

- vzít v úvahu související koncepce mateřství, plodnosti, neplodnosti a početí (Douglas 1968). Podle Ortnerové zjevná skutečnost, že mateřství je výlučně ženskou doménou, přispěla k tomu, že jsou ženy univerzálně symbolicky spojovány s přírodou. Protože zároveň tvrdí, že muži jsou spojováni s kulturou, která vždy transcenduje přírodu, dospěla k závěru, že dochází k univerzální devalvaci žen (Ortner 1998).

OBYČEJE ROVNAJÍCÍ MUŽE SE ŽENAMI

Nepřekročitelná skutečnost, že mateřství je výlučně doménou žen, nebránilo vzniku kulturních praktik, které stavějí muže na roveň žen, tedy že muži prostřednictvím takových praktik transcendují k přírodě. Mohli jsme vidět, že u některých etnických skupin muži simulují menstruaci (Hogbin, 1996). Ale dotýká se to celé řady dalších kulturních praktik, jako je například couvade, jež tolik zajímala představitele klasického evolucionismu, jako byli Edward Burnett Tylor či Johann Jakob Bachofen. Couvade bylo ovšem v Melanésii jen málo rozšířené (Dawson 1929, Rychlík 2012).

Blízko ke couvade (kuvádě) je rovněž přesvědčení o možnosti mužského těhotenství, které antropologové popsali u některých novoguinejských etnických skupin (Hayano 1974, Meigs 1976). V antropologické literatuře najdeme i řadu příkladů rozmanitých výkladů početí a těhotenství. U etnické skupiny Paiela z novoguinejské Vysočiny popsala zvláštní Aletta Biersacková specifickou koncepci početí a souvisejících představ o menstruaci. Paiealové věří, že sperma musí mnohokrát obmotat menstruační krev, aby zůstala v ženském těle a mohl z ní vzniknout plod (Biersack 1983). Naopak například Baruyové zastávali názor, že jediné sperma vytváří dítě v těle matky a jen díky němu vzniká mateřské mléko (Godelier 1996). Jak je naopak dobře známo, Trobriandané zcela odmítali uznat jakýkoli podíl mužů na početí dítěte, neměli koncepci biologického otcovství. Muž svým spermatem pouze pomáhá stavět a vyživovat tělo dítěte v děloze matky (Malinowski 1927:285, Malinowski 1954: 221).

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POD KONTROLOU MUŽŮ

Přes hluboký antagonismus a polarizaci mužů a žen vyskytující se na Nové Guineji, zde vznikly také kulturní praktiky, které zpochybňují tezi o univerzální devalvaci žen. V obecné rovině lze konstatovat, že s přihlédnutím k tělesným procesům docházelo k (1) izolování žen, z obavy z rituálního znečištění (strach z menstručání krve), (2) muži se chtěli vyrovnat ženám (imitace menstruace, těhotenství, porodu) (3) snaha mužů o kontrolu nad ženskými tělesnými procesy (muži plodí, ženy jen rodí).

Přes to všechno je evidentní, že novoguinejské kultury kontrolovali (a kontroloují) hlavně muži a ženy měly (a mají) vůči mužům nižší společenské postavení. Symbolicky tuto skutečnost ztělesňují kulty tambaran, v nichž hlavní úlohu sehrávaly posvátné flétny.

V osmdesátých letech se americký kulturní antropolog Donlad Tuzin vrátil na výzkum k Arapešům Ilahita. Před jeho příjezdem však u této etnické skupiny došlo k dramatickým událostem. Podle arapešského mýtu vzniklo lidstvo díky krádeži. Jeden muž spatřil koupající se nahé kasuárky. Jedna z nich se mu velmi líbila, a tak ukradl její kůži a odvedl si kasuárku v podobě ženy domů a měl s ní hodně dětí. Vynecháme líčení dalšího průběhu mýtu, podstatné je, že tento mýtus se úzce vázal ke kultu tambaran a posvátným flétnám. Celou pravdu o společnosti a jejím původu znali jen muži. Ženy nesměli nikdy spatřit flétny a znát tajemství kultu.

