Men's Groups as a New Challenge to the Israeli Feminist Movement: Lessons from the Ongoing Gender War Over the Tender Years Presumption

INTRODUCTION

sraeli LAW STILL CONTAINS THE TENDER YEARS PRESUMPTION, according to which children under the age of 6 should live with their mother in cases of parental separation, unless special circumstances require a different custody arrangement.¹ In many other developed countries, this presumption was abolished during the last two decades of the twentieth century, among other reasons due to aggressive campaigns by men's organizations.² In these countries, the presumption was replaced with gender neutral legal language, encouraging shared legal parenthood and blurring the distinctiveness of the role of the primary care-giving parent by replacing the terms "custody" and "visitation" with terms such as "parental plan" and "contact".³ Similarly, at the end of 2011, a governmental committee (here-inafter: the Shnit Committee) recommended abolishing the tender years doctrine and adopting the terms "parental responsibility" and "parental times". These recommendations were embraced by the Minister of Justice, and are awaiting parliamentary discussion.⁴

Some feminists in other countries are critical of the outcomes of such legal changes. In the United States, Canada, and Australia, what seemed to be a move from a patriarchal rule that assumes maternal sole caring responsibilities post-divorce to a liberating rule that will lead to gender equality, turned out to be a tool in the hands of many fathers to avoid paying child support, restrict divorced mothers' freedom of movement, and enforce ongoing contact with an abusive ex-spouse.⁵ Moreover, the gender-neutral

language used by the law in these countries did not lead to significant changes in the gendered labor division, but rather masks the ongoing reality in which in most post-divorce families, like in most pre-divorce ones, the mother is the primary caregiver.⁶

The dangers for women embedded in the abolishment of the tender years presumption are even more acute in Israel. Divorces in Israel are governed by religious laws and tribunals. Civil marriage and divorce are not allowed, and so women are subordinated to patriarchal religious norms that enable the husband to economically blackmail the wife for a divorce decree (*Get*).⁷ Indeed, Ruth Halperin-Kaddari and I have recently warned against the adoption of the foreign legal reforms described above into Israeli law, because it will harm women and children who already suffer from the current discriminatory legal system. In our paper, we argue that the tender years presumption should be changed to a primary caregiver presumption. Such a change will mark the option of paternal custody, if the father was the primary caregiver, and will allow shared physical custody in the rare circumstances when such an arrangement is possible and advisable, while saving most mothers the need to prove in court that the best interest of their children is to stay in their physical custody.⁸

I will not dwell any further on the pros and cons of each possible legal rule governing parental responsibility upon divorce, discussed at length in the above mentioned paper. Rather, I wish to shift the spotlight towards the innovative strategies used by the Israeli men's groups in their struggle to abolish the tender years presumption. After mapping these strategies I argue that the Israeli feminist movement does not address them adequately, hence not properly adjusting to the challenges of the third millennium.

ISRAELI MEN'S GROUPS' STRATEGIES

In my empirical study of the field shaping divorce arrangements in Israel at the dawn of the third millennium, I have found several men's organizations that called for the abolishment of the tender years presumption. However, I concluded from the findings that "unlike the status of men's organizations in other countries, these Israeli men's organizations do not enjoy public recognition as carriers of a legitimate socio-legal change."⁹ Ten years ago, representatives of men's organizations were not invited to Knesset discussions, were belittled by women's organizations, ignored by the media, and disregarded by professionals in the legal and therapeutic fields shaping divorce arrangements. At the time, the only organization that managed to fracture this wall of indifference was Horut-Shava (Equal-Parenting), an NGO that insists that it is not a men's organization but a parents' organization of both men and women, aiming at encouraging shared parenting in intact families and after separation.¹⁰

There is no other way to describe the change in the political power of Israeli men's organizations in recent years, but as revolutionary. Today, they enjoy public legitimacy and are perceived as crucial participants in discussions over the law regarding parental responsibility and as carriers of the winds of change related to it. A precise and detailed cause-andeffect analysis of this revolution can only be drawn from an up-to-date empirical investigation, which is yet to be conducted. Notwithstanding, I sketch here the main strategies used by Israeli men's organizations, as both possible contributors to this revolution and as activities that highlight my argument about the relative weakness and stagnation of the Israeli feminist movement, detailed in the next section of this article.

