

One of the perks of being a Hillel rabbi is traveling to Israel once a year to staff a Birthright trip. 10 days overseas with college students can be tiring, but for most of the students it is their first trip to Israel, and it is a privilege to introduce them to the Land and State of Israel.

On one of my Birthright trips I made a point of visiting a mentor of mine, Rabbi Simcha Krauss, a retired American rabbi living in Jerusalem.

On that visit I shared with Rabbi Krauss some complicated halakhic issues that come up on my college campus: keeping kosher with gentile roommates, classes on *yom tov* —things like that. At the end of the conversation he said to me: “Seth, if you really want to help *klal yisrael* then you need to learn *Even ha-ezer*.” *Even ha-ezer* is the section of the *Shulhan Arukh* which covers complex areas of Jewish law including marriage, divorce, and personal status. Rabbi Krauss went on to explain that he did not mean I should learn how to administer or write a *get*—a Jewish divorce. He meant that I should join the cause that “deals with *agunot*.”

The term *agunot* literally means “chained women”; women who are anchored to their husbands against their will, desiring a Jewish divorce but not granted one. It is true that halakhah developed to include the wife’s right to refuse to accept the *get*. And this does sometimes happen—that a husband is trapped in marriage when he wants to give a *get* but his wife refuses to accept it. In either case, when a recalcitrant spouse holds up *get* proceedings, tremendous pain and suffering are inflicted.

Rabbi Krauss has been in the news recently, because he is establishing a new *bet din* to deal with difficult cases of *agunot*. To fully appreciate Rabbi Krauss' courage in establishing this *bet din*, I want to clarify the halakhic issues related to "*get* refusal." And I want to encourage you to support *agunot* and rabbis like Rabbi Krauss. From my perspective, this might be the greatest moral issue facing Orthodoxy today.

Let's start with the Torah. Devarim 24:1 describes the process of divorce:

וְכָתַב לָהּ סֵפֶר כְּרִיתוֹת וְנָתַן בְּיָדָהּ וְשָׁלַח מִבֵּיתוֹ

"he shall write her a bill of divorce, give it to her in her hand, and send her away from his house." Based on this clause, in Jewish law the husband's willingness to grant the divorce was, and is, an absolute prerequisite for divorce. This is the crux of the *agunah* problem.

The common approach to dealing with a recalcitrant husband has been to induce a *get*. As a community we can put social pressure on recalcitrant husbands. We can refuse to give them honors in *shul*; we can protest outside their homes. An extreme example of this approach is the story from October of last year: the CNN headline read: "Rabbis plotted to kidnap husbands, force divorces." (The FBI caught the rabbis before they could kidnap the husbands.)

A less extreme way to induce a *get* is to sign a halakhic prenuptial agreement. It is a prenup like any other, enforceable in civil court, and it has two parts: first, each spouse agrees to appear before a specific *bet din* and to abide by its decision about the *get*, and second, the

prenup contains a financial penalty amounting to about \$54,000/year for a recalcitrant spouse (and it can be either spouse) to pay to the other party. The prenup says: you don't want to go through with a *get*? Then you must support your spouse financially until you agree to divorce. Using the prenup can solve the *agunah* problem before a couple is married; before they have kids and money to fight over. What could be better?

Well, there is the “small” problem that many Orthodox rabbis do not require the prenup when they officiate at weddings. Only Yeshivat Chovevei Torah requires its graduates to insist on a prenup when officiating at weddings. And the International Rabbinic Fellowship, co-founded by Rabbi Avi Weiss, is the only rabbinic organization that requires its members to use the prenup when officiating.

Inducing a husband to give a *get*—whether by using the prenup or by ostracizing him from the community—can be effective. But both of these can take a very long time to work, and sometimes a husband digs his heels in firmly and never caves to the pressure. Inducements, we should understand, are not solutions from within the halakhic system; the rabbis remain mostly on the sidelines. (After the husband caves and is prepared to give the *get*, then you call the rabbis to arrange a *get*.) Inducements do not solve the moral problem of the husband's unilateral power. Divorces can be messy and often require difficult negotiations—that's true. But that does not mean rabbis should *de facto* let men use the *get* as leverage or encourage such behavior.

Inducements can also have the unintended consequence of *hillul hashem*, desecrating God's reputation and the Torah's reputation in the world. When we rely on inducements we end up in the news. Rabbis plotting to kidnap husbands is the most extreme example. But how about the Tamar Epstein case? Ms. Epstein and her ex-husband Aharon Friedman divorced under U.S. law but for years Mr. Friedman refused to give Ms. Epstein a *get*. He was fiercely ostracized by the community, but to no avail. Eventually the community began to pressure his employer, Michigan Congressman Dave Camp. That pressure also failed to yield a *get*, and it generated sharp criticism of the rabbinate. Why are rabbis pressuring a U.S. congressman over this? Let the rabbis solve the problems of Jewish divorce law.

There is some truth to this argument. At the same time, Mr. Friedman's behavior was a form of emotional abuse, and we can reasonably expect our government representatives to denounce abuse.