Jednu neděli se muži v rámci milenaristických očekávání rozhodli symbolicky vrátit „kasuáři kůži“ a napravit nespravedlnost. Vystoupili před ženami a dětmi v kostele a odhalili, že celý kult tambaran byla lež. Že jediné tajemství kultu bylo, že žádné tajemství neexistovalo. Ilahitská společnost se po kolapsu kultu ocitla ve stavu nejistoty, přestaly platit zavedené normy a pravidla řídící chování mužů i žen a jejich aspirace (Tuzin 1997). Ilahitská společnost si nyní žádala rekonstrukci. Tuzin se sugestivně ptá, zda také my nemáme náhodou ve skříní nějakou tu kasuáři kůži? ●

Judaism and divorce practices in the modern State of Israel

What is the position of Jewish women during divorce proceedings?

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ABSTRACT:

This paper deals with the position of Jewish women during divorce proceedings, which to this day are tremendously disadvantageous to women in Israel. Feminist circles refer to the different circumstances surrounding discrimination towards Israeli and other Western women: Israeli conditions primarily stem from the application of the judicial code, whereas manifestations of gender inequality which prevail in other democratic countries for the most part „only“ reflect the socially accepted norms. This paper is supplemented by authentic samples of conversations with Israeli women.

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The State of Israel is often spoken of as the only democratic system in the Near East. However, the UN Commission established to eliminate discrimination against women (CEDAW)¹⁾ repeatedly raises objections against the application of some parts of the Jewish religious code known as Halacha²⁾ in state legislation. One of the main reasons these appeals have been made not only by the UN, but also by feminist organizations, is the fact that women in Israel cannot divorce without the consent of their husbands.

Here it should be made clear that some parts of the religious code adopted into State of Israel legislation apply to all Jewish women in Israel regardless of their religious persuasion. Under Halacha only the child of a Jewish mother is considered to be a Jewess or a Jew, not the child of a Jewish father or anybody who has undergone Orthodox conversion to Judaism. However, of course a person who is born to a Jewish mother need not be a practising believer, but may for example be a Buddhist or entirely nondenominational. However, the religious code applies to the entire Jewish population of Israel. ³⁾

Israeli family-law expert Ruth Halperin-Kaddari, who has authored many contemporary studies of the position of women in Israeli society says that: „*The gender construct within Jewish marital and divorce law, as it is understood and practised by rabbinical courts in Israel, indisputably results in the subordination and vulnerability of women*“ (Halperin-Kaddari 2001:16). Halperin-Kaddari also briefly summarized the source of the problem, which she sees, for example, in the conception of marriage as a unilateral agreement in which a man becomes engaged to a woman, but not the other way around; consent to inequality and discrimination against women within the framework of marital rights and obligations; the unfair and disadvantageous position of women during divorce proceedings; the acceptance of double standards for sexual behaviour and the ensuing diametrically opposed legal and social consequences (e.g. see the issue involving adultery and the statuses of

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manzerim and agunot described below - Halperin-Kaddari 2001).

THE INSTITUTION OF MARRIAGE

Before we focus more closely on the possible circumstances surrounding divorce, the institution of marriage should briefly be mentioned. ⁴⁾ Entry into marriage itself is preceded by the drafting of a document of quite fundamental significance, known as a ketubah, a marriage contract, which has two important objectives. The first is to provide the woman with material security and to secure her social and sexual rights, while the second is to protect the woman’s financial status in the event of divorce or the death of the husband. This precisely determined marriage contract is enforceable by the woman in the event of divorce and it is also the first „encumbrance“ placed on the husband’s estate (Baker 1993). The signing of the ketubah, traditionally written up in Aramaic, takes place before the beginning of the wedding ceremony itself in the presence of the rabbi and two witnesses. It is only signed by the groom, who is also asked by the rabbi if he accepts the obligations arising from it.