Men's organizations use the following strategies in their current battle against the tender years presumption and any other legal rule that might grant divorcing mothers an a priori advantage:

Organization

While ten years ago there were no more than four active organizations identified with fathers' claims of discrimination in divorce, today there are about ten organizations focusing on men's rights in divorce and calling for the abolishment of the tender years presumption.¹¹ While some of these organizations are very small, their numeric existence and few devoted activists create an impression of a growing and powerful community of citizens acting against harsh discrimination against men and fathers. Moreover, these relatively small organizations enhance their impact by cooperation through virtual networks, and permanent and ad hoc coalitions.¹²

Internet

In recent years, several men's organizations managed to build attractive and comprehensive Internet sites.¹³ Besides commercial sites of family lawyers, the men's organizations' sites are the most detailed about divorce-related issues, providing useful information based on their political agenda. Their presence in the virtual sphere is so dominant that when one searches in Google for "parenthood" and "divorce" (in Hebrew), it is the sites that support fathers' rights and reject maternal custody that pop up first.

Furthermore, men's groups' activists use the virtual sphere to share information among themselves, to coordinate their activities, and to bash those they oppose. An example of these activists' cyber sophistication is their activity in Wikipedia that includes uploading divorce-related entries, biased by their agenda, as well as adding derogatory substance to entries on their opponents. By all these virtual, yet very real, activities, Israeli men's groups activists have joined the global "cyber-world of men's rights Web pages" with its "truly remarkable gallery of anti-feminist content".¹⁴

Legal Aid

Some of the men's organizations offer men legal advice and representation, in an attempt to assist men in their struggles against their partners, in what these organizations perceive as a discriminatory system that punishes men economically. These organizations specifically mention the need to balance the legal aid women's organizations' offer to divorcing women.¹⁵ However, this is the one activity in which it seems that women's organizations still have an advantage compared to men's.

Media

While in the past men's organizations were ignored by the media, today they manage to get the media's attention and support. One striking example is the broadcasting of the documentary "Father's Rights" on channel 1—the public TV channel of the Broadcasting Authority, in May 2011. This film, directed by one of the Israeli men's movement activists, Isri Halpern, follows four fathers in their custody and alimony battles, without giving voice to the ex-spouses of these men and with an overriding narration providing false "information" such as that women are responsible for half of domestic violence cases and that a third of Israeli children are cut off from their fathers.

Another example is the media's uncritical adoption of the men's groups' claim that 200 Israeli fathers commit suicide yearly because of custody battles.¹⁶ A search into official data published by the Ministry of Health shows that on average, 35 men aged 25–64 kill themselves yearly, and that this number, far from the alleged 200, includes men who are not fathers, fathers of non-minors, and fathers who never sought custody.¹⁷

More generally, while after the publication of the intermediate Shnit Committee report in 2008, most media coverage opposed its recommendation to abolish the tender years presumption, much of the media coverage on the release of the final report in 2011, with the same recommendation, was relatively supportive, among other reasons in the name of fathers' right for equality.¹⁸

NATIONAL LOBBYING

Men's organizations mark the Knesset as a central arena for their activity. They send materials to MKs (Members of Knesset), meet with them têtea-tête, initiate bills, and participate vocally in committee sessions. Indeed, today they are routinely invited to every session related to parental responsibility after separation. Moreover, since each organization gets a chance to speak up, no matter how small and unrepresentative, the total time granted to men's organizations in these sessions is substantial compared to the time allocated to women's organizations, including large ones such as Na'amat and WIZO.¹⁹

The men's organizations also try to influence the government. Their activity within the Ministry of Justice contributed to the establishment of the Shnit Committee in 2005, and a representative of Horut-Shava was a committee member. This committee's recommendations were recently adopted by the Minster of Justice. Moreover, the men's groups' activists campaigned in 2012 for the appointment of MK Yulia Shmalov-Berkovich as the Minster of Welfare,²⁰ as she is the greatest supporter of the men's organizations in the Knesset and is known for her anti-feminist and homophobic views. The fact that recently, Shmalov-Berkovich did not manage to be elected to a realistic place in the Likud party's primaries for the 19th Knesset, nor pass the votes threshold needed for her to enter the Knesset as the leader of the Economy Party, is additional evidence that the Israeli fathers' movement, though very vocal, is composed of a small number of activists and supporters.

