

**Choosing Limits, Limiting Choices:  
Women's Status and Religious Life**

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***Agunot and the Powers That Be***

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Susan Weiss, Center for Women's Justice

**Sharon Shenhav:** This morning, during the sessions on other issues, we talked about the problem of *agunot*. Tamar Roth said that feminists claim that as long as the judges are all men, we can have as many *to'anot* as we want; they're not going to change anything. That's the feminist position. Blu said if we had a critical mass of women rabbis, we would have solved the problem of *agunot* long ago. And Sylvia said that the *agunah* issue is the canary in the mineshaft. It's a profoundly unjust, immoral, shameful, anti-Jewish situation. In this session on "Agunot and the Powers That Be," the question that the panelists were asked to address was, "What is the impact of the *agunah* issue on the lives of Jewish women?"

I would broaden that and say, "What is the impact of the *agunah* issue on Jewish continuity, on the Jewish *people*?" As a lawyer who has represented women in the rabbinical courts of Israel for almost 25 years, I've had to deal with these powers that be, the all-male judges who sit interpreting Jewish law as it applies to the problem of divorce. However, two-

and-a-half years ago I was given an extraordinary opportunity. I was elected by the Israeli bar association to be the only woman on the commission to appoint *dayanim*—religious court judges—in Israel. As you may know, all judges in Israel, including *dayanim*, are appointed by a statutory commission. Therefore, for the last two-and-a-half years, I've been sitting with the two chief rabbis; two *dayanim* from the *beit din rabban ha-gadol*; two members of Knesset, both of whom are from religious parties, one from Shas and one from the national religious party; the minister of justice; the minister of religious affairs; and another colleague from the bar association who is also a representative of a religious political party.

I can tell you that there's nothing like having a little power when you deal with the powers that be. The experience I've had is very humorous, very interesting. Suddenly, chief rabbis are calling me almost on a daily basis to discuss with me their list of candidates, because they need my support to appoint their candidates as *dayanim*. During the last two years I've been the subject of a barrage of letters, faxes, and daily telephone calls from the current chief rabbi, the former chief rabbi, members of Knesset, ministers, judges, you name it. And, of course, mothers, Jewish mothers. It's an interesting phenomenon because they're all trying to prove to me that their candidate is good for women. They are relentless in attempting to show me how much their candidate is going to do to help solve the problem of *agunot*, and why it's so dear to their hearts. In other words, a woman sitting in a position where decisions are being made does have an influence on the discourse of how those decisions are being made. Interestingly, I'm no longer the only woman on the commission. We now have, for the first time in the history of the state of Israel, a woman who was recently appointed to be the minister of justice. Tsipi Livni is a

colleague, a former practicing lawyer, and she was originally on the commission as an appointment of the prime minister in the place of the minister of religious affairs. So in interviewing the 150 candidates for the six positions of *dayanim* in the regional *batei din*, we asked questions as to how they would handle cases involving extortion, physical abuse, and emotional cruelty. We discussed the positions of women's organizations on each candidate. So women's voices are being heard, at least in Israel, on who's going to be appointed as a *dayan* in a religious court.

I would suggest that here in the United States, you might want to think about asking how your *dayanim* are appointed. Who appoints them? What are the qualifications required? Are they elected? Who elects them? Do women have anything to say about who sits on the RCA *beit din* or any other *beit din*? Since women are at least half of those who appear in the *beit din* and suffer from the problems of *agunot*, perhaps women's voices should be heard in determining who sits as a *dayan*.

We have on our panel today three dear friends, activists on behalf of *agunot* for several decades. Each one is well known to all of you, has appeared at JOFA conferences, and will talk about some of the questions that have been put to our panel on the impact of the *agunah* issue. Let me just say that there are two things that happened in the last six months that I think are having and will continue to have major impacts. One is the award-winning documentary film called *Mikudeshet*, (Sentenced to Marriage) which won the award as the best documentary at the Jerusalem Film Festival in July and has since been screened all over the country, including at the Knesset. The director of our rabbinical court, Rabbi Eli Ben Dahan speaking in Jerusalem at a

screening a week ago for International Women's Day, said that this film has become such a hit that he spends most of his time now traveling around the country and speaking at screenings of the film. This was his fifteenth in just a few months. So it's being shown everywhere in Israel, and I think that it's being shown here in the United States as well. I'm going to be screening it at the JWI conference on violence against Jewish women next week in Washington, and believe it or not, in Sedona, Arizona, later this week. So it's being shown all over. You all must see it, because it shows the human pain and suffering of the women. It's not enough for those of us who are activists to talk about it. This film portrays the women speaking in their own voices. They are eloquent, and their pain is so palpable that every audience viewing this film comes away in shock and very angry.

And that leads me to the next major thing that has happened, which is not coming from the rabbinic establishment. The change is coming from outside of the rabbinic establishment, and that's a successful claim for damages for the pain and suffering of an *agunah*. Susan Weiss, who's going to be our first speaker and is an attorney, represented a woman who separated from her husband over ten years ago, from the *haredi* community. He has been refusing to give her a *Get* for the last ten years including a nineteen-month period from the time of the decision given by the rabbinical court of appeals in Israel that there was a *khiyuv*, an obligation to give a *Get*. The court awarded for that nineteen-month period 425,000 shekels, which is about \$100,000 or 5,000 US dollars a month, for the emotional damage caused by the husband's refusal to give a *Get*. Civil damage suits are one way to get at the powers that be, and I think this Israeli decision is going to start a landslide worldwide. There was a case in Canada a few years ago where the

court awarded \$50,000. In France, they've been awarding these damages for over a century. It's time that women who are suffering go to lawyers and file claims in civil courts for money damages. If they can't get the *Get*, at least they can get lots of money, and there's no question that that will have an effect.

We're going to start out with Susan Weiss, an attorney who is the founder of the *Yad L'Isha* program and has started a new organization, the Center for Women's Justice. After Susan, we'll have Dr. Susan Aranoff, who is a well-known activist for many, many years on behalf of *agunot* and has been eloquent in her speeches and in her writing, and is well known as a cofounder of *Agunah*, International. And, of course, Professor Norma Joseph, of Canada, who has been an activist on behalf of *agunot* for a long time, and has been in active in doing films on the issue and is chairman of the department of religion at Concordia University in Canada.

**Susan Weiss:** Good afternoon, and thank you for the pleasure of being here today. I'm sure all of you are exhausted. I am exhausted, so it's very good that most of my presentation will be on PowerPoint, so that in case you're not following my words, at least you'll be able to see them visually. The title of my speech is "Fundamentalist Feminists Spar with the Patriarchy: Interpretive Strategies of Religious Pleaders within the Rabbinical Court." This is the same title as an MA thesis that I'm currently writing for Tel Aviv University in sociology and anthropology.

The initial question that interested me when I set out to write my thesis was, how do religious pleaders respond when their religious world is challenged by modern values? Do they seek to change the *halakhic* norm, or will they reproduce the status quo? I was also interested in

continuing the questions raised by Muslim feminists regarding the possibilities of reinterpreting patriarchal texts. What type of interpretative strategies might facilitate change? In particular, how can canonical texts of infallible, divine origin and authority possibly be opened to modern reinterpretation, or to paraphrase a question raised by a Muslim feminist, how is reform generated by feminist reinterpretation of patriarchal texts possible within a legal system written by men, judged by men, and backed by literature written for an era long past its sell-by date? To answer my questions, I conducted in-depth interviews with female rabbinical court pleaders, and I choose three as my ideal types to categorize the interpretive strategies that I discerned. I would call the three pleaders Atara, Tamara, and Penina, whom I've represented in blue, black, and red. Later I'll bring you quotes from these different women, though hopefully you will be able to follow them by color.

These three women represent the three strategies that I categorize as exegesis, hermeneutics, and rhetoric. I have pictures here to help you understand what I mean by these three categories. I borrowed these three categories from Peter Goodrich, who's a scholar in critical legal studies. If any of you are lawyers, that's a theory of jurisprudence. He wrote a book entitled *Reading the Law*, in which he uses these categories to understand the techniques and methods relevant to interpreting written sources of law. The first category, exegesis, derives from the canonical tradition and is the interpretation of the law in a singular, insular, coercive manner which defers to God's will, His authority, even when it's absurd. I have depicted the strategy of the exegesis in the picture of Michelangelo's God and Man, where the emphasis is on deference to authority, and that's why I call the pleader Atarah an authority. Her coping strategy,

which I mention on the bottom here, is compartmentalization. That is, if it's the word of God, I can't question it, even if it conflicts with my modern values. Hopefully, you'll understand this even better when we get to the actual quotes.

The second category, which I refer to as hermeneutics, derives from the humanistic tradition. It takes its inspiration from tradition, history, precedent, reason—common sense rather than the word of God. Hermeneutics is a more creative method of interpreting the law than exegesis, opening up the law to multiple meanings, values, developments, and supplementation. However, like exegesis, hermeneutics tends to conform to the status quo by deferring to the past. It reasserts historical trends rather than critiquing them. I have chosen Michelangelo's David for the symbolic rendition of the hermeneutic tradition—emphasis on tradition—hence Tamara. Her coping strategy is rationalization and apologetics. She denies tension between modern values and the *halakha*.