Divorce as such is not taken lightly in Jewish society and is generally viewed with displeasure. On the other hand it is perhaps surprising that under Talmudic law divorce is permitted on almost any grounds. We learn from the Torah that a man may repudiate his wife if „*she find no favour in his eyes, because he hath found some uncleanness in her; then let him write her a bill of divorcecement, and give it in her hand, and send her out of his house*“ (Deut. 24:1). These words were interpreted variously by different religious authorities and, for example, the Shammai School understood it to mean that the husband may only divorce the wife in the event of infidelity, while the Hillel School permitted such trivial grounds for divorce as spoil, i.e. burnt, food. And Rabbi Akiva came out directly and said that a husband could divorce his wife just because he had found a more beautiful woman. However, the Talmudic treatise Gittin⁵⁾ ra-

KLÍČOVÁ SLOVA:

gender, religion, Jewish law;

Jewish marriage, divorce

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A difficult situation arose for the wife if her husband went missing. The law permits neither divorce nor a new marriage until it is proven that the husband is dead

- ▶ ther restrains this indulgence with the words: „If a man divorces his first wife then even the altar sheds tears“ (...) „The Lord is witness between you and the wife of your youth, with whom you have broken faith“ (Mal. 2: 13-14) (Git. 90b).

THE DIVORCE PROCEDURE

The divorce procedure basically involves drawing up and presenting a separation document (get), with a text releasing the wife from wedlock. The husband either delivers the document to the wife in person or he authorizes somebody else to do so. A more complicated situation arises if it is the wife who wishes to divorce. As stated above, a wife in Israel, even a completely secular wife, needs her husband's approval in order to divorce. If the husband refuses to divorce then the wife becomes „agunah“, i.e. „chained“ to the marriage.

For centuries halachic scholars have endeavoured to ensure that women in the Jewish community have not been too disadvantaged and denied the right to divorce of their own free will. Hence if the husband refuses to draw up a separation document for his wife then a court of law may exert pressure on him and compel him to divorce his wife. However, the intervention of the court is by no means always successful or even possible, and there is not always sufficient will on the part of the religious authorities concerned. Hence the wife may become a „hostage“ in her own marriage and there are cases in which she gives up her parental rights or financial claims in exchange for permission to divorce. In an effort to prevent such practices, a legal amendment was passed in 2008 allowing for the division of property before the completion of divorce proceedings.

Grounds for the courts to intervene in favour of the wife include e.g. the husband's impotence, his aversion towards providing for his wife or his rejection of sexual relations. „If the husband takes a vow that he will not have relations with his wife, the Shammai School gives him two weeks, and the Hillel School one week“ (Ket. V, 6). He is then compelled to either renounce the vow or to divorce his wife. In Judaism the frequency of sexual relations in marriage is deduced from the husband's profession, so e.g. a sailor needs not fulfil his marital obligations so often as a husband who performs his employment near his home.

Other grounds on which the wife could be divorced were „serious disorders“ shown by her husband, for example if her husband fell ill with some repulsive disease or if his profession disgusted her. To be specific, this included e.g. leprosy, while the professions which the court might formerly have considered to upset the wife

included those of dog excrement collector, bronze smelter and tanner (Cf. Cohen 2006).

IF THE HUSBAND IS MISSING...

A difficult situation arose for the wife if her husband went missing. The law permits neither divorce nor a new marriage until it is proven that the husband is dead, and it does not matter how long the husband has been missing. If there was any suspicion that he had died then testimony of his death had to be borne by two witnesses. This requirement was eventually dropped and just one witness was sufficient for the husband to be declared dead so that his wife could marry again.

So if the husband is missing and there is nobody to witness his death, or if the husband resists the pressure of the court and refuses to draw up a separation document, the wife acquires the aforementioned status of agunah. A woman who is agunah cannot remarry or have any more children. If she does have any then the children born of any such union will be considered illegitimate or „mamzerim“, who are greatly disadvantaged in Jewish society. For example, they are forbidden to marry Jews of legitimate birth and this restriction also applies to descendants in subsequent generations. A mamzer may only marry another mamzer or a convert. The only way to de facto prevent the transfer of this stigmatizing status to subsequent generations is open to men alone. If a male mamzer fathers progeny with a non-Jewish wife, the children cease to be mamzerim and become non-Jews. Of course, for a female mamzer this does not apply, so her children will be mamzerim in all cases.

A mamzer is considered to be a person born of a „forbidden“ union, e.g. adultery or incest, not just any child born out of wedlock. However, the Halacha code of Jewish law Shulchan Aruch very pragmatically teaches that if there are rumours that a married woman is unfaithful, but she clearly associates primarily with her husband then there are no grounds for the children to acquire the status of mamzerim (Sh. Ar., Even ha-ezer 4).