INTERNATIONAL ACTIVISM

One of the most innovative strategies of men's organizations is acting in the international sphere. This activity includes petitions before UN committees and U.S. courts, which embarrass the State of Israel by portraying it as a discriminatory country that harms fathers who want to be involved in their children's lives.

The most successful international effort so far was conducted in 2011, when a coalition of men's organizations approached the UN Committee on Economic, Social and Cultural Rights with a report alleging harsh discrimination against Israeli fathers in divorce proceedings.²¹ This report, though not backed with any reference or reliable source of data, led this UN committee to issue a recommendation to Israel to amend its law so that "custody of children up to the age of six is not always given to mothers", and "child support awards do not lead to an inadequate standard of living for the father".²² Another recent example of an international lobbying effort is the petition of the Coalition for Children & Family (Israel) to The Hague Special Committee on the Practical Operation of the Child Abduction Convention, arguing that Israel fails to obey the convention when the abducting parent is the mother.²³

The UN is not the only international sphere in which men's groups are acting. A few months ago, a petition was submitted to the New Jersey District Court, in which three Israeli fathers sued the Israeli Minister of Justice, the Israeli Welfare Minister, The New Israel Fund (that allegedly funds "radical feminist organizations"), and others, for tort compensations of millions of dollars due to the "gross violations of human rights and torture arising out of an institutionalized discriminatory policy of disengaging and separating fathers from their minor children."²⁴ While it is hard to believe that this baseless claim, and a similar one filed in Wisconsin,²⁵ will be granted, they have already burdened the defendants with legal expenses and granted media coverage to the initiating activists and their agenda.²⁶

Personal Attacks

The most alarming strategy of Israeli men's organizations in their struggle against the tender years presumption and any practice they believe discriminates divorcing and divorced fathers, is not the lies they feed the media nor the million-dollar suits they file abroad against the Israeli government and funds that support feminist organizations. Rather it is the personal attacks they launch against judges, social workers, psychologists, governmental committee members, and academics that do not follow these organizations' agenda. These personal attacks include defamation on the Internet,²⁷ demonstrations in front of the professionals' homes,²⁸ threats to demonstrate in public events in which these professionals are scheduled to speak,²⁹ and threats of violence.³⁰

Unfortunately, it seems that this personal targeting is effective and professionals are hesitant to present their opinions in fear of the men's groups' retaliation. It is hard these days to find a therapeutic expert who will present his supportive views on maternal custody in a public event, though many Israeli psychologists still support the attachment theory and its warnings against harm to the child's attachment with the primary caregiver.

Moreover, the updated policy of the social workers who submit their opinions to the courts in custody disputes is to recommend joint custody even in cases in which the mother will continue to be the primary caregiver.³¹ This language laundering is aimed not only to ease the father's anger against the mother, but also the father's anger the social worker will have to face if she recommends maternal custody.

The most severe aspect of the men's groups' personal targeting strategy is its possible impact on judges. In a recent seminar for judges on parental responsibility upon divorce, one judge approached me and said that he is afraid of the men's groups and that the fear for his own safety and that of his children affects his decisions. I was left speechless. Indeed, the threats have become so frequent and direct that Family Courts judges have recently appealed to the Director of Courts to find ways to stop the wave of incitement.³²

THE FEMINIST RESPONSE

Prima facie, the Israeli feminist movement reacts adequately to the growing political power and affectivity of the men's organizations. Unlike in other issues, there is no split between academia and field activists and among different feminist streams and groups—all are in agreement that abolishing the tender years presumption will harm women and children, and that some kind of legal recognition of the significant role of the primary caregiver must be part of the parental responsibility laws to avoid futile legal custody battles and child support avoidance by fathers. This position was presented by all women's organizations that testified before the Shnit Committee, by Na'amat that had a representative as member of the Committee, and in writings of feminist academics.³³

However, to my understating, the feminist movement fails to answer the well organized and creative public, political, and legal activities of the men's organizations, and does not effectively address their growing legitimacy and influence.