The third strategy is rhetoric. According to Goodrich, rhetoric derives from classical Greek disciplines of persuasion and refers to the interpretation of law in a manner that is plural, polythemic, and takes context and power into account. Goodrich posits rhetoric as a critical endeavor which attempts to discover the semantic choices, the political and historical motives that underlie the development of the law and the imposition of meaning. I've chosen Elizabeth Cady Stanton's portrait. She wrote *The Woman's Bible*, and she emphasizes issues of power, hence *Penina*. Her coping strategy is to rail against the male distribution of power and to seek transformation.

Today we will listen to the answers of the three pleaders, Atarah, Tamara, and Penina—

to three questions: one, are you a feminist? Two, what is the status of women in *halakha*? Three, what would you do if your daughter was married to a man who refused to give her a *Get*, and she wanted to have a child before her biological clock ran out? In other words, how does the issue of *mamzerim* (illegitimate children) challenge your moral equilibrium?

Are the pleaders agents of change? What you're going to hear now is the actual words of the pleaders. Hopefully you will be able to follow my thesis through their words. So, first question: are you feminist? Atarah's answer is basically, unequivocally, "No. I am more conscious of the rights of women in the last four years that I've worked as a pleader." In other words, she's aware somehow that she has some feminist leanings, because she protects the interests of woman on a daily basis. She feels, "I do not know what feminism is but I think that I love being a woman. I like being feminine, I like being wooed, I like being supported." I'd like you to remember Atarah, because we're going to hear her again in a way which, if I had to put this quote juxtaposed with her next one, I don't think you would expect from her.

The next one is Tamara. Actually, in this set of questions, the issue is not so much their interpretive strategies, but I thought it was important to bring because one of the questions in this conference was, do the pleaders view themselves as feminists? So here we have it. She's yelling at me: "I am not a feminist, get that into your head. I believe in the laws of nature." I love this argument: a bird does not have the same strength as an elephant because she does not have to do what an elephant does. That's the elephant-bird argument. Tamara feels grateful to feminism that it finally was able to protect the rights of women in such a manner that they would not be beaten or discriminated against. Truly, in this respect, she feels, I am very much a feminist, but I do not

see the feminist revolution as equality between men and women. I think that it is a punishment for women. I want a woman to have ten children. A woman who has not given birth, who has not realized her womb, has not realized herself, is despondent. The pleader who says this is very, very stringent. You should know that.

And this is Penina. Are you a feminist? "I think that feminism is justice ensured." I love this quote. This is the third woman, who clearly thinks she is a feminist.

Now we're really dealing with the interpretive strategies. This [second] question is the question that addresses the tension between the status of women and *halakha*. Do they see *halakha* as adversarial to the status of women? That was one of our questions. And what interpretive strategy do they adopt in response to this possible tension? Here is Atarah, and I'll remind you, she's the one who says that she wants to be wooed. But she acknowledges the tension. She is the one who I characterize as exegesis. Watch what she does. There's nothing to talk about the status of women in *halakha*. There's nothing to talk about why—and I've cut down these quotes. They're even longer than what I'm showing you. Women have no status in *halakha*. There is no equality. Judaism is not equal. A woman moves from her father's jurisdiction to her husband's. [Atara says,] "I always said that if I had a choice, I would have preferred to have been born a boy."

Contrast that to what she said before. It's incredible, and she certainly acknowledges that we've got a problem here. How does she resolve it? Here's why I say it's exegesis. She defers to God and authority: "I am not happy with everything. I do not see eye to eye with everything, but this does not mean that I do not accept them." In other words, this is the word of God. She

compartmentalizes. She understands that she'd rather be a boy. There's a real problem. We've got a real problem with *halakha*, but she's compartmentalizing: "I don't understand everything. This is the word of God. I defer to him."

Next is Tamara. If you remember, we're talking now of hermeneutics. She defers to tradition. She denies the tension. She rationalizes and apologizes. She's the one with the bird and the elephant argument, if you remember. She says, "Change is not outside and separate from the Torah. I see all the feminist changes anticipated in the *Torah* in the process. It is written, 'I am creating a new creation in the world. A woman courts a man.'" That's Jeremiah. She didn't know the quote. I had to look that up. But it's right there in the sources. So, there's no real tension for her because the *halakha* is incorporating all the changes. In other words—and these are her words, I'm not making this up—"You cannot escape the fact that according to all authorities, the status of women will change." In other words, the hermeneutics has a greater range of possibility of change built into the system. The plurality of meaning and interpretive options are inside the system. If you want to be critical, you could say this is apologetics, and she modernizes her religion.

We look now at the status of women versus *halakha*. That's the issue again, and we're with Penina, who's the rhetorician. Penina stands for power. Remember *P*, "power," Penina. She acknowledges the tension. What does she say? "I say that feminism faces challenges in all areas of life. If I were to leave every framework in which there were chauvinism, I would not be able to belong to any community at all. Men wrote history and I'm not throwing all of history into the garbage. I need to grapple with history and I need to write it anew." I underlined that because it

reminds me of a quote from Helene Cixous, about women having to write themselves into history, and that's exactly what she's saying. "To dictate matters and to shed light on the issues concerning the fact that things were written in a certain way that must be changed in the future. I cannot get up and leave, so why do people think that I can get up and leave my religion?" Next, the status of women. What does Penina do? How does she cope? She wants to transform it, and she's very, very clear. She says, "We will stay and reform it." The word that she used is *tikkun*. She acknowledges that there are power differentials, and she acknowledges that what she has to do is not say it's all there and it's all fine, but she has to literally transform it.

The next question is the question of *mamzerut* (illegitimacy). I really wanted to see how they were coping with that, since it's a moral dilemma that I've been coping with for many, many years. As Sharon said, we all have been. It drives me nuts, so I wanted to see how they were coping with it. With Atarah, we're back to the woman who defers to authority, and who talked about the fact that she likes to be wooed, and she says, "If my daughter decided to have a child who would be a *mamzer*, she would get beaten by me with a leather whip on her behind. This seems to me the worst possible thing that could ever be." In other words, she can't accept that. She can't even understand it. She doesn't say this is good, but she won't allow this in her family. Now let's hear how she explained this. "Because for me, cases of *mamzerim* (illegitimate children), where the law provides no solutions for them, they're like a child who is born to a father who is a drug addict or a mother who is a whore. It is the same thing. There's nothing to do about it. It's a given. There are things that cannot be changed, and I accept them. I accept them lovingly as part of life." She's doing the same thing that she did before, when she said,

“Women have no status in Judaism, but there’s nothing I can do about it.” In other words, I don’t really understand this, I don’t like it. If my daughter wanted to bring a child into the world who is a *mamzer*, I would beat her with a whip. She defers to authority. Again, she compartmentalizes. For her, it’s a tragedy that she has no control over. It’s from God.

Tamar, if you recall, defers to tradition. She denies tension. She apologizes, she modernizes, and this is what she says: “I’m telling you that if my daughter contemplated bringing a *mamzer* into this world, and she would not take my advice, she would have reached such a low level of morality that it would not matter what I thought.” In other words, it doesn’t really raise a moral dilemma for her, because for her, bringing in a *mamzer* is immoral. She says, “You cannot have *mamzerim*. Women only have one womb, right? And it’s necessary to be sure who the father is. The child must know who his father is, if he is Moisha, Nachman, or Shaika.” In other words, she rationalizes it, she explains it. And she explains it in a very patriarchal way, too—a husband, a man, has to know who his kid is, and who the mother of his kid is. Now, I translated these from Hebrew, so the word “hermeneutics” is mine, but this was approximately three hours of interviews. They’re very in-depth interviews, and she says this over and over: “I think that my argument with the rabbinical courts is over hermeneutics, interpretation.” In other words, it’s not really a problem for her. She can interpret it.

Penina, if you recall, is the one who acknowledges the problem of the power differential. She grapples with *mamzerut* head on: “I think that the problem of *mamzerut* is the most difficult value issue in Judaism. I am embarrassed that I continue to be religious and to be part of a world that can do such things to other people. I do not have one good word to say about what our sages

do to the *mamzer*.” Now that’s wow, right? Unbelievable. She says, I’m not playing around with this. I’m not apologizing. I’m not modernizing this issue. We’ve got a real issue here. We’ve got a problem here. And how does she reconcile her tension? She says: “I’m not working as a pleader because of women’s pain. I’m here because of my personal existential pain with my religion. It cannot be that my religion enables this.” Again, she is a rhetorician, acknowledges power differentials, and wants to be transformative.

What interpretive strategy do you use when your modern values confront your religious ones? Are you Atarah, who uses exegesis? Do you defer to authority and compartmentalize? Are you Tamara, who uses hermeneutics, or interprets, modernizes, and rationalizes? Actually, I heard a lot of that here today. Or are you Penina? Do you disclose the issues of power, and do you seek transformation?