A woman may also become agunah if she is widowed before she conceives. The Bible commands that a childless widow should be taken as a wife by her husband's eldest brother, who by her should father a son, who should bear the name of the deceased, so that „he is not expunged from Israel“. However, if the wife's eldest brother-in-law has not yet reached the age of maturity or has refused to observe this levirate rule, the widow is again threatened with agunah status. In such cases a ceremony known as chalitzah (removal) is performed, whereby the obligation towards the brother's wife is re-

moved. The ritual requires the widow to take off her brother-in-law's right shoe before the court, to spit in front of him (previously in his face) and to declare „So shall it be done to the man who does not build up his brother's house“ (Deut. 25:9). The woman may then freely marry any man except a priest (kohen). Close observance of levirate laws, which was considered standard in biblical times, was abandoned very early, so that even the Talmud supports chalitzah, which is practised down to the present day. However, some Jewish communities, particularly in Arab lands, keep traditional levirate marriages alive.

Here it should be recalled that in Israel the practice of this ceremony (chalitzah), the drafting of a marriage contract (ketubah) and a separation document (get) or the application of social statuses (mamzer, agunah) and hereditary priestly offices (kohen) is in line with official state legislation and is binding on all the Jewish population in the country, i.e. even those who are entirely secular.

Hence clearly the divorce procedure may be extremely disadvantageous to women and frequently a psychologically depressing affair. Some rabbis are well aware of this unfavourable situation and endeavour to seek rectification in line with Halacha. Baker compares specific approaches of modern-day rabbis to this issue and mentions inter alia a proposal put forward by Rabbi Eliezer Berkovits, who sees a solution in the inclusion of a provisional clause in the pre-marriage contract (ketubah). This clause rules out the possibility that the wife will become agunah if her husband refuses or is not able to draw up a separation document. This option is already broadly applied in Jewish communities throughout the world, but it is not yet permitted in official Israeli legislation. On the other hand, Rabbi and Judge Berel Berkovits proposes to assign the authority to grant definitive permission for divorce to the civil courts (Baker 1993). However, these attempts to deal with the discrimination against women that is found in Israeli family law have not yet been sufficiently well received by Orthodox Jewish authorities and so remain more in the nature of a hope for the future.

EXTRACTS FROM INTERVIEWS

There follows a presentation of extracts from interviews with Israeli women on the subject of divorce in their complete wording together with interpretations from the book *Judaismus a ženy v Izraeli*.

ZOHAR - 41 - AN ISRAELI JEW

Five years ago Zohar was ordained a reform rabbi at a rabbinical seminary at the Hebrew Union College in

Jerusalem. She originally studied Hebrew literature and linguistics at the university in Tel Aviv and subsequently worked as a teacher. She currently works with the Beit Daniel congregation at the Centre for Progressive (Reform) Judaism in the northern part of Tel Aviv, where we met in her office. She has described herself as a „full time“ rabbi. Here she is in charge of Bar/Bat Mitzvah coming-of-age rituals and conversions. One of her students and conversion candidates was an acquaintance of ours who had arranged the meeting with the Rabbi. I was surprised that in spite of her enormous workload she immediately agreed to the interview. However, it turned out later that we had not entirely understood one another, as she was not clear (or did not want to understand) why I was interested in her personal life. She reacted even worse to questions on her relations with Orthodoxy. It was difficult for her to separate her own personal positions from those formulated by the progressive (reform) movement. She only wanted to present herself as a „public individual“ and not „just“ as Zohar. But despite this initial misunderstanding she eventually gave a full interview, even though it sometimes looked as if she was going to finish ahead of time and leave.