The feminist organizations have not yet raised the substantial funds needed for organized and significant counter-activity. This is not very surprising taking into account that there are hardly any feminist organizations that perceive the family as their major concern. The two big women's organizations—WIZO and Na'amat—that have substantial resources and do perceive the family as a major concern move too slowly, and to my knowledge one of them suffers from conflicts within itself. Recently, a small coalition of women's and feminist organizations was established in an attempt to prevent the Shnit committee's recommendation from materializing into a new law, and a few hundreds of shekels were assigned to its activity. This is too little and too late.

Indeed, by starting to act only after the final report of the Shnit Committee was published and by turning only to traditional lobbying in the Knesset over the formal law, the women's organizations fail to realize that the professional field has already been influenced by the public discourse initiated by the men's organizations, and that social workers and judges have endorsed the concept of shared and equal parenting after divorce, although the formal law has not yet changed.³⁴ This shift, as well as the support of the Minister of Justice for the Shnit Committee reconditions, the change in the tone of the media coverage, and the overall growing legitimacy of organizations that portray men as the victims of the therapeutic and legal systems, who are cut off from their children and pay too much child support, are answered only sporadically by individual feminist activists.³⁵ In particular, the women and feminist organizations pose no answer to the comprehensive Internet sites and cyber activity of the men's organizations, to their international lobbying, and to the few divorced fathers who devote much of their time and energy to the gendered struggle over divorce. This relative silence and passivity leave the public and the decision-makers under the impression that divorced mothers have no urgent and shared problems, and that abolishing the tender years presumption will lead to equal parenting to the benefit of all family members.

Like feminists in the developed world, Israeli feminists must realize that the gender war is not over and that in the third millennium major actors in this war are men's organizations. In other countries, men's organizations did not stop at abolishing the tender years presumption, but act to minimize and even abolish child support orders,³⁶ and fight against laws that protect battered women.³⁷ Moreover, they promote a misogynist discourse in what is now called the "manosphere"—a web of hundreds of Internet sites, blogs, and forums devoted to slandering all women as a group.³⁸

The men's organizations pose not only a technological challenge of integrating feminist activities into the virtual—yet very real and effective sphere. They also pose philosophical and ideological challenges since they base their claims on their "discrimination" and demand "equality"—the very same terms used by the feminist movement. Hence, feminists must further develop the concept of equality or look for other philosophical concepts in a way that will acknowledge the importance of the familial care women perform, without turning women into victims or essentially and biologically domestic, and without ignoring fathers who care for their children and wish and are able to perform a significant parental role in intact families and after divorce. The men's organizations also pose a moral challenge. In the face of these organizations' tactics of disinformation, lies, and violent threats, feminist organizations must tackle the question of how they can fight back while maintaining their integrity and ethical standards.

CONCLUSION

My conclusion from the war over the tender years presumption is that the Israeli feminist movement has to (I) better understand and better use and confront the old and new supra-national spheres: cyberspace and the international and legal supranational bodies; (2) realize that the family must be at the center of its activities; (3) develop a sophisticated and up-to-date philosophy about the gendered division of labor and power relations, and at the same time, translate this philosophy to simple and understandable public messages; and (4) find ways to bring feminism to men and to join forces with feminist men. These are enormous challenges, yet extremely urgent, since the anti-feminist backlash is already here.

Notes

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1. Capacity and Guardianship Law, 5722–1962, article 25.

2. Richard Collier and Sally Sheldon, eds., *Fathers' Rights Activism and Law Reform in Comparative Perspective* (Oxford, 2006); Ray Graycar, "Family Law Reform in Australia, or Frozen Chooks Revisited Again?" *Theoretical Inquiries in Law* 13.1 (2012): 241.

3. Carol Smart and Selma Sevenhuijsen, eds., *Child Custody and the Politics of Gender* (London, New York, 1989); Daphna Hacker and Ruth Halperin-Kaddari, "The Determining Rules in Custody Disputes: On the Danger of the Parental Sameness Illusion in a Gendered Reality," *Mishpat and Mimshal* 15 (2012) [Hebrew].

4. Hacker and Halpern-Kaddari, The Determining Rules in Custody Disputes.

5. For example, see Susan B. Boyd, "Autonomy for Mothers? Relational Theory and Parenting Apart," *Feminist Legal Studies* 18 (2010): 137; Graycar, "Family Law Reform."