I’m summarizing some of the answers, and I know this is a very cursory summary, but are the pleaders feminists? My answer in my paper was that yes, in fact, they are feminists. Even though they deny that they’re feminists, they’re feminists in practice because they fight for women against a patriarchal system in the rabbinical courts, and for their rights. It’s very hard for me not to call them feminists, because they’re feminists in practice. There is an article, which I haven’t brought here, which discusses exactly that possibility, that you can be a feminist in practice but not in consciousness. Do they *view* themselves as feminists? I think, at least from what I saw, mostly not. They deny that they are feminists quite vehemently: “Get that into your head. I am not a feminist.” Do they see the *halakha* as adversarial to the status of women and to modern values? I think, yes. Some compartmentalize and will say, “Okay, they are adversarial,

but there's nothing I can do about it, it's from God." That's Atarah, that's the deferral to authority, that's the exegesis. Or, as Penina does, she says, "Yes, and we've got a problem here and we've got to change it. We have to transform it."

My concluding question is, "What interpretive strategies, if any, are conducive to change?" You would have thought, if you followed my argument, that I would say, Penina, the rhetorician, is certainly the one. But even when Penina goes into the rabbinical courts, what she uses is hermeneutics. In other words, what she does is she defers to the tradition. She's not going to come and say, "We've got a problem here. There's a maldistribution of power, and we have to destroy the patriarchy." She's not going to go and say that inside the rabbinical courts. She can't. What I think is the most conducive to change is to use hermeneutics, but to use it with a rhetorical insight, with an understanding of what exactly you're fighting.

Finally, are the pleaders agents of change? I think that's a value-important question, and I can tell you that I presented an answer, although I can't tell you that it's totally conclusive. I think that they *are* agents of change, but I'm not sure if it's because of their interpretive strategies, especially when they're not accompanied by this feminist consciousness. But I think, as Devora Steinmetz also said today, that by their entrance into the field, their bodies challenge patriarchal assumptions. In other words, just as women are going and learning, I think the fact that these pleaders, these women are going into rabbinical courts and arguing *halaka* in front of the rabbinical establishment does challenge patriarchal assumptions. I think that it's quite disconcerting.

Next, my predictions. I think that the tension between our modern values and *halakhic*

values is increasing. Especially in Israel, you see increased competition with the rabbinical court system. More and more young people are choosing civil marriages. There are more civil alternatives being raised that challenge the validity of the existing system, such as prenuptial agreements or the tort cases that I was involved in. And as Sharon said, the *beit din* (rabbinical court) has to meet these challenges and this tension every day and address them. The interesting question arises, will the changes that arise be evolutionary changes or will they be changes which maintain the hegemony? There's a very nice book written by someone about the antebellum period, whose name has just evaded me right now, who claimed that all the changes that were made in the antebellum period were actually changes to enable slavery, and they weren't really changes to the whole system. It wasn't until we had the Civil War that things actually changed. So, are these adjustments that we're making, like the prenups or even the cases that I've been bringing in for tort, do they just enable the rabbinical court system to keep going and adjust somewhat because we're nudging it? We're coming to conferences, and we're complaining, so they'll make minor adjustments, but will these adjustments really be substantive? Are they evolutionary? Are they slow changes that will eventually reach a crescendo of conclusion which actually will be real change, or not? Time will tell.

I'm going to end with a quote from Penina that I particularly liked and thought was upbeat: "Change is the word that most threatens religion. Change does not threaten me, because my religiosity is so problematic, because of the gaps between the values that I hold and the values and worldviews that I get from the sources, so I live daily with this problematic. I'm aware of my ambivalence and my torment, and the way that I resolve this is by change. Change

that for one person is a threat, for me, is a salvation.”

**Susan Aranoff:** What I plan to discuss today is the moral quandary that the *agunah* problem creates for Orthodoxy. I hope that the question and answer period will allow us to zero in on any points that I gloss over too briefly.

I think the overriding question, when it comes to *agunot*—as somebody said, the canaries in the coal mine—is that the level of suffering and immorality that takes place because of the failure to make change is so intolerable in human terms, in terms of the individual cases of women and children impoverished and emotionally battered by the *agunah* experience. The second dilemma is the tremendous *khilul ha-shem*, the disgracing of Judaism, that occurs and the difficulty of staying within the Orthodox system when that system fails so grievously to measure up to Judaism's ideals of justice and compassion. Norma Joseph and I are involved in Women of the Wall, which deals with the problems of women's rights at the *Kotel*, the Western Wall. This too is an issue of doing away with gender discrimination that oppresses women. But the *agunah* issue is immediate. Women of the Wall—maybe you'll prevail in another ten years. People can say that. But you can't bring yourself to say to an *agunah*, “Maybe in ten years.”

So how do we stay in the Orthodox system which so oppresses women? We've been talking a great deal about wrestling with the tension between our gender and religion, but to me, even bigger is the question of the tension between my sense of morality and religion. Can we continue to stay with the system, can I stay with the system, when I'm being told over and over again by the powers that be that the immorality of the *agunah* situation is a built-in feature of Orthodox marriage, which inevitably exposes a woman to the risk of being held hostage by her

husband? For an *agunah*, each day of delay and suffering takes a toll on her spiritual, emotional, and physical well-being. For me, each day of witnessing the suffering of *agunot* and inaction of the rabbis makes it more and more difficult to remain affiliated with the Orthodox movement.

Let me describe the impact of the *agunah* problem on the *agunot* themselves, without going into all the *halakhic* ins and outs, which I've done so many times before. Then, I'll speak about the impact on me, as an *agunah* activist who's been involved for about two decades.

I was going to call this section of my presentation the "DISS section"—the *agunot* are "dissed" because they are DISheartened, they experience DISbelief. The first time they encounter the way the rabbinical courts deal with the *agunah* issue, there is DISbelief. Over and over, *agunot* will tell you, "I couldn't believe how the rabbis treated me in the *beit din*, how unjustly they behaved. Then I couldn't believe what happened the second time. And when I brought this fact to the attention of the *beit din*, and when the rabbis did nothing to help me I couldn't believe it." After a while the DISbelief is replaced by DISillusionment. The *agunot* are no longer surprised by the rabbis' failure to help them, and they become disillusioned with rabbis and *batei din*. Then comes DISenchantment, and finally DISgust. The *agunot* get exhausted by the tidal wave of injustices perpetrated by their husbands and then by the *batei din*. Some of the *agunot* get worn down and withdraw from the struggle but live a very constrained and difficult life. Even when they finally secure the *Get*—if they ever do, and in most of the very difficult, contentious cases they do not—there is an irreparable wound in the family life and in the spirit of that woman.

I have encountered *agunot* at various stages in the *Get* process. Actually, there have been

two stages in my life as an activist for *agunot*, I label the two stages “BBD,” before the *beit din* and “ABD,” after the *beit din*. The *beit din* that I’m talking about is the Rabbi Emanuel Rackman *Beit Din*, which approximately eight years ago began to annul marriages. The kinds of marriages that the Rackman *Beit Din* deals with are impossible marriages involving severely abusive husbands. The women who come to our *beit din* have been through at least one *beit din*, sometimes two, sometimes three, and have consulted with numerous rabbis—communal rabbis, nationally renowned rabbis, world renowned rabbis. By the time the *agunot* get to us, it is clear that the recalcitrance of the husband is deep and malicious. These are marriages that no woman could endure, marriages that are unquestionably beyond any hope of recovery.

BBD, before the advent of the Rackman *Beit Din*, as I have said, there was little or no hope for such unfortunate women. ABD, after the establishment of the Rackman *Beit Din*, a *halakhic* solution became available for these *agunot*.

Among the first wave of women who came to our *beit din* were women who had walked off into the sunset, dropped out of their communities. They’re very difficult to track. It’s hard to find them, they’re no longer affiliated, and they’re often not grouped in any particular way. But these distanced women were somehow still attuned enough to the Jewish community to find the *beit din*, though they were now living only on the periphery of the Jewish community. Somehow they heard about the Rackman *Beit Din*. These women had long ago made the decision to go on with their lives without a *Get*. They refused to be imprisoned by their husbands. The women had remarried and had children. Some were affiliated with a Reform or Conservative synagogues. Some were completely disaffiliated from the Jewish community. But somewhere

inside, they still had a desire for religious closure of their old marriage. The annulment from the Rackman *Beit Din* had no practical consequences for the daily lives of these *agunot*. They were in their fifties and their sixties. They had other families. And yet they still had something buried deep inside of them that needed release, something that made them feel it was Jewishly right that they be released. That initial wave of women trickled down, because the other women in that category were probably so disconnected and disaffiliated that they didn't know about us.

The second wave that we got were women who had begun new relationships with other men but had not married. It was a secret, clandestine relationship, so what they wanted was some sort of release so that they could indeed marry and be more comfortable in their current Jewish communities.

The third type of woman that we encountered had come for an annulment before beginning any new type of life. Interestingly, many of them came for the annulment to the Rackman *Beit Din* though they were completely aware that within their own communities, the annulment would not be accepted. What these women did was to come for the annulment to satisfy their own conscience, so they felt free to begin a new, private relationship with a man while continuing to struggle for the *Get*. These women may have had no intention of remarrying any time soon, but they want the *Get* in order to put an end to the psychological torment of being perceived as the prisoner of their cruel ex-husband.

