, their family history of recent immigration might attach to them a whiff of distinctiveness (Lerner 2011; Krael-Tovi 2017). In addition, men who want to build a family with a daughter of gay men might feel the same kind of antagonism toward the (Orthodox) Rabbinate as many of my research participants.

There is therefore good reason to assume that at least some of the daughters of gay men will transfer a Jewish identity to their children that is not grounded in halakhic definitions of Jewishness. Yet, as I have also demonstrated in Chap. 5, over the generations—as boys and girls will be born—Judaism is entirely capable of ingesting the offspring of same-sex couples and rendering the same-sex relationships in their lineages functionally invisible. A look back in history shows that the capability to ingest practices and lineages that do not exactly meet the halakhic definitions of Jewish reproduction is not a new phenomenon at all. Rather, rabbis have found solutions for *mamzerim* from the Talmudic period onward. As discussed in Chap. 3, they did not hesitate to declare a delayed delivery of up to 12 months so as to attribute paternity to a woman's husband, and have made every effort to keep blemished lineages concealed. And while the nationalization and bureaucratization of religious marriage break with the rabbinic principle of not inquiring into a person's pedigree and thus render *mamzerut* visible, rabbis have found new solutions. Thus, Rabbi Lamm (1980) has suggested that in order to get rid of the moral stain, *mamzerim* should marry non-Jewish women. The reason is that since children born of such a union are not considered Jewish, they cannot be *mamzerim*. As Lamm (ibid. 79) has put it: "If the child subsequently converts to Judaism, there is no stain of *mamzerut*." The detour through non-Jewish women not just renders the stain in the lineage invisible, but literally erases it.

These historical insights, as well as Doron's family history, are important because they allow us to embed the formation of same-sex parenthood in long-standing processes, in which rabbis and laypersons alike have made sense of and negotiated the reproduction of Jewish collective identity. While presenting these insights, I do not deny that the formation of same-sex parenthood is in its current visibility a new phenomenon that raises new challenges and new questions. But I insist that dealing with such challenges is in itself part of Jewish tradition and that exactly this tradition also provides the means to deal with same-sex couples and their

children. In addition, I challenge the treatment of same-sex parenthood as a somewhat enclosed and detached phenomenon that concerns only a minority and thus places it at the fringes of academic interest. The struggles that in the last two decades have been fought out in Israel over the formation of same-sex parenthood show clearly that there is more at stake. But rather than framing them as a “war of culture” between the religious and the secular, I suggest that we better understand these struggles as the frictions created by the shift from an analogical to a naturalistic ontology.

7.3 ONTOLOGICAL SHIFTS, RIFTS, AND FRICTIONS, AND THE FUTURE OF ORTHODOX JUDAISM

In Chap. 2, I argued that with their great efforts to kosher all medically assisted reproductive technologies, Orthodox rabbis themselves paved the ground for an understanding of parenthood as a universal right that depends neither on sexual orientation nor on marriage status. As rabbis and unmarried women evoked Rachel’s cry as the epitome of childless women’s suffering, they shifted the weight from the reproduction of unequivocally traceable lineages to the needs and desires of individuals. A similar shift became visible in Chap. 6, where I discussed the rationale of proponents of reorientation therapy, according to which access to such therapy is a right of homosexuals who suffer from their sexual orientation.

The medical procedures that rabbis have mobilized to solve the halakhic dilemmas that reproductive technologies create show not only the great importance the rabbinate currently places on the commandment “be fruitful and multiply”—they also show that rabbinic endorsement of these technologies is not a smooth undertaking at all. At the same time, however, it is important, again, to recall that the willingness to create space for kinship relations that do not exactly fit the halakhic rules of reproduction is neither new nor a reaction to technological inventions. As Descola (2013, 366) has argued, technological innovations are seldom the cause of ontological shifts. Rather, ontological reorientations “open up the way for technical innovations which, in their turn, strengthen the hold that the new dominant relationships wield over practices and the ways in which they are regarded” (*ibid.*).

The biblical analogical ontology not only constitutes a highly fragile world, in which everything and everyone has a clearly determined place

and in which the derangement of one piece unsettles the whole order (2013, 274). The multitude of analogies also provide a great flexibility (*ibid.*) that is mirrored in the rabbinic dissent on virtually each and every question. The rabbinic preference not to enquire into pedigrees, the assertion of a delay in delivery, and even their turn to Rachel's cry to explain their efforts to kosher reproductive technologies do not, therefore, necessarily constitute in and of themselves a shift away from an analogical ontology. Rather, it appears that within the multitude of analogies, there is ample space for rationales and relationships that resonate very well with the naturalistic understanding of the world that took hold of Europe in the last 400 years and that spread from there to other parts of the world. Over time, the space that naturalistic relationships occupy in Rabbinic Judaism has expanded, slowly and in a largely unnoticed manner.

Viewed from this perspective, the principle question that Orthodox Judaism needs to address is to what extent it is possible to further strengthen those relationships between human individuals and the Jewish collective that are characteristic of a naturalistic ontology without losing those particular features that distinguish Orthodox Judaism. It appears that for many rabbis, public recognition of same-sex couples as a "potentially life-giving reproductive form" (Godelier 2011, 548) posits a boundary that they are not willing to cross. This brings us back to Annette Weiner's understanding of reproduction as the regeneration of society in a broad sense. According to Weiner, "every society must make a commitment that certain essential elements and relationships should be regenerated" (Weiner 1978, 175). Reproduction is in Judaism an act between God, a Jewish woman, and a Jewish man, who thereby enter a committed relationship with each other. All three parties are necessary, as they contribute complementary elements that turn the newly born child into a human being with a social position within the Jewish collective. From this perspective, same-sex parenthood appears as an oxymoron that would not only displace the man or the woman, but also sever the relationship between humans and God.