What is really amazing about the Epstein case is how it ended. One day in December I opened my email to read that "Tamar Epstein has been freed." The use of the passive voice caught my eye. "Has been freed"—how? A few days later my suspicions were confirmed. Mr. Friedman did not give a *get*. Five years after their civil divorce, a *bet din* decided a *get* was not necessary in Ms. Epstein's case.

People generally believe, because rabbis usually say this, that there are no halakhic solutions to the *agunah* problem. That is not entirely true, and Tamar Epstein's case is evidence to this. There are different types of halakhic solutions. One solution is to use

“conditional marriages” or *kiddushin al tenai*. *Kiddushin al tenai* allows for the marriage to be declared invalid retroactively if some condition was not complied with.

Rav Kook, the first Chief Rabbi of Palestine, in a 1925 letter objected to the use of conditional marriage “because of the damage that can arise from this through those who are not well-versed in the laws of conditions...” Yet Rav Kook himself acknowledged that the effectiveness of *kiddushin al tenai* was “פשוט”—obvious. All major codes of Jewish law—Rambam (Gerushin 10:19), the Levush (Ha-buts vеха-argaman 149:5), the Shulhan Arukh (EH 149:5)—agree that conditional marriage is effective.

And another possible solution is annulment or *hafka’at kiddushin*. This goes back to the Mishnah (Gittin 4:1-2), to the time of Rabban Gamliel, so it is the oldest of the proposed solutions. The gemara says כל המקדש אדעתא דרבנן מקדש—when a man marries a woman he does so under the conditions laid down by the rabbis—ואפקעינהו רבנן לקידושין מיניה—and the rabbis can nullify his marriage. The basic concept, as Rashi explains it in Yevamot (110a), is that when we get married *kedat moshe ve-yisrael*, what we mean is: according to Jewish law which is determined by the rabbis, so that if the rabbis decide this marriage needs to be annulled, then they have the authority to do so. In a sense this is a form of *kiddushin al tenai* but without specific stipulations—*hafka’at kiddushin* assumes all marriages are sort of conditional. The bride and groom marry on the stipulation that they will follow certain conditions of rabbinic law.

The appeal of this method for solving *get* refusal is that a recalcitrant spouse who disobeys a rabbinic court order to divorce would be in violation of rabbinic law, and the *bet din* potentially could annul the marriage on that basis. The Talmud records five cases of *hafka'at kiddushin*, some of which involve immoral behavior, like abuse, on the part of the husband. But there is some strong halakhic opposition to using *hafka'ah* today. Some maintain, for e.g. , that we cannot use *hafka'at kiddushin* after the talmudic period. The best response to that criticism is that there were some instances of rabbis using *hafka'ah* even after the talmudic period.

In the 20th century prominent rabbis —Rabbi Yosef Eliyahu Henkin, Rabbi Isaac Herzog, Rabbi Yechiel Yaakov Weinberg, Rabbi Emanuel Rackman, and Rabbi Ovadia Yosef —have sought to use these and other solutions. They were all deeply respected rabbis, and they were all criticized on this issue, by those who thought they were pushing *halakhah* too far, too fast.

In the case of Tamar Epstein, no one knows which solution was used. To make things more confusing, no one knows who constituted the *bet din* that ruled on the case. Everything was done in secrecy.

The secrecy was pragmatic. Publishing the ruling would give others the opportunity to question it, and that would be devastating for Tamar Epstein's future.

Just two weeks before Ms. Epstein “was freed” Rabbi Simcha Krauss (who I mentioned before) announced a new *bet din* which will use *halakhic* solutions to deal with difficult cases of *get* refusal. (His *bet din* wasn’t involved in Ms. Epstein’s case). The new *bet din* so far includes Rabbi Krauss and Rabbi Zalman Nehemia Goldberg, a universally respected *haredi* rabbi in Jerusalem. Rabbi Krauss is a modern Orthodox rabbi, but he is not a radical or a liberal. In his own words: “I am not a revolutionary and I understand that *halakhah* moves slowly, but it’s been too slow. It’s time.”

While exciting developments seem to be brewing in Jerusalem, I believe that modern Orthodox Jews like us in the Midwest can play an important role in *agunah* activism. In the short term we need to push for effective inducements like the prenup. We need to ask rabbis in our communities whether they insist on a prenup and why not. We need to tell marrying couples about the importance of a prenup, and make efforts to normalize its use. This keeps *agunot* on the communal agenda, and makes it harder for rabbis to duck the issue.

And in the long run we need more rabbis like Rabbi Krauss. When Rabbi Krauss’ *bet din* is questioned and criticized, as it inevitably will be, we need to be vocal in our support.

Taking a strong stance on *agunot* is what it means to be modern Orthodox: total commitment to *halakhah*, which includes honesty about *halakhic* solutions, and the courage to use halakhic solutions to solve the problem. This is potentially the gift that modern Orthodoxy can give to the wider Orthodox community.