The fourth type of woman that I've encountered, and I'm getting in increasing numbers, is women who, before they are married, are coming to us as experts, to armor themselves as they enter marriage: "What can I do? I'm getting married. What can I do to protect myself from the

dangers of Orthodox marriage?" This research goes on for months and months. I've had lengthy phone calls and correspondence with Orthodox young women who are about to get married. They're aware that the prenuptials really are very ineffectual. They're not at the point where they're willing to walk away from the traditional *huppah v'kiddushin*, and they're seeking all kinds of devices to protect themselves. The reality is that there is very little that a woman can do to protect herself. One device that's often considered is to have an invalid witness for the ceremony so that, according to some opinions, the ceremony does not create a *halakhically* binding marriage, and there is no need for a *Get* to dissolve such a union. I have problems with this type of circumvention. It's a bit absurd, as Susan said, sticking with something even though it's absurd. I also have problems with it, as I've said in other forums, because the people out there watching the wedding ceremony don't know that the couple has built in a defect that makes the wedding ceremony a charade as far as *halakha* is concerned. To the crowd attending the wedding it appears that the bride and groom are conforming to the very ceremony that they have rejected. So the couple is rejecting a ceremony which chains the wife to her husband but to the public they appear to be accepting and perpetuating it.

So these are some effects that the *agunah* problem has had on Jewish women. Now what about the effect on me? Well, as I said, there's ABD and BBD. Before the *beit din*, the stories were very similar and sad. Long struggles, poverty. I remember vividly one woman who in civil court had won a subsistence alimony and child support settlement. She was pressured by the rabbi who headed her *beit din* to surrender this meager civil court award in return for the chance to secure her *Get*. It was a long time ago, so I'm going to mention the rabbi's name. He's still a

prominent rabbi. His name is Rabbi Heinemann, from Baltimore. When this woman brought Rabbi Heinemann into her case, she was very excited. She said, "Rabbi Heinemann, he's so well known, he's such a great rabbi, he has such tremendous stature. I know that justice will finally be done." And when the process was over, she turned to him and she said, "Rabbi Heinemann, you have condemned me and my children to a life of poverty." When I asked her, "How do you feel about that?" She said, "I came into this process with such *emunat hakhamim*. I had such faith in the rabbinic leaders, and now I have none."

After years of counseling hundreds of such women I have frequently been pretty close to total burn-out. But somehow you continue to struggle for justice in the Orthodox batei din. There's another reason that you stay with this issue, and that is, regardless of the conflict with your moral values, it's really almost impossible to walk out because of the women who call you. You cannot hang up the phone. You cannot say, "I'm sorry, I'm quitting, I'm burned out, you're on your own." So, it's just impossible to leave.

When the Rackman *Beit Din* was established, there was a whole new era. After the other rabbinical courts had failed to produce a solution for them, women came for an annulment. It meant not an investment of thousands and thousands of hours in a process that may yield a return of one percent on that investment, but rather that there was a solution. The first thing was to get this beit din up and running, and the second was to spread the message. That turned out to be very difficult and painful, because after the initial excitement and controversy and exchanges and writing in various forums, things got quiet. Our organization, *Agunah* International, and the Rackman *Beit Din*, got written off. We weren't invited to forums or synagogues to speak or

write. A blackout was imposed on Rabbi Rackman and *Agunah* International in the Orthodox community. We were pushed out of the discussion. Not to over-aggrandize this, but when I would read Jeremiah about his feeling of rejection and being thrown in the pit and wishing that he hadn't gotten into this in the first place except he just has this compulsion to speak, he has the fire in the bones—I still had the fire in my bones. I kept it up, but it was getting harder and harder.

I guess I've hit the wall. I've gotten to the point now where I'm looking at the community that I'm speaking to, and I'm saying are you Tamara or are you Atarah or are you Penina? (Susan, thank you for this typology.) How do you stay in, when this type of immorality is being perpetrated on a daily basis in the name of the system that we are all staying in? What can I do as an activist to enable the community to adopt the solution put forward by the Rackman *Beit Din* and *Agunah* International?

Some people say, "Your solution is not *halakhic*. I've studied it, and it's just not *halakhic*. I have to reject it on the grounds of *halakha*." That's like Atarah, the authoritarian, right? But my impression is that not everyone in the community has gone through a thorough study and evaluation of our solution. That's what bothers me. I feel that we've presented a solution. The ship is in the harbor ready to sail to a safe harbor for *agunot*, and people aren't even looking over the ship's brochure let alone really studying the itinerary. What can we do, we who are advocating this solution? And we're not alone, because other solutions that are equally dramatic have been proposed in the last couple of years. For about five years, Rabbi Riskin has been talking about setting up a special *beit din* in Israel that would annul marriages. In the last

couple of months, he actually put this bill into the Knesset. I think there are problem with that political process, and I think it's not likely to succeed, but nevertheless, Rabbi Riskin moved from talk to acting on his solution to the *agunah* problem. Menachem Elon, who is one of the deans of modern *halakha* and coping with modern problems, has revised his proposal for a *takkana*, which would accomplish the same thing. *Agunah* International and the Rackman *Beit Din* can, I think, take credit for stimulating this discussion and encouraging others to be bolder in suggesting solutions to the *agunah* problem

But now I am asking you a question. What else needs to be done to empower the community? For those of you who haven't come to a firm *halakhic* decision that our solution is not acceptable, what can we as activists do to get you more involved and empower you to accept the solution that Rabbi Rackman is implementing in his *beit din*? Despite Rabbi Rackman's tremendous stature, we keep hearing that there are no *gedolim*. There are no leading authorities to do something so radical. Perhaps if there are no *gedolim*, we must have the courage to think for ourselves. In my mind, there's a trade-off. Change is risky, but this change, though it may be risky, will succeed in eliminating such human suffering that we have to think of moving ahead. The absence of *gedolim* can cause paralysis, the absence of the *gedolim* can cause us to live with something we're not comfortable with—but doesn't there come a point where the immorality of doing nothing tells us that in the absence of *gedolim*, we've got to do it anyway? Take that chance. So I'm really throwing the question back to you. I hope you have questions for me and suggestions for me. Thank you.

**Norma Baumel Joseph:** I have been an *agunah* activist in Canada for the past thirty years.

Dealing with women who cannot receive their Jewish divorce and are consequently bound to dead marriages has forced me to confront the issues I wish to discuss today.

Incongruously, I do not want to talk about *agunot*. I want to talk about Jewish Orthodox feminists who have to face *agunot*. I have been active in many different arenas and issues related to feminism and Orthodoxy, and as far as I am concerned, the Jewish divorce process and its procedures, specifically the situation of the woman left without a divorce, without a *Get*, presents us with a worst case scenario for Jewish women. In fact, the *agunah* symbolizes all that is distorted in Judaism today. The *agunah* represents the paradigm or microcosm of the problems facing women in Judaism. It highlights for us today, at the end of this conference, the conflicts faced especially by Orthodox feminists. And if we haven't faced them yet, we had better. This issue is not about choice, but it certainly is about setting limits.

I want to begin with some preliminary concerns. First, to discuss Orthodox feminism and the Jewish divorce process, we have to understand the non-negotiable commitment to the *halakha* and the *halakhic* process. Orthodox feminists are not willing to abandon the *halakha*, or write unprecedented new laws. Number two: the law is not intentionally oppressive to women, though undoubtedly, at times, women suffer because of the law. The rabbis often found ways to interpret and adapt the law so that the community could survive. Rabbis have done this for generations. We wait for them to do it again and relieve the oppressive situation of divorce law Jews suffer. Number three: as long as law is applied by a male elite, their underlying androcentrism will pose serious problems. As the law preserves its patriarchal character, it retains an inability to correctly hear women. Number four: some rabbis and men are actually

“good guys,” and it is perhaps possible and even desirable to work with them in partnership. Jewish Orthodox feminists must reach out to them and teach them to pay attention to us. Even at conferences, they can sit and listen to us.

Number five: women can be scholars, they can be *to'anut* (advocates) and they can be *yo'atsot* (advisers), but we need to move beyond those advocacy positions to innovative, activist positions. Number six: don't blame the victim. Many people say to me, why don't Orthodox women leave the community? This question has formed the basis of some of the questions we have asked today. “If they cannot get a *Get*, and if the law is difficult for them, or too patriarchal, and they don't like the authority of the male rabbis, let them leave.” But that, of course, misses the point—both of Orthodoxy and of feminism. Orthodox Jews are Orthodox because they believe in Orthodoxy. They believe in the *halakha*; they believe in the integrity of the system. Women choose to remain Orthodox because they believe in it and accept and find it meaningful. They do not wish to abandon their beliefs, their heritage, and their community, no matter how they feel about a particular item, and no matter that at times they feel abandoned by that system. They have chosen to be Orthodox Jews. Their choice! And feminism is about choice. It's about the ability of a woman to choose to stay where she is, and perhaps to want to renovate from within. Feminism is about enabling and supporting women who say, “I am an Orthodox Jewish feminist, I wish to stay inside, and I need you to network with me, be in partnership with me on the difficult issues, not to tell me to leave.”