6. "Caring for Children after Parental Separation: Would Legislation for Shared Parenting Time Help Children?" Family Policy Briefing No. 7, Department of Social Policy and Intervention (Oxford, 2012), 6, http://www.nuffieldfoundation .org/sites/default/files/files/Would%20legislation%20for%20shared%20parenting% 20time%20help%20children%29OXLAP%20FPB%207.pdf; Mark A. Fine and David R. Fine, "An Examination and Evaluation of Recent Changes in Divorce Laws in Five Western Countries: The Critical Role of Values," *Journal of Marriage and Family* 56.2 (1994): 249–63.

7. Ruth Halperin-Kaddari and Yaacov Yadgar, "Between Universal Feminism and Particular Nationalism: Politics, Religion and Gender (In)equality in Israel," *Third World Quarterly* 31.6 (2010): 908–11.

8. Hacker and Halperin-Kaddari, The Determining Rules in Custody Disputes.

9. Daphna Hacker, *Parenthood in the Law—Custody and Visitation Construction upon Divorce* (Tel-Aviv, 2008), 246 [Hebrew].

10. Ibid., 246-8.

11. Among these organizations are: The Movement for the Future of Our Children http://yeladeinu.wordpress.com/; Horut-Shava http://www.horut-shava.org .il/; The National Center for the Man's Rights in the Family http://www.merkaz .co.il/; Family Lobby http://familism.org/; A Bother to the Man: http://www .gever.co.il/; Idea—for Man's Rights in the Family http://www.edeia.co.il/?p=1568; Equal Shared Parenting http://www.mishmoret.org.il/; Hakshava—The Movement for Parental Equality http://hakshava.org.il/; The Struggle Headquarter for the Divorced Father http://www.mate.org.il/.

12. For example, The Coalition for the Children & Family http://ccfisrael.org/ eng.

13. For examples: http://www.horut-shava.org.il/; http://shared-parenting.co.il/; http://www.mishmoret.org.il/; http://ccfisrael.org/; Shared Parenting = The Best Interest of the Child http://shared-parenting.co.il/ [all sites referred to in this article were last accessed 9 October 2012].

14. See p. 65 in Robert Menzies, "Virtual Backlash: Representations of Men's 'Rights' and Feminist 'Wrongs' in Cyberspace," in *Reaction and Resistance: Feminism, Law, and Social Change*, ed. Dorothy E. Chunn, Susan B. Boyd and Hester Lessard (Vancouver, 2007), 65–97.

15. For example: http://yeladeinu.wordpress.com/. One of these organizations was found to exploit his clients; see http://www.israelbar.org.il/article_inner.asp? pgId=18654&catId=166.

16. For example, Dana Spector, "Men in Trap," Ma'ariv, 27 January 2012.

17. The Ministry of Health Report of Suicide in Israel http://www.health.gov.il/ PublicationsFiles/loss_2011.pdf.

18. For example, Yael Gil, "Shnit and the Divorcing: An End to the Terror on the Back of the Children," *Ynet*, 28 January 2012 [Hebrew].

19. See for example, *The Child Rights and Women's Status Committees Joined Protocol*, 7 February 2012 [Hebrew]. http://www.google.co.il/url?sa=t&rct=j&q=&esrc= s&source=web&cd=9&ved=oCFoQFjAI&url=http%3A%2F%2Fwww.nevo.co.il% 2Flaw_word%2Flaw103%2Fyeled2012-02-09.doc&ei=nHAbUfL1J6SH4gS8_ YG4DQ&usg=AFQjCNG7s_uJBMN4YEW-FTzap1sAMINAOw. 20. See http://israblog.nana10.co.il/blogread.asp?blog=808367&blogcode=13256269.

21. Report of Israeli NGOs for Fathers' Rights, the Coalition for the Children and Family, to the 47th Session of the Committee on Economic, Social and Cultural Rights (15–16 November 2011).

22. United Nations. "Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant Concluding observations of the Committee on Economic, Social and Cultural Rights" (Geneva, 16 December 2011) UN Doc. E/C.12/ISR/CO/3, article 22.

23. See http://ccfisrael.org/eng/child-abduction-report-to-hague-permanent-bureau.

24. See Ben Haim v. Neeman, No. 2:12 CV 351 (Newark) (D.N.J. Jan. 17, 2012); http://he.scribd.com/doc/94623069/Complaint-Ben-Haim-v-Neeman-Et-Al.