„And how are things in Israel with divorce? Do you have any experience of this?“

„Money is important. Money is one of the primary means of exerting pressure during divorce. The husband says: 'So you want to divorce, eh? Then just sign here and give me all our savings, e.g. two hundred thousand shekels - or sign here and give up looking after our son, so that I can take custody of him. All kinds of pressure. It is awful.'“

„But then can the wife not accept the get either? That rarely happens. In Israel there are many agunot (women who are chained to a marriage), but only a couple of men in that situation. She needs to divorce a lot more than he does. True, he cannot remarry, but any subsequent illegitimate children will be okay. Here at the reform synagogue we marry mamzerim without problems.“

REBEKA - 51 - AN ISRAELI JEW OF CZECH ORIGIN

We meet up with Rebeka in a spacious flat in Haifa in the north of Israel. There is a fine view from the window of the sea and the port. She shows me where Hezbollah launched rockets at them from Lebanon just a couple of years before.⁷⁾ She says it would never occur to her to run away:⁸⁾ „We are where we are meant to be,“ she smiles. She looks full of life, even

⁴⁾ Rabbinical-Talmudic legislation, which regulates marital law, is found particularly in the third section of Mishna entitled „Women“ (Nashim), where it is contained within treatises entitled: Sisters-in-Law“ (Yebamoth), „Marriage Deeds“ (Ketubot), „Adultery Suspect“ (Sotah), „Separation Deed“ (Gittin) and „Betrothal“ (Kiddushin).

⁵⁾ As a full Czech translation of the Talmud has not yet been published, this text draws from the English version: The Babylonian Talmud from 1935-1938 and a Hebrew-English edition of the Babylonian Talmud from 1972 - both from the Soncino Press. The translation into Czech also took into account Talmud pro každého. Historie, struktura a hlavní témata Talmudu (Cohen, 2006).

⁶⁾ This is approximately equivalent to one million Czech crowns (CZK).

⁷⁾ During the Second Lebanese War in 2006 Hezbollah (the Lebanese Shiite terrorist organization) hit Haifa with 93 rockets, killing 11 civilians.

⁸⁾ During the first week of the war almost half the population left the city.



However, the difference lies in the fact that the husband may father other quite legitimate progeny outside the marriage without divorcing.

- ▶ though just a few hours ago she came back from the hospital and is now nimbly preparing lunch for us and her husband. Kosher of course.

Rebeka is originally from Prague, but she has been living in Israel for the last twenty years. She is the wife of an orthodox rabbi, with whom she has brought up two daughters. They all live an Orthodox lifestyle and the daughters have already married and have their own children. The older one lives in Haifa near her parents, while the younger one lives in the Orthodox quarter of the Bnei-Brak district in Tel Aviv. Rebeka now makes a living as a translator and journalist - previously she was also a teacher. In Prague she once worked at the Jewish Museum. The parliamentary elections are approaching and Rebeka says she does not know who she is going to vote for yet: „perhaps one of the religious parties, but not Shas⁹⁾ - they have been corrupted too...possibly the National Religious Party¹⁰⁾ ...“

„And how do you see divorce procedure these days in Israel, with women evidently having difficulty obtaining a get?“

„I don't like it either when a husband refuses to give his wife a get, when the husband makes a song and dance over it...but now they can force him. They have every right to do so. They can take his passport or his driving licence. They can block his account or he can go to jail.“

„And after a divorce in Orthodox families what is the situation with custody of the children? Do you have any experience of this?“

„In Orthodox families if the mother refuses to carry on the religious upbringing after the divorce, she may lose the children...or the boys are often placed with the father.“

Rebeka has divorced herself. She married her present rabbi husband when she was 27 and already had two daughters from her previous marriage. Her first marriage only involved a civil wedding, so the divorce was a civil one too. The second (but first Halacha) marriage took place at an Orthodox ceremony at the Prague Old-New Synagogue.

LIORA - 28 - AN ISRAELI JEW

As a child Liora wanted to be a pilot or a vet. She smiles and says that she used to be naive and wanted to save all humanity and animals, but with age she says she has come to understand that you have to look after yourself first and foremost and not give yourself to others completely. She says you need to look after your family and enjoy a good standard of living.

She had been recommended to us by another respondent, who said she was an excellent raconteur and unemployed at that time, so she had a lot of spare time. Liora gives the impression of being a hardcore hippie. She smokes cigarettes in a refined manner and wraps herself in a stylishly threadbare greatcoat. We sit in the garden of a café in the Tel Aviv „Latin Quarter“ Florentin. This part of the city, which belongs to debutant artists and students, does not come alive until after sundown. Now at around ten in the morning we are completely alone here and the sleepy waitress blinks at us in surprise. Two weeks earlier, Liora quit her job in films. She had the impression that her colleagues were just apathetic schemers. She studies biotechnology and lives with her boyfriend, an Israeli Jew. She has a younger brother (aged 22), who works in film production. She wants to have three children. Amongst other things she describes his parents' long drawn-out divorce, which he found very traumatic.