Number seven: solutions come in a variety of forms and suggestions. Not all of those forms are viable. Personally, I would like to suggest castration of abusers, but I don't think that's

always a viable option. I once had a wonderful idea—this was in the eighties, when we were struggling so hard for Soviet Jewry. I suggested that we would send all those unwilling to give a proper and timely *Get* to Russia. The Russians would release the refuseniks to us. Perfect exchange!

I believe, in terms of solutions, that we must work practically and *halakhically*. The practical may involve things like civil legislation, civil torts. The *halakha*, though, will involve more than just individual or ad hoc solutions. Do not misunderstand me. We need those individual resolutions, but they are not sufficient and do not address the overall systemic problem. For example, an annulment is a possible *halakhic* solution and is used rarely in a case-by-case situation. A full *halakhic* solution will do more than expand the use of annulments. It will address the disparity in the law itself. I can call it renovation and reformation, but in the end, it has to be radical, that is, it must go to the root of the problem.

We have accomplished a lot. When I first began talking and agitating about *gittin* 33 years ago, I was told by my community, by my rabbis, by my lawyers, and my social workers that there was no problem. Then they amended that claim. They said the real problem was elsewhere. The rabbis told me there is no problem with Jewish law only with the lawyers. The lawyers told me there is no problem with lawyers; the problem is with the men. The men told me there is no problem with them; the problem is with the women. Everybody said there's no problem, and certainly, there was no problem in Judaism. Today we're in a very different position. Even rabbis and lawyers agree that there is a problem. Next week some of us will be at a conference in Washington, DC, on domestic violence in the Jewish community. Not only is it

very important for the Jewish community to recognize the problem publicly, but for Susan, Sharon, and me, it will be especially important. At this conference, we will identify *Get* abuse as the one uniquely Jewish form of domestic violence.

Finally, my point is that one person can do an awful lot. Individuals can definitely make a difference, so each of you has an obligation now to do something. No one can do it all—none of us can. But each of us can contribute to the resolution. Chose one aspect of the issue and do something.

Having listed my presumptions, let's look at *agunah* activism as a microcosm of Jewish Orthodox feminism. *Agunah* activism highlights the conflicts, fractious identities, and ruptures for women in the Orthodox community. Even in the face of acceptance as individuals and full members of the community, we face the reality of ultimate invisibility or failure. For many of us, *agunah* activism presents the clearest and most unambiguous way in which Orthodoxy and feminism just might be an oxymoron. Though I don't believe that, and I don't live it, when we talk about the problems of *agunot*, I feel it. The conflicts between Orthodoxy and feminism reach the most difficult, most insoluble, and the most offensive situation when an *agunah* stands before us. How do we understand a commitment to Jewish law that enables lawless men to tyrannize law-abiding women? How do we adjust to a concomitant acceptance of rabbinic authority, which is defined and legislated by a male elite that is unable or unwilling to hear women? What do we do with our respect for the law and lawmakers while knowing that the law regarding *Gittin* is unacceptable in its treatment of women, and that rabbinic authority is worse than patriarchal, it is often corrupt? How do we stick to a feminist critique that puts women's experience and needs at

the center stage? How do we manage a social activism that is bred internally by the *Torah* commandment to seek justice when the system is not just? Finally, how can we be committed to *Torah* justice when there is no justice for some women? In other words, how are we feminists and Orthodox in the face of *Gittin*?

No one today can honestly claim that there is no problem here. We are dealing with a situation that is not a theoretical problem between the theories of Orthodoxy and the theories of feminism. We cannot say that we might have a problem, but let's sit and learn. Maybe we will learn like men and maybe we will learn like women, but we cannot wait ten years and see how it works. We don't have the luxury of time. We cannot face *agunot* by saying, let's wait and see. Orthodox feminists have to face that challenge right now. It's not theoretical; it's not just practical; it is existential.

The solution, if there is going to be any solution, has to come from within the legal system, from within *halakha*. We may seek remedies elsewhere in terms of social action—okay, we'll go picket in front of this man's business, or we will not give him an *aliya* in *shul*. We can also turn to civil law. In Canada, we were very successful with civil support. Fifteen years ago, some of us succeeded in getting a civil law passed throughout all of Canada. It allows judges to consider a recalcitrant refusal to release barriers to the religious remarriage of their spouse. In this way, the civil court can enable a woman to offset the blackmail and extortion that are endemic in the *Get* process. Hooray! But this civil amendment to the national divorce law did not fix the problem completely. Three-quarters of the difficult cases have been solved by the civil law, but that one quarter that is left doesn't let me sleep at night, doesn't let me sit comfortable

in my body as an Orthodox Jewish feminist. The only real solution has to come from *halakhic* reformulation. Jewish Orthodox feminists cannot escape the challenge of opposing the law. As Orthodox Jews they find and accept that law as binding, but as feminist Orthodox Jews, they find that law degrading. That puts *agunah* activists in a direct path of confrontation with their heritage, with their beliefs, with their tradition, with their community, and with their rabbis.

There are three different problematic areas for *agunah* activists and for Jewish Orthodox feminists. One is the problem of men and marriage. You can say all men are terrible—that is patently not true, my sons are okay—or you can say marriage is terrible—but as Orthodox feminists, we can't say either. Not that men are terrible, not that all rabbis are terrible, and not that marriage is terrible. Blaming someone or finding the problem with one particular segment of society doesn't help us. It doesn't advance the situation and it doesn't ease the existential problem.

Secondly, the *beit din* poses a serious but solvable difficulty. The *beit din* is under the control of rabbis, some of whom are so far removed from real women's lives that they have no idea when a decision confines her to a life of poverty. I had a case of a woman whose daughter had leukemia. When the doctor told the parents, the man said I want out. I won't be a father, but I won't give my wife a *Get*. He left and got a civil divorce. The rabbis tried to help and thought they had a great idea. They said, "We got him to agree to give you a *Get*. Just give him your house." It was the home of the daughter with leukemia. It was all she had, and they thought they had solved the problems. They were releasing her, but they had no clue. So we could say the problems are all in the *beit din*. I know JOFA is working on a wonderful list of *batei din* that will

be very helpful, but blaming the *beit din* is again not enough. Yes, we do have to improve the *batei din* systems and structures. We have had many successes in that vein, and there is much more to do. For example, many need computers for record keeping, etc. Some are sorely lacking in any kind of organization or management. They need to work with recognized psychologists on child custody issues and with social workers. There is much room for improvement. There are many things we can do in terms of *beit din* improvement, but that's not the primary area. It does not present us with a comprehensive solution. It will get us somewhere but it won't fix the problem, because the real problem is in *halakha*.

Accordingly, we are left to denounce men, denounce our local rabbis, or denounce our heritage. And while we bring this battle to our local community or our ancient community heritage, everybody turns and looks at us and says, "My, what arrogance you Orthodox feminists have." We can keep proposing solutions, but the authority and the interpretation and the application continue to be in the hands of a male elite that does not care to talk to us. So the notion that Orthodoxy, and Judaism in general, has developed healthy notions of human partnership, has presented a view of male and female created equally *bi-tselem elohim*, in the image of God, is clearly challenged by the case of *agunot*. Where can we find these notions in the *beit din* court hearing the case of an *agunah*? There is no equality. Some might say there is no God.

If the Torah teaches that men and women are created equally before God, how do we concretize that? It is certainly not evident or accessible in Jewish divorce law as practiced today. This is not just about who the legalists are but rather what the law enables. This specific arena

challenges every aspect of an Orthodox woman's identity who is also a feminist, and even those who are not feminists. It risks one's position in the Orthodox community. People tell us we are too aggressive, too loud, and worst of all, too angry. Anyway, they say, it's just about a small percentage of the population.

What is more, this issue risks one's position in the feminist community. Everybody keeps questioning our feminism: why don't you just chuck the whole system? Feminists keep saying, "How could you be a feminist and still stay within that system?" To some extent we can deal with that "otherness." But to have our commitment to Judaism and the Jewish community questioned is truly difficult.

Frighteningly, the *agunah* issue can also increase anti-Semitism. When we describe the situation truthfully, people get up and say, "Judaism is terrible to women. I knew that all along. It's what my priest taught me." Then you have to live with the fact that your honest assessment of the tradition and the community that you love dearly enables and promotes distortions and even anti-Semitism. How shall we continue? We cannot sit idly by and watch our sisters suffer. We cannot allow the Jewish tradition of justice and righteousness to be diverted.

If Orthodoxy is about accepting the law and rabbinic authority, and Orthodox feminists respect the law and rabbinic authority, *agunah* activism is about doubting and challenging and even contradicting that rabbinic authority. It is about questioning the very basis of one's own beliefs. It is to engage in an existential ordeal. No one can claim that Judaism is absolutely just anymore, no matter that the Torah says "*tsedek, tsedek tirdof*"—passionately pursue justice. No one can claim that women are protected or held in a high esteem by Jewish law and heritage. No

one can claim that there are no legal problems, just human ones. No one can claim that feminists are unreasonable or off the wall or anti-Jewish or anti-religion. No one can claim that the feminist critique is unfounded. No one should claim that Jewish law does not need to be revised or amended or adjusted.

