

Paternity Tests, the Child's Best Interest, and Ideology in Israeli Law

Dr. Zvi Triger

Senior lecturer, The College of Management School of law
zvit@colman.ac.il

The proposed paper analyses Israeli courts' decisions concerning establishment of paternity within the Jewish population. I focus in my paper on court's hesitation to order blood or tissue typing tests, based on the child's best interest, in cases in which the child might be classified as a bastard, if paternity is indeed established.

I wish to critically explore the courts' choice to frame the dilemma as a balance between the child's right to know who is her biological father, and the risk of being stigmatized as a bastard (with serious repercussions concerning her personal status, and especially marriage and future children).

As mentioned above, Israeli courts oftentimes hesitate to grant an order for paternity establishment, when there is a chance that under Jewish law the child had been born out of a halakhically forbidden relationship (such as a sexual relationship between a married woman and a man who was not her husband at the time). The reason courts cite is that such a child would be classified as a "mamzer" (bastard). In some cases, paternity is established using presumptions such as "Most acts of sexual intercourse are attributed to the husband" ("rov be'ilot ahar haba'al) and other halakhic tools, that enable the courts to avoid establishing biological paternity.

I argue that the tension between two of the child's interests – knowing one's father and not being excluded from the Jewish community – is in fact a tension between the individual (establishing one's kinship) and the community, and not two competing "child's best interests."

Furthermore, this tension is both political and man-made, despite its being presented as an unfortunate given fact. It is a tension which feeds on two important cultural constructs: On the one hand, the privileged status of biological parenthood (as opposed to psychological parenthood), and, on the other hand, the ultra-orthodox monopoly on personal status issues in Israel. These cultural concepts are highly political because they also serve demographic goals as well as regulation of women's sexuality. Thus, I suggest, the court's thinking on these issues is bound to reach a dead end if the child's best interest is indeed on its mind, as it in fact does in many cases.

My paper discusses questions of Jewish identity, the relationship between state and religion, and the gendered aspects of paternity establishment within the Israeli Jewish context.