25. See http://www.docstoc.com/docs/97633571/Weisskopf-v-Yaakov-Neeman-Wisconsin-WD-11CV00665.

26. For example, http://www.israelnationalnews.com/News/News.aspx/155685#.UDNU06CE71U.

27. One of the victims of vicious defamation with the intent aimed at harming her practice as divorce mediator is Adv. Galit Shne Luria, one of the three Shnit Committee members who wrote a minority opinion in the intimidate report. Even after actions were taken to remove the defamatory virtual pages, there are still sites that imply she hates men and warn men from approaching her or any mediator she tutored, see for example, http://www.mat.co.il/lzu. Another defamation victim was the psychologist Tirtsa Joels, who was persecuted due to her alleged preferences of mothers in her parental evaluations in custody disputes (she was also a Shint Committee member that joined the majority). This case reached the court and ended in a settlement; see decisions in CC (Haifa) 34622-12-Tirtsa Joels et al. v. Ronen Paz et al (Jul. 15, 2011), Nevo Legal Database (by subscription) (Isr.) [Hebrew].

28. For examples: a demonstration near the home of Family Court Judge Rivka Makias, claiming she grants custody only to mothers and robs fathers of their property, see http://www.mat.co.il/lzh; a demonstration near the home of Ronit Zchur, while she was the Chief Social Worker and a member of the Shnit Committee, see http://www.mat.co.il/lzS.

29. I was "fortunate" to be granted an operation under my name "operation Daphna bouquets" in which fathers' organizations planned to demonstrate in public events in which I will participate as a speaker, see http://www.news1.co.il/ Archive/0020-D-287047-00.html.

30. In an operation against a conference at Bar Ilan University that hosted, among others, speakers who pointed at the dangers of shared physical custody, one of the organizers called his fellows to "break legs and hands' of anyone who tried to harm our children" and to understand that "the cause justifies the means", see http://www.facebook.com/permalink.php?story_fbid=277631445618043&id=2776 26072285247&comment_id=3554039&offset=0&total_comments=18.

31. Hacker and Halperin-Kaddari, The Determining Rules in Custody Disputes.

32. Tomer Zarhin, "Family Court Judges complain about Increasing Threats on behalf of Parents," *Haaretz*, 29 August 2012, 1, 6.

33. Gali Ezion, Minority Opinion, Final Report within a letter to the Minister of Justice, Shnit Committee, December 2011; Daphna Hacker, "Dilemmatic Feminism and the Preferred Physical Custody Model upon Divorce," in *Studies in Law, Gender and Feminism*, ed. Daphne Barak-Erez, Shlomit Yaniski-Ravid, Yifat Biton, and Dana Fogetch (Srigim, 2007), 699–732 [Hebrew]; Judith Maisels, "On the Honey and the Sting: A Discussion on the Custody Arrangement in Israel," in *Children's Rights and the Israeli Law*, ed. Tamar Morag (Tel-Aviv, 2010), 519–70 [Hebrew]; Orit Kamir, "The Tender Years Doctrine: The War over the Poor's Lamb," November 2005, http://2nd-ops.com/orit/?p=14484 [Hebrew]; Ester Herzog, "We Want No Favors," *Nrg*, 10 June 2010, http://www.nrg.co.il/online/1/ART/756/586.html [Hebrew].

34. Hacker and Halperin-Kaddari, *The Determining Rules in Custody Disputes*. Recently, the District Court has criticized the growing tendency of Family Court judges to ignore the tender years presumption and reminded them that it is the Knesset's prerogative and not theirs; see FA (TA) 55785-02-12 S. et al. v. B. (20 September 2012).

35. A very articulate and persistent speaker is Esther Herzog; see for example, Herzog, "We Want No Favors."

36. Jocelyn Elise Crowley, *Defiant Dads—Fathers' Rights Activists in America* (Ithaca, 2008).

37. Molly Dragiewicz, *Equality with a Vengeance* (Boston, 2011).

38. Menzies, "Virtual Backlash"; Arthur Goldwag, "Leader's Suicide Brings Attention to Men's Rights Movement," http://www.splcenter.org/get-informed/ intelligence-report/browse-all-issues/2012/spring/a-war-on-women.