Last night at dinner, we were all asked to state our favorite thing about Judaism. I said *Pesach*. I really meant it. *Pesach* is a great family holiday, but it also offers us a model for human action. It presents us with an example of God's great redemptive action. God frees the slaves, those who were *meshubad*, and brings them to a point of freedom. In doing that, *Hashem* sets before us the paradigm for future human redemptive acts. It is a world that I would like us to emulate as Jewish Orthodox feminists, to pick up that *Pesach* model of redemption.

Just a little while ago the four of us were sitting and talking about how tired we are, so I'd like to end with an acknowledgment of not just the tiredness because of the hours I've spent or the family events I've neglected. I remember when my son was in high school, and he came home one day demanding my help on a project. I said, "How could you do that, I'm busy writing my own thesis, I can't help you right now. Why did you leave it to the last minute?" And he looked at me, with his incredible wisdom, and said, "*Ima*, if I was an *agunah*, you'd drop everything right now to help me." And he was right, so I dropped everything to help him.

I don't want to speak about the hours that we've committed to this, and the lives we've committed to this, and the things we've missed because of our commitment to the individual *agunot*. I speak of our tiredness—or at least my tiredness—because of my realization that the injustice I faced for 33 years is *Torah*-based and systemic, and I am tired because I keep

wondering, "Does God really want this to be my Judaism? Does this inequality stem from God?"

I experience despair and rupture in my identity and conflict in the realities of my life.

I cannot end this way, so I want to go back to *Pesach*. The *haggada* commands us to experience the exodus as if we were there, so I want you each to experience the *agunah* as if you are her and work towards redemption. Don't import my existential angst or turmoil into your lives, but introduce the need to teach and to activate. We have made a difference over these years slowly and individually, and we are Orthodox Jewish feminists. We are not an oxymoron, and we can succeed. I hope to God we do.

**Sharon Shenhav:** Well, I'm a little prejudiced, but I think we had the best for the last. This panel has been superb. If you have questions, please come up to the microphone.

**Q:** My name is Michelle Shinar. I'm a student at Brandeis College. Thank you to all of you. It sounds like you're addressing two angles of how to solve the *agunah* problem. The first is, what we do with current *agunot*, But the second one that you touched on is, how do you prevent this from happening in the future? I would like to ask you in what ways are you still committed to this idea of *huppah v'kiddushin*. If we look at it as a complete purchasing of women by men, as it is clearly described in all rabbinic sources, why do we as a community remain so attached to it when, from a *halakhic* perspective, there are other legal systems in which you can have cohabitation? How would it affect your *agunah* activism and the reactionary trend in the *beit din* system if my generation of young people in their twenties refused to undergo *kiddushin* and instead opted for a different form of a Jewish marriage? Thank you.

**FEMALE SPEAKER:** Thank you. A week ago, in Jerusalem, we had an evening at the Van

Leer Institute to commemorate the book that has just been written by Aviad Hacoen called *The Tears of the Oppressed*, on one of the *halakhic* solutions to the problem of *agunot*. A young Orthodox woman who is about to get married came up with the very same point. Her question was *kiddushin, ad matai?* Or, how much longer do we need *kiddushin*? Was there another question here?

**Q:** My name is Philip Weintraub. My understanding, from a friend of mine who likes to tell me this every time I bring up this discussion with him, is that the Rambam says that the one instance where you can whip someone into submission is in the case of a man who refuses a *Get*. So, how do we encourage the Israeli courts to bring this back?

**FEMALE SPEAKER:** Why just the Israeli courts?

**Q:** And my second question is about the Islamic world. I took a course on marriage, divorce, and sexual ethics in Islam from Professor Keeshali, who was here last night. In the Islamic world, several of their *gadolim* have said that a US civil divorce is equivalent to the verbal giving of the *Get*—we'll use the Jewish language. If the man consents to the divorce, clearly he's consenting to a religious divorce.

**FEMALE SPEAKER:** It's like he has a messenger—you can give the *Get* through a messenger. It's like a *shaliach*.

**Sharon Shenhav:** Shall we take all the questions? Why don't we take all the questions and then we'll answer them? Yes?

**Q:** I'm Laura Van Meeder. I'm from Austin, Texas. I'm just here visiting. I had a couple of questions. I'll try to condense them. One, since nobody mentioned the numbers of women you're

dealing with, I was hoping for some statistics. Also, addressing Dr. Aronoff's talk, I was wondering if she could address the problem of remarriage to the current lover. I don't think it would be possible, since you can't marry the adulterer. You had mentioned that some women come with a secret relationship, and if they want to be part of the Orthodox world—even if this wouldn't have a problem of *mamzerim*—how would they reconcile this sort of *halakhic* breach? Also, with the *beit din* that she's working with, what's the recognition of the Rackman *beit din*, and the *halakhic* recognition of the annulment versus the *Get* in varying situations? And last question was, how would we implement a *takanah* without *gadolim*? That was all.

**Q:** My name's Hendy Bozart from Sharon, Massachusetts. I was just wondering whether a woman has any rights to refuse a *Get*. Is there any equality with that? Second of all, I was wondering about a prenuptial agreement, and what happens with that. And the third thing is that I have read stories about the *Tsemach Tsedek*, who was one of the Lubavich shuredi [?], and I know that he helped many *agunot*. A good portion of his work had to do with helping *agunot*, and I was wondering if anyone could check to see how he helped them, if there was any way within Hassidic *halakha* to help *agunot*, if that would apply in some general way.

**Q:** I'm Roseanne Chaseman. I'm an artist. I do *ketubot*. They're dreadfully, dreadfully pretty, and the rabbis are very concerned with whether I spell *dain*, meaning "this," with the *yud*, without a *yud*, etc., and whether I spell Poughkeepsie, New York, the appropriate way. I'd love to see us work out something better, of course, on *Get*. I have a number of different questions. There's a group called *Kayama* that tries to push at people. Have people found this effective at all? Would this tort solution work in the United States, or would people say, well, a civil divorce

is a divorce, so why don't you just accept that?

Maybe we need to start out earlier. Could there be presentations at *yeshivot* while men are young, so that the issue is presented and made very forceful to young rabbinic students? I think that realistically, we have to work through some of what we have there. And does it really take a *gedoleh*, a major religious leader, to be effective on this sort of thing? How effective have people found social pressures like denying people *aliyot*, having them beaten up by the Mafia, all these various and sundry other kinds of things? Could we work through existing Daughters of Israel and Jewish religious counseling agencies to make people more aware on this sort of thing and get women gathering together to put social pressure in the community and also to put some kind of influence on the *batei din*? For Norma Joseph, how does the Canadian civil law work, and who are these one-fourth of the male population who are still refusing to come along on the *Get*? That's a whole batch of questions.

**Q:** My name is Dodie Goldstein. I'm a graduate student in the Department of Near Eastern and Judaic Studies here at Brandeis. First, I just wanted to thank all of you for your amazing presentations and your work and your activism. I look to all of you as amazing, amazing role models. Many of you have touched on the fact that there's a flaw currently in our rabbinic leadership and has been, especially in relationship to the struggle of women to receive *Gets*. You also touched on the fact that it's not only a systemic flaw with our rabbinic leadership but that it's a flaw that has its foundation in *Torah*, and that there's something that's wrong relating to women and the laws of marriage within *Torah*. How can we reconcile these flaws of *Torah* with the fact that we learn as observant Jews and in observant Jewish communities that "*Torat ha-*

*shem temima*,” that the way that we receive the *Torah* is perfection and is divine. So that’s my question.

**Q:** My name is Joan Katz. I’m from New York, part of JOFA. I had a question about the *batei din*. To what extent does one *beit din* recognize any of the other *batei din* decisions? If we’re encouraged to help move the process along, do we simply hit the stumbling block of one *beit din* not accepting what the Rackman *Beit Din*, or another *beit din* does? In which case, it’s a “catch-22.” Thank you.

**Shula Reinharz:** I don’t want to answer a question. I would just like to have a complete record of having spoken after every session. Since I’m the founding director of the Hadassah Brandeis Institute, I just want to say that when I was listening to Dr. Aranoff speak, I had a *déjà vu* experience. I know this will sound a little strange, but I remember hearing the Dalai Lama speak here at Brandeis. He was here for a few days, and he had the same tone in his voice. The words were slightly different, the topic was different, but the tone was the same. It was, “I have taken on this huge task of saving the Tibetan people in the face of the Chinese army and government destroying our temples, destroying our culture. Help me. I don’t know if I can handle this. I want to be able to handle this.” I’m quite serious. You have taken on a noble task. You can’t help but keep on with that task. It is completely huge, like China. You have people following you, you have admirers, perhaps, and followers around the world. You are stuck with it. Just enjoy it, keep on doing it, and we will listen to you.

**Susan Aranoff:** Thank you. I’ll start and address as many of the questions as I was able to take notes on, and then people will add.