For a substantial part of Jewish Israelis, the biblical and Talmudic worlds are a matter of their past rather than their present, and therefore it is clear that public clashes over the recognition of same-sex couples and same-sex parenthood have initially and primarily evolved along a religious-secular line of confrontation. But as I have tried to show through my empirical chapters, in bureaucratic, legal, and social practice, the assumption of two competing sectors cannot be maintained. Rather, through the

incorporation of the principle of religious marriage into Zionist politics, Israeli family law also contains elements and practices of an analogical ontology which, notably, were translated into legal and bureaucratic practice and thus transformed. In this respect, it is noteworthy that the solution that state workers have found for the requests of same-sex couples to be recognized as self-sufficient family unions resembles the solutions that rabbis have found to deal with same-sex couples in their congregations.

Both on a state level and in Orthodox congregations, room for same-sex couples has been provided as long as they do not directly challenge the preeminence of religious marriage according to halakhic definitions. At the state level, the concept of *zugot yeduim batsibur* has been used to make this room possible. In Orthodox congregations, room becomes possible through the eschewal of labels, as well as through solutions like the one that Rabbi Drukman proposed to Nadav's siblings. Having a same-sex couple participate in large events of over 150 guests is according to the rabbi acceptable because the couple's non-normative relationship would disappear in the masses. Indeed, in both Israeli family law and Orthodox Judaism, the coexistence of strict norms and pragmatic solutions draws from contrasting ideas about the relationship between the Jewish collective and the individual. The normative frame of reproduction is concerned with the continuity of the collective and less with individual needs. The pragmatic solutions, in turn, bespeak the concern for exactly these individual needs.

However, my findings also show that neither on the level of state politics nor within Orthodox Judaism have these solutions stopped the controversies and struggles. Particularly within Orthodox Judaism, the struggles are becoming only more heated, as same-sex couples continuously insist on some kind of recognition for their conjugal relationships. It is important to recognize that here also, the struggles surrounding same-sex couples and the formation of same-sex parenthood have entered existing rifts and shifts. It appears that feminist Orthodox women, in particular, have paved the way for new sensibilities and alternative approaches, on which religious lesbians and gay men draw.

As the stories of lesbians and gay men from religious homes presented in Chap. 6 show, some kind of recognition from within Orthodox Judaism is necessary to establish same-sex parenthood as yet another way of making Orthodox continuity. At the same time, it is the tacit everyday encounters—for example of their children in religious schools or of their own

parents who take their grandchildren to Shabbat prayers to the synagogue—that make such recognition possible. My research among religious Zionist LGBT people, their families, and rabbis shows that these encounters do create change. Yet, my findings also indicate that exactly this change has at the same time triggered even fiercer rejection. As far as I can judge the situation now, no reconciliation is in sight. Thus, I am left to ask, is history repeating itself? Is Orthodox Judaism currently splitting into distinct streams? And what would such a split mean for the relationship between religion and state?

While working on my research, I became aware that the fiercest challenges to the institution of the Chief Rabbinate are coming from within Orthodox Judaism. These challenges concern pressing issues such as the stringent approach of the Chief Rabbinate's conversion courts vis-à-vis people who do not live their lives according to halakha, the situation of women who cannot get a divorce (*agunot*, chained women), and the situation of *mamzerim*. These issues have generated various initiatives from within Orthodox Judaism to set up alternative rabbinical courts that are independent from the Chief Rabbinate as well as calls for its dismantlement altogether. Although these initiatives do not directly concern the situation of LGBT people, they come from the same circles that have also shown openness to same-sex couples. Thus, Rabbi Prof. Daniel Sperber, the father of Avigail Sperber, garnered headlines in 2018 for being one of three rabbis who constituted a private rabbinical court to issue a divorce for an *agunah*, whose husband had for 23 years refused to grant the divorce papers (Newman 2018). Rabbi David Stav, who came to the conclusion that under certain circumstances it is permissible to attend the commitment ceremony of a same-sex couple, is a member of a chain of private Orthodox conversion courts that follow a more lenient approach, together with other rabbis who are known for their sympathetic approach to LGBT people, such as Rabbi Shlomo Riskin and Rabbi Yehuda Gilad (Giyur K'Halacha Conversion Courts 2020). And only a couple of months after having talked with Rabbi Lubitch about his endorsement of same-sex couples, his wife Rivkah Lubitch published *From the End of the World and Beyond* (2017), where she drew from her work as a rabbinic pleader to provide detailed insights into—and harsh critique of—the practices of the official rabbinical courts vis-à-vis converts, widows, orphans, and *agunot*. With these initiatives in mind, I finish this work, wondering whether a radical change of Israel's family law, which so far has proven to be impossible, will ultimately come from within Orthodox Judaism.

NOTES

1. *Yoav Arad Pinkas v. The Committee for Permitting Embryo-Carrying Contracts* (Hebrew), HCJ 1078/10, Petition submitted to the High Court of Justice on 07 February 2010.
2. Ibid, paragraph 27.3.
3. Whether this aspiration should be supported at all and under what conditions—if at all—surrogacy can do justice to the surrogate mothers, too, is hotly discussed among feminist activists and scholars.

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