

A Socio-Legal Investigation of '*Get*' Jewish Divorce Refusal in  
New York and Toronto: *Agunot* Unstitching the Ties that Bind

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## Abstract

This dissertation, focusing on religion, law, and socio-legal storytelling, is a comprehensive, qualitative study of Jewish divorce (*get*) refusal and the first comparative study between Toronto and New York, cities with the largest and most diverse Jewish populations in their respective countries. Since the 1980s and early 1990s, there have been slow socio-legal developments around *get* refusal in New York and Canada as well as heightened awareness and advocacy in New York, coupled with denial of the persistence of the phenomenon in Toronto.

Sally Falk Moore noted of a different legal pluralist context, “Innovative legislation and other attempts to direct change often fail to achieve their intended purposes...new laws are thrust upon going social arrangements in which there are complexes of binding obligations...” (Moore, 744). Despite the increased visibility of *get* refusal in the media, much of the work being done, both social and legal, continues to perpetuate a gap between legal and social realities within Jewish communities as well as silences, particularly in Toronto. At least in part, this is due to unforeseen forces, specifically the power of normative cultural practices.

Drawing on interviews inspired by oral history and ethnography, and archival sources to get a ‘thick description’, this dissertation contributes to women’s historiography of marriage and examines the overlapping legal norms of Jewish and civil laws, making some key contributions. I incorporate socio-legal literatures dealing with religion, law, and multiculturalism, as well as gender and storytelling (by talking to broad and diverse stakeholders) and thus I bring literatures of social theory, religious feminism and legal pluralism together in an innovative way to examine women’s narratives of being “chained” to a marriage. I shift the parameters of studying *get* refusal by placing women’s narratives and experiences of being refused a *get* by their recalcitrant spouses at the centre of this analysis, developing a critical legal pluralist approach. With empirical support from interviews I illustrate that *get* refusal is not necessarily a function of one’s piety. It may impact all types of women, and religious observance is not in and of itself the cause (thus abandoning religious observance is not the solution). Furthermore, I demonstrate the deep connection between domestic abuse and *get* refusal.

## Acknowledgements

*“Barukh ata Hashem elokeinu melekh ha’olam, shehekheyanu, v’kiymanu, v’higiyanu la z’man ha’zeh”*, “Blessed are You Lord our God, Ruler of the Universe who has given us life, sustained us, and allowed us to reach this day”. The *Shehekheyanu* blessing is a common Jewish blessing said in order to celebrate special occasions, when one is thankful for new and unusual experiences. Completion of a Doctoral Dissertation has been new and unusual and I first thank G-d who has enabled me to reach this moment.

I would like to acknowledge here, however inadequately, those without whom this accomplishment would not have been possible.

Annie Bunting has been the best mentor by whom any junior scholar could hope to be influenced and guided. She is gifted in all she does- as a researcher, as a teacher, and as a most compassionate person. Annie’s steady, consistent, and unyielding support (even in times of doubt) has led me to this achievement. Annie makes students feel worthy and helps them grow. She has a special way of imparting confidence and humbleness simultaneously. Her kindness, respect, and intellectual engagement continue to inspire me and I remain deeply grateful.

I also wish to thank Sara Horowitz and Benjamin Berger for their tremendous insights and enduring support as I solidified my ideas over these past few years. They provided critical guidance into the production of something that I can now look on with satisfaction. I also extend a note of sincere thanks to the external examiner Shauna van Praagh, as well as Amélie Barras who were willing to commit their time to the consideration of the thesis in its entirety and their valuable comments and professionalism.

I have a profound sense of gratitude toward all my teachers, without whom I would never have quite learned what it means to stay with a problem, to dwell on its multiple complexities, to push against one's own inadequacies of comprehension, and moreover, to savour the slow process of discovery. In particular I acknowledge Marsha Razin, of blessed memory. I continue our intellectual debates on the page and in my heart.

I am grateful to Ben Berger for inviting me to participate in the Religion and Diversity Project and to Lisa Fishbayn Joffe for inviting me to participate in various endeavours with the Brandeis Project on Gender, Culture, Religion and Law. Both these collaborations have become stimulating contexts in which to consider the nexus of law, religion, and women’s storytelling, with particular focus on the abuse of *get* refusal. I look forward to continued collaborations emerging from these rich intellectual communities. Thank you for ‘lifting as you climb’.

I also have been fortunate along the way to have had generous support from the Social Sciences and Humanities Research Council, the Ontario Graduate Scholarship, and the Religion and Diversity Project Doctoral Fellowship, and the Dr. Percy and Bernice Singer Award.

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I acknowledge the wonderful and dedicated people who agreed to participate in this study and who were willing to share their thoughts, perspectives and ideas with me along with their vast knowledge. I appreciate their openness, candor, and generosity of time. It was they who gave the research its final meaning. In particular, I give my utmost gratitude to the *mesuravot get*, women refused a *get*, past and present, who shared their experiences with me. I have a debt that I can never repay to the women I worked with, whose generosity, insights, and struggles animate the words and phrases in this study. They opened up to share or revisit difficult, traumatizing, and often private experiences for the sake of sounding silences and in that way, for the sake of justice. Without their patience, eloquence, and belief in this project, it would not have been possible for me to write about many of the issues addressed here. I am forever indebted to them for letting me be the conduit through which their stories can enlighten and embolden others.