As far as alternatives, the first question of “*ad matai*,” how long do we continue to use the *huppah v'kiddushin* form of marriage? I'll be quite candid and say that I don't think we should keep it up. Alternatives do exist. About ten years ago, Rabbi Professor Meyer Feldblum wrote a paper in which he suggested a form of domestic partnership that had certain roots in the Talmud. It had to do with minors marrying because of early betrothal. The betrothal wasn't really possible, but the young people were already living together. To be living together without any sort of *halakhic* framework wasn't acceptable, so the rabbis of the Talmud developed something like *kiddushin* that really wasn't *kiddushin*. Rabbi Feldblum even suggested a reformulation of the groom's “*harei at*” declaration that could be used. What Rabbi Feldblum was trying to do was provide a traditionally rooted alternative that would still look so similar that transition would be possible. In that article, he wrote, as a very astute observer and somewhat prophetically, that the number of Israelis who were voting with their feet and refusing to get married under the auspices of the Israeli rabbinate would grow and grow, and this might increase pressure for changing the marriage ceremony and divorce process. He was partially correct. More and more Israelis eschew being married under the auspices of Israel's Orthodox rabbinate. But where Rabbi Feldblum was incorrect was that he thought the rabbis would be moved to reinterpret *halakhic* marriage when they saw that they were losing such a huge segment of the population, that so many Israelis are driven away from a Jewish marriage ceremony. Rabbi Feldblum was wrong. The scandalous agunah situation has not moved the Orthodox rabbinical establishment to adopt his solution or any of the other I have mentioned today. But Rabbi Feldblum's proposal still stands and should be given very serious consideration.

More recently, one of the former Israeli Chief Sephardic Rabbis, Rabbi Bakshi-Doron has more than once advocated an alternative to *huppah v'kiddushin* in Israel. I think part of the reason for his proposals was the problems with people who cannot marry *halakhically*, particularly within the large Russian population. In addition, he said that the problems associated with securing a *Get* and the rabbinical divorce courts were creating such contempt for Judaism that it was necessary to create an alternative. People who get entangled in the system who are not observant just refuse to participate in the rabbinical court system, and *mamzerim* are being born. If people take on Rabbi Bakshi-Doron's alternative domestic partnership, civil marriage, then if they part without a *Get*, they would be considered single and a subsequent marriage would not produce *mamzerim*. This is very important, because many people critique alternative domestic partnership arrangements and say, *halakhically*, you still need a *Get*. Even if you didn't have *huppah v'kiddushin*, if you live together, if you hold yourself forth as a couple, you still need a *Get*. But Rabbi Bakshi-Doron is saying civil marriage will obviate the need for a *Get*. I'm all for it. I support it, and I think that it will add to the momentum for change. If within the ranks of Orthodoxy, women start doing this, change will become more inevitable.

As for the *Rambam* and coercion, the *Rambam* was followed by Rabbeinu Tam, who said that coercion is no longer permissible. While we may follow the *Rambam* on many other halakhot, rabbis choose not to follow the *Rambam* on this *halakha*, but to follow Rabbeinu Tam and say that coercion is no longer permitted. That's why the kinds of pressures that can be used and that are built into prenuptials are rather mild and often ineffective. Although the Israeli government and legislature have passed certain measures, they stop short of what we would call

real coercion. I believe, and Susan will know this better than me, that implementation of the available legal sanctions to pressure recalcitrant husbands is very spotty. The Haifa court invokes those sanctions frequently. Many *dayanim* on the rabbinical court in Jerusalem do not invoke them because they regard them as coercion, imprisonment being the most extreme, or and suspending the license or whatever it might be. So the Rambam's solution of *kefiyah*—coercing the *Get*—is not really a viable solution since so many rabbis question it *halakhically* and, of course, outside of Israel the means of coercion are far more limited.

As for this idea that civil divorces might represent a *Get*, if the husband is the defendant and he opposes the civil divorce, then you'd have a hard time making the *halakhic* argument that it's a *Get* that complies with the free will of the husband. You have a shot at making the case that a civil divorce indicates the husband's agreement that the marriage is over if the civil divorce is uncontested. But in the cases that Norma and Susan and Sharon and I deal with, it's always contested, because these men are so dysfunctional that their *raison d'être* becomes tormenting their wives, so you will almost never be able to get an uncontested civil procedure. In any case, a civil divorce is not regarded as a *Get* by the Orthodox rabbinate though at the Rackman *Beit Din* the husband's failure to contest the civil divorce is a factor which is taken into consideration when deciding whether to grant an annulment of the marriage.

I'm not going to go through all of the questions because I'll be talking all day, and I want to leave some for the others. Let me just go to one that is specific to me, and that is the question of the recognition of the Rackman *Beit Din* annulments. The Rackman *Beit Din* annulments are recognized by very few Orthodox rabbis, and this of course is what is deterring women from

coming to the Rackman *Beit Din*. If you just want psychological closure, which I mentioned, then fine. You get that. But if you have the intention of remarrying within your former community, in most cases, it doesn't help you. Some women have remarried. One woman managed to remarry in Israel, and one or two women were remarried by the rabbis of our *beit din*. Several women have said their intendeds do accept the Rackman annulment, and they intend to remarry on the strength of this annulment. But for the vast majority of Orthodox women, it's a problem. That doesn't mean that the women don't keep coming, so it's a very interesting mixture of what keeps them coming.

And I just wanted to add something that I neglected to say in my remarks at the podium. I want to talk about the integrity of *batei din* and the integrity of the *beit din* process. I have here—and anybody who wants to come see it is welcome to—the last page of an annulment that was issued approximately a year ago by a *beit din* headed by Rabbi Israel Belsky, one of the most senior *roshei yeshiva* of Torah V'Da'as Yeshiva in Brooklyn. I believe that the proceedings of the Rackman *Beit Din* had a hand in this case or certainly influenced this. I know that a relative of the *agunah* in question was a student in my class. She came to me and told me about the problem. I gave her all of our writings on the Rackman *Beit Din*. She told me that she gave it to the mother of the *agunah*. I lost track of the case, but heard that an annulment had been issued. For those of you who know the names of New York rabbis, the rabbis who concurred with the annulment were Rabbi Israel Belsky, Rabbi Kurzrock, the head of the *beit din* of the Igud ha-Rabbonim in Brooklyn and Manhattan, Rabbi Peretz Steinberg, one of the leading rabbis in Queens, and Rabbi Wolmark from Monsey. I also have a *haskama*, a letter of support from

Rabbi Landesman from a Monsey *beit din*. What happened with this annulment was that the recalcitrant husband's family was very powerful. They lined up some powerful people and rabbis affiliated with another Brooklyn yeshiva, who dispatched a letter to Rabbi Eliashiv in Israel. One of Rabbi Eliashiv's deputies reported that Rabbi Eliashiv considers the annulment invalid in the face of such incredibly strong rabbinical signatures. Certainly the rabbis I listed are among the *gedolim* of the New York Jewish community. In the end, the *agunah* paid over a million dollars to a family of multimillionaires, so it was not even normal greed. It was simply malice. So my question to you is, is this system ever going to produce a solution? These are the "big guns" in the New York Jewish community, and this is the right-of-center, black hat Jewish community that tried to free an *agunah* from an unscrupulous, dysfunctional husband. But they were stymied by an intrusive protest from Israel. That is why I said at the beginning that I'm all for abandoning the forms of marriage that put women in this position. Any alternative that frees women from this and increases pressure on the rabbis to do something about this, is, in my mind, the only way that this is going to move forward in our lifetime.

**Susan Weiss:** I would like to just for the record agree with the "Dalai Aranoff" that I would also favor a solution that eliminated the need for *kiddushin*. People should read Rabbi Meyer Feldblum's article, because I think it's a very important one.

I also want to say, for the record, that I would be against invoking the *Rambam's* solution of violence and beating men. I did write an article once in which I described the three methods of Jewish divorce resolution: rigid fundamentalism, extortion, and violence. I described these methods as crude. It is crude that the way this woman had to get the *Get* was that she had to pay

a million dollars, and it's certainly crude that we have to beat men in order to effect divorce. So I would be against that. What I would like to see is some sort of solution that eliminates the discretion being put totally in the hands of men. That's why I also agree with Susan that we have to eliminate or reinterpret the whole concept of *kiddushin*.

I would also like to relate to the question of whether I think torts could provide another tool. Not a resolution but another tool in the fight for the rights of the *agunah*. I think that in the United States, it can be used, because the problem is that women may have a civil divorce, but they still don't have their religious divorce, and it's an abuse. It's an emotional abuse that should be redressed, so I do think that's something that can be used here.

There was an interesting question about the flaws in the Torah. I liked that question, actually. I thought of an article that I read by a woman named Elizabeth Bartlett, who talks about feminist methodology. One of her theories of feminist methodology is "positionality." She says that when you look at something, you have to look at it from different positions. I think that one of the ways we can relate to the problem of the *agunah* is that when these laws evolved, women were in a certain position. I don't think it was necessarily a flaw. For instance, the *ketuba* has a complicated historical development, but one could say that it was meant to protect women, at least at a certain period of time. Women didn't have a say about being divorced, and they probably didn't want to be divorced 3,000 years ago. They wanted to stay in the protection of their husbands. So if we look at the issue from the perspective of positioning, it's not necessarily a flaw. But, we do have to progress, from 2,000 or 3,000 years ago. One of my views of the law is plurality of meaning. I feel that the law has almost no limits to its interpretive possibilities. To

quote Blu Greenberg, "Where there's a rabbinic will, there's an *halakhic* way." And I really do believe that. Unfortunately, if Rav Eliashiv is dashing all these creative innovations we've got, we've got a real problem. I think I've said quite a bit and I'm going to leave the floor to Norma.