„My father cheated on my mother for many years, but when she wanted to get a divorce he didn't let her, so she wasn't able to go with anybody else. I think that's awful. I don't think any God would intend it that way.“

„And what happened then? Did your father change his mind?“

„No, he didn't. They argued over the property until [my Mum] gave him what he wanted, so he gave her a get and they were able to divorce.“

„Meaning your mother had not asked for a divorce beforehand?“

„Yes, she had, but he didn't agree to it and whenever she went before the religious court my father said he wanted harmony in the household - that is, he wanted to put things right and save the marriage, so mother couldn't do anything.“

„I heard that if the husband refuses to give the wife a get then he is actually forced to do so by the rabbinical court. For example, they can take away his driving licence and so forth?“

„But that didn't happen in my mother's case - they went there several times and each time my father repeated that he wanted harmony in the household and to make another attempt at it, though of course he didn't really.“

„And your mother gave all the grounds...that he was cheating on her?“

„She did, but the rabbi wasn't interested. My father is very eloquent and unflappable whereas my mum is emotional. So the rabbi first looked at her and then at him and said - he wants to be with you and you want to get rid of

him. But if he were the one asking [for a divorce] and she said she wanted to try it again, she would not be able to make the decision to try it again or not. It took them several years to get a divorce. Before they agreed to, they lived separately for a long time, but always within the same apartment. It was like living in a war zone - dreadful! Between two people who hate and might maltreat each other. In the end I don't even remember if she somehow managed to get rid of him herself or if he just left.“

„And do you think that the divorce process might have been different if family law matters came under the civil courts?“

„Yes, I think that would be good, but I don't think it's going to happen. Israel is very fine if you marry, but very nasty if you divorce...You feel you belong somewhere, it would be nice to marry in the presence of a rabbi, but divorce without his assistance! I think this distresses a lot of women here. And even though I am now deeply in love, you never know what will happen in twenty years and people change and you can never be sure how someone is going to be, if they are going to go mad, get angry or jealous. For example, my neighbour friend got married and then after three months wanted a divorce, and her husband refused to give her a get for two years. Now her new fiancé is asking for her hand she is afraid to accept.“

Although Halacha premises relating to women are „only“ directly reflected into legislation in the sphere of personal status, i.e. family law, it is obvious that discrimination against women, e.g. in divorce proceedings, leads to their subsequent disadvantaging in the public sphere, inter alia in salary and employment opportunities.

As has already been stated several times in this paper, both by our respondents and at the level of our own exposition, a woman cannot divorce in Israel without the consent of her husband. However, she often only obtains this consent after she has legally waived her lawful property rights, and sometimes even her custody of the children. It is due to the influence of Orthodox Judaism in the country that she is compelled to take these measures. If the wife does not succeed in buying her way to „freedom“ then at the next stage under Halacha she is disqualified from starting a regular new life. This involves not only the application of the disadvantageous agunah status on the wife, but also the heritable defamatory status of mamzer on her potential children from another marriage which is illegitimate from the religious view. It should be added here that not even the husband may divorce and remarry without the consent of his wife. However, the difference lies in the fact that the husband may father other quite legitimate progeny outside the marriage without divorcing. This is due to double standards in the view of adultery. If a married woman is made pregnant by anybody apart from her husband, her child acquires the status of mamzer. Whereas if a married man fathers progeny with another woman who is not married then this does not amount to adultery. In this case the child is not the progeny of a prohibited relationship and the status of mamzer does not apply. These legislatively enshrined double standards applied to women and to men appear at least non-standard for a democratic country. The standards and specific situations recorded in this paper are just one of the examples of discriminatory pressures exerted on Jewish women by religion. ●

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⁹⁾ Sephardic Torah Guardians.

¹⁰⁾ The Mafdal - Miflaga Datit Leumit Party - a religious party well-known for its support of Zionism - can be radically right-wing.