

DORON TEICHMAN

THE GEOGRAPHY OF CRIME: JURISDICTIONAL COMPETITION AND CRIME CONTROL POLICIES

This article analyzes the structure of the Israeli crime-control system, and presents a competitive model of the political economy of a decentralized system of government. This model demonstrates that local authorities might compete among themselves over the level of crime-control services they provide, and attempt (knowingly or unknowingly) to displace crime to neighboring jurisdictions. These competitive forces may, in turn, cause local authorities to provide excessive amounts of crime control services. After presenting the basic model, this article demonstrates that despite its apparent centralized structure, the Israeli crime-control system has been gradually decentralized over the past several years. Subsequently, the article will suggest a reexamination of the structure of Israel's crime control system.

BARAK MEDINA & ILAN SABAN

ON HUMAN RIGHTS AND RISK-TAKING: DEMOCRACY,
ETHNIC PROFILING, AND THE REQUIREMENTS OF THE
LIMITATION CLAUSE (FOLLOWING THE SC DECISION
RE THE CITIZENSHIP AND ENTRY INTO ISRAEL ACT)

This paper's point of departure is the Citizenship and Entry into Israel Act (Temporary Provision) 2003 and the 2006 Supreme Court ruling that validated it. The Act severely restricts citizens' rights based on group affiliation when the State is satisfied that their affiliated group is statistically more potentially dangerous than others. The paper suggests an examination of the constitutionality of such an arrangement, proposing that when the profiling policy includes one of two features, it may be recognized as legitimate only if each member of the targeted group poses a substantial threat. One feature, necessitating proof that an individual poses such a threat, is when the profiling policy infringes upon an interest that is a recognized basic human right. The other feature is the stigmatization, implied by the relevant policy, of each member of the group targeted for profiling on the basis of group affiliation alone, when the group itself is marginalized and discriminated against by society.

Based upon this reasoning, the article concludes that the infringement on the basic right to family life and equality, entailed in the the Citizenship and Entry into Israel Act (Temporary Provision) 2003, is unconstitutional. The same answer is given to the profiling of Arab citizens for special inspection in Israel's airports.

On a more general level, the paper propounds a stand on the issue of how to accommodate basic rights. It is argued that to aim for "absolute security", in the sense of avoiding all risk, however negligent, should not be considered a "legitimate purpose" under the Limitation Clause of the Basic-Law: Human Dignity and Liberty. A law can be described as

pursuing a legitimate and worthy purpose only if its aim is to confront and neutralize a real threat inherent in each of the individuals whose rights it curtails.

This stand has important implications on the application of the second sub-test of the Limitation Clause – the requirement to apply the least restrictive measure. The violation of a basic right is disallowed when a less harmful option is available. This is true even if the alternative option does not prevent the potential threat as effectively as the procedure under review. Concretely, a democracy may not impose preventive measures upon its citizens unless a necessary condition is met: The potential danger anticipated from the individual who was targeted for a preventive measure transcends a substantial threshold of risk.

OREN GAZAL-AYAL & AVISHALOM TOR

THE IMPACT OF INNOCENCE ON PLEA BARGAINING:
EMPIRICAL FINDINGS, PSYCHOLOGICAL INSIGHTS,
AND NORMATIVE IMPLICATIONS

This article presents evidence that innocence impacts defendants' willingness to plea bargain. This evidence stands in contrast to the common assumption in the literature that defendants decide whether to accept plea offers in the "shadow of trial" – that is, after considering the probability of conviction at trial and the expected sanction if convicted. To wit, while in the extant shadow model innocence has no direct impact on defendants' plea behavior, a range of empirical findings reveals that innocent defendants tend to reject plea offers that guilty ones accept, even when facing similar expected sanctions at trial. Innocents' plea aversion has important and hitherto neglected normative implications for plea bargaining law and practice. Additionally, the research reported here shows that further empirical studies of plea bargaining judgment and decision-making are needed to provide an appropriate empirical foundation for legal analyses in this area.

AMIHAI RADZYNER

FROM LVOV TO TEL-AVIV: 'WRONGFUL DIVORCE' RULINGS IN ISRAELI RABBINICAL COURTS

In recent years, we have noticed an increasing tendency of Israeli Rabbinical Courts to retroactively cancel *Gittin* (Halakhic bill of divorce), under the pretext that the woman infringed on one of the divorce agreement's terms and thus nullified it. Such judgments are given even if the breach took place long after the divorce, and even in case the former husband has already remarried. The consequences of this cancellation are obvious, particularly when the woman had another man's children (such cases are cited in the article). The argument of the Rabbinical Courts is that these cases constitute 'Wrongful Divorce', i.e. a *Get* granted based on the husband's certainty that the agreement was final and irrevocable, and the breach of that agreement rendered the divorce illegitimate.

This article shows that these rulings have become more common in recent years, as no such decisions were given in the past. Until recent years, most of the *Dayanim* (Rabbinical Court judges) felt that a *Get* may not be revoked in case the divorce agreement is breached. The article also shows that until the beginning of 2008, the Rabbinical Supreme Court canceled 'Wrongful Divorce' adjudications of lower Rabbinical courts, but that has recently changed.

The article examines the judgments of a specific Rabbinical court composition that leads this trend. This examination, which is the main point of the article, raises many questions about the very problematic Halakhic and legal course that this specific court composition has taken. Among other things, the article shows that almost all judgments were handed down in cases where divorced women filed for alimony for their children with a civil court. This, according to the Rabbinical Court, conflicts with the husband's assumption that the divorce agreement was

final, including its terms regarding the children - which this article maintains is a questionable argument.

It seems that the Rabbinical Courts found a new technique of restoring jurisdiction powers that the Israeli Supreme Court revoked in issues accompanying a divorce: Transforming the observation of divorce agreement terms into issues that pertain to the validity of the *Get* itself and, as such, fall under their exclusive jurisdiction. This is an additional significant stage in the jurisdiction struggle between Israel's Rabbinical and the civil courts.