**Norma Baumel Joseph:** Well, I guess I don't agree. If we're talking about solutions, there are numerous ones, some already offered within the *halakhic* system and some outside the *halakhic* system. The solutions within include *kofen*, coercion. Even after Rabbeinu Tam, *batei din* in medieval Europe used coercion. Only a *beit din* can give the verdict of a coercion. It can't come from a civil court; only a *beit din* can force him until he says, "I voluntarily want to give my wife a *Get*." We have some records of medieval communities where they would dunk a man's head in the water trough and say, "Are you voluntarily ready to give it?" So coercion is something that was one of the solutions. The way we would talk about a *beit din* legally enforcing coercion requires certain finessing, but it's something one could think about working on.

But my problem is to step outside of that first and ask, does the *beit din* even want to coerce him? Are they even willing to think about the women's position in order to use the powers that exist within *halakha* or within Israeli law? We're at a much earlier stage than even talking about some of the legal solutions. Many of us have worked on annulment, on *kofen*, on putting a floor into the *ketuba* or not putting a floor, on having a witness, be it an incorrect witness. All these things are *halakhicly* problematic as well as existentially problematic, but I don't agree to saying no more *huppah v'kiddushin* for two reasons. One is practical. The majority of people getting married today want *huppah v'kiddushin*. We'd be abandoning them, and that's not what we're all about, so forget it. It's not practical, it's not real, it's not where I

live, and it's not going to stop the phone calls that you and I are getting. That's number one.

But aside from the practical issue, I don't want to abandon *huppah v'kiddushin* because, Michelle, I don't agree with your premise at all. I don't think you've read Jewish law correctly. It is not about buying a woman. There is no buying a woman in *halakha* at all, at all, at all. It's not in the system. You acquire rights in each other. It's contractual law, but it's not about buying and owning a person. My concern is that if you say, we'll walk away from *supavakidyushin* [?], we will walk away from traditional marriage, you're saying there's something in Judaism we can't fix, so let's abandon it. That's like saying, stop being Orthodox. I don't want to be co-opted into that position. I'm fully aware of how difficult it is, and I did play with the idea every now and then, as my four children each got ready for marriage. What would I do to protect them? Not letting my husband perform the wedding was my solution, but it didn't go over so well. So I'm not willing to abandon *huppah v'kiddushin* for theoretical, theological, and practical reasons. I'd like to see a realm of coercion that is not violent but actually using the law.

**Female Speaker:** Put his head in the trough?

**Norma Baumel Joseph:** Castration. No. But using the law, making life more pleasing if he cooperates. The laws of Moses in Israel say that if you're separated for a certain number of years, no longer living together, these are the things that you have to do. So let's do it, let's figure out a way to do it rather than walk away from it. That's my initial feeling. Aside from that, a number of different people spoke about different ways of using social pressure. There are a number of organizations, a number of places to go for individual help. I could quote you Feinstein page and verse and everything, of individually helping individual cases.

We should keep working using social pressure and *halakhic* pressure in the individual case. We should keep doing this, but that's not going to solve my problem, which is that there's a problem in the *Torah*, and I have to figure out what to do with that, and my belief in the *Torah* and my belief in God. What do I do about that? Yes, there are individual solutions to individual cases. We've all worked on caseloads. Keep going, keep doing, and please help us take on some of our case loads. Wonderful. But that doesn't deal with the larger problem of trying to find a metasolution.

And two more points. Prenups? Prenups are out there. There are a number of very good prenups, but none of the prenups used to date, none of them—and I wish somebody would correct me—have ever affected a *Get* in a *beit din* or even in a civil court. That is, none of them have been used for their intended purpose. They may be used initially, that is, a man may say, "I'm not going to give you a *Get*," and then his lawyer says, "But you signed a prenup. My god, this is going to get us into trouble. Do it." Or the prenup may be a warning to a person that there's such a thing as a *Get*, or a social conscience issue, but prenups have never been legally activated, so they're no solution. Forget it, forget it at this point.

Then finally, can a woman refuse to accept a *Get*? Yes. That's the wonder of Rabbeinu Darsham's *takanah* from the eleventh century. He included women in the process. There were a lot of stages in the evolution of Jewish law. That's why I say the way divorce law is practiced today is my problem, not the way it was practiced in the sixteenth century or the eleventh century. There have been stages in the evolution so I believe that ultimately, there are stages yet to come in which we will fix it, and that it is fixable somehow. I can even envision how to fix it.

But if a woman refuses, which is her right, all I could say to you is, if you were coming to me for one of my cases, would I tell you to refuse? Absolutely not. Take it and run, because a woman's refusal is not worth the backlash she's going to get. She's going to get the worst possible treatment, and at some point, the *beit din* will release him when he wants to, and she won't be released. So refusing the *Get*—no matter what Rabbi Gershom thought he was doing—it ain't working today. I wouldn't suggest anybody do it.

And the final thing about Canadian civil law. It's very complicated law. The judge can either stay the proceedings, which means there won't be a civil divorce, or strike the pleadings of the person who won't release the barriers to religious remarriage. Therefore in the majority of cases the man's case won't be heard in civil court, and only the woman's side will be heard. If you want to ask me more questions about Canadian law, I'll answer you later.

**Sharon Shenhav:** As the moderator, I have to add a few things. Number one, the issue of the prenuptial agreement, in legal terms, has not been tested. That doesn't mean it hasn't been successful. In Israel we've been using Professor Ariel Rosen-Tsvi's prenuptial agreement for about twenty years, and not one time has it been tested in the courts. That doesn't mean that none of the thousands of couples who signed that agreement have divorced. Obviously, with a divorce rate of one-third, we know that they're getting divorced—but they're getting divorced fairly. That's the purpose of the prenuptial agreement. It seems to have a psychological effect that couples who sign such an agreement will get divorced fairly. The Rosen-Tsvi agreement has a financial clause in it which says that a husband who lives apart from a wife who has filed for divorce in the *beit din* will pay extraordinary amounts of maintenance to his wife. The only way

he can free himself from that obligation is to give her a *Get*, because a husband is obligated to maintain his wife, not his divorcee. So Rosen-Tsvi's agreement does not discuss the *Get*; it only has to do with maintenance, a high, extraordinary amount which is the husband's obligation according to *halakha*.

We've got to keep up the pressure. I'm going to quote Bella Abzug, who said "Never give up, and never give in." I think that's what we all have to do, to hit them from every side, through the arts, through films, through poems, through music. I want a jingle for international *agunah* day in Israel. Somebody out there who is musically talented, let's get a hit song, and let's have the latest star, some rapper, and have it played on radio every week, "Give her a *Get*." I'm not a song writer.

Don't underestimate damage suits. We lawyers have always said that the most sensitive part of a man's anatomy is his pocket. If he has to pay \$5,000 for every month that he's refusing to give a *Get*, forget all the *halakhic* solutions, he's going to give the *Get*, because you can enforce that judgment. I don't know how many men in the United States can afford that kind of payment, but I can assure you in Israel they can't. That's three times the average salary. The threat of having to pay such high amounts is going to have what we lawyers love to call "a chilling effect" on a man's refusal to give the *Get*. Money speaks. The whole problem with the *Get* process is blackmail. It's blackmail for money. Women now have a tool that they can use to get back at the greedy, recalcitrant husband, and a civil damage suit can be done anywhere in the world. I say, *agunot* of the world, run to the civil courts, whether you're in the United States or in Canada or in South America or in Europe, or Israel. And that's just the first decision. The next

one may be higher. Maybe the next guy will have to pay \$10,000 a month, or \$50,000 a month.

When Jewish women suffer—and *agunot* do suffer, it's pain and suffering, it's emotional suffering—every hour will cost their husbands. That's the way we have to do it. All of you have to join us, because no system can continue to tolerate this kind of injustice.

**Sylvia Barack Fishman:** Because I have enormous sympathy for your pain and suffering, I am simply going to thank a number of people, and I will leave it to you to summarize for yourselves.

First of all, I want to thank this wonderful, amazing, stirring panel. I want to thank two women who worked in New York and Boston and whose names are not necessarily on the program, but who made this possible: Nancy Vineberg at the Hadassah Brandeis Institute, and Robin Wagner at JOFA. I also want to thank Shana Feinman at JOFA and Deborah Finkel at the HBI, who made all the logistical arrangements and I think did an amazing job. We also have a number of volunteers, and because I don't have all of their names, I will simply thank them as a class. They made things a lot easier for us. I want to thank all the people who made financial contributions, large and small, and especially Diane Trotterman, who is making a substantial gift. I would like to thank all of the greeters, introducers, moderators, and speakers last night and today, and I want to thank the program committee, which was a dream committee to work with. Unbelievable. We had wonderful conversations together, and together we created this program: Janet Dolgan, Michele Freedman, Idana Goldberg, Blu Greenberg, Norma Baumel Joseph, and Carol Newman. And thank you all for helping to make this a truly memorable experience.