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Finally, Judy and Beni Machtinger- ultimately it is you who taught me to speak up when I see injustice and to reach for the stars. It is your unconditional love and encouragement that has made me persevere. Even when the road got bumpy, you helped me clear the path that has lead to this moment. For these reasons, and millions more, I feel lucky and blessed to be your daughter. This accomplishment is yours and there are insufficient words to express my deep gratitude. I hope I can continue to make you proud.

In addition to everything else, Judy, you have been an apt and eager intellectual partner; reading everything I read, and proofreading everything I write since I began reading and writing. This feat could not have been met without your tireless support.

I would also like to acknowledge my grandparents, Moshe Yosef and Frieda Machtinger (née Horowitz) and Yitzchak and Sarah Hamerman (née Samet), of blessed memory, all four of whom were Holocaust survivors who believed so strongly in education. They never had the privilege of schooling, having been ripped out of their classrooms and sent to concentration camps. I am humbled and proud to be their legacy.

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## Prayer for Agunot

Creator of heaven and earth, may it be Your will to free the captive wives of Israel when love and sanctity have fled the home, but their husbands bind them in the tatters of their *ketubot*. Remove the bitter burden from these *agunot* and soften the hearts of their misguided captors. Liberate Your faithful daughters from their anguish. Enable them to establish new homes and raise up children in peace.

Grant wisdom to the judges of Israel; teach them to recognize oppression and rule against it.  
Infuse our rabbis with the courage to use their power for good alone.

Blessed are you, Creator of heaven and earth, who frees the captives.

יהי רצון מלפניך שימלאו רחמיך  
להתיר נשות ישראל השבויות  
בידי בעליהן וקשורות בכבלי  
כתובותיהן. אך קדושה ואהבה  
כבר סרו ממעונן. השר נא  
מעליהן את עולן הפור ורכך  
את לבם המאובן של שוביהן.  
פתח הרצובות רשע ושלח  
בנותיך הפשי לבנות בית  
בישראל ולגדל ילדים באהבה  
ואהבה בשלום ורעות.

השיבה שופטינו כבראשונה  
ויזצינו כבתחילה ותן בלבם  
רוח חכמה ונקמה. רוח עצמה  
ותושיה להציל גשוק מיד רודף  
ואשה משביתה.

ברוך אתה, מתיר אסורים.

English by Shelley Frier List

Hebrew Translation by Devorah Ross and Esther Israel



Shelley Frier List composed this prayer in 1991. Despite attempts to garner more information regarding the prayer and its author further details have been elusive. I also wonder about the motivation for writing the prayer, particularly since *get* laws had already been established in Toronto and New York by 1991. Despite lacking details regarding what precipitated its creation, this prayer, composed by a Jewish woman, is a fitting way to begin a socio-legal analysis of *get* refusal which embraces a religious feminist approach and gives women a platform to illustrate their roles as social and legal actors.

This personal prayer has deeper meaning as well. Using the language of captivity and liberation, oppression and freedom signals both the significant toll *get* refusal has on women and an emerging theme of this project, that refusal of a *get* is abusive behaviour. Moreover, this language echoes language used by the women themselves, as well as Alan Dershowitz, and others, who go so far as to compare *agunot* to slaves. This theme will be revisited in chapters six and seven. The language used throughout the prayer is noteworthy in that it signals the ubiquity of the phenomenon of *get* refusal and also that the remedy, like the cause, is ultimately within the hands of individuals.

## **Chapter One- Introduction**

In this preliminary chapter I set up the in depth, socio-legal, religious feminist and qualitative primary research that is to follow by contextualizing my entry point and sharing a story. I then elucidate my research questions and arguments, and I begin to unravel the multiple threads running through this project. Finally, I discuss my deliberate choices regarding my sites of analysis, participants, and language and I lay out the design of the coming chapters, weaving these multiple strands together.

I often get asked why I became involved with the issue of *get* (Jewish divorce) refusal particularly since some see me only as a ‘not-yet-married, nice, devout Jewish girl’. Consequently, it has been assumed (by both religious and academic communities at times) that either I, or someone close to me must be an *aguna* (a woman anchored to her unwanted marriage), as if that would be the only rationale for ‘someone like me’ showing interest in a ‘topic like this’. I also get branded with the ‘F’ word very often. Some (in religious communities) assume that the only reason I might be passionate about the issue of *get* refusal is because I am a raging, liberal Feminist (yes, that ‘F’ word), constructing feminism as bad and contradictory to my belief system (of course, neither is the case but this does speak to the context in which this research and I might be read). The truth is, I have not been personally affected by *get* refusal but I do take *get* refusal personally. And though I did not consider myself a feminist before I embarked on this project, I have grown in to my feminism as a result. I have also come to understand however, that the issue of *siruv get* (*get* refusal) is not just a feminist one and it is not just a human one, it is both, and thus one with which we should all be concerned.

I first applied to graduate school with a different project in mind. However, everything changed in a course on Legal Pluralism. The nexus of women, religion, and law emerged in our

discussion around Muslim marriage, divorce and *Mahr* (a sum of money paid by grooms to brides in Muslim marriages), and Muslim women suing for their *Mahr* payment upon divorce. I quickly became curious about similar challenges facing Jewish women attempting to secure a *get*. In Judaism, Husbands are the ones who must grant a *get* by physically placing the document in the wife's waiting, open hands. Even if the wife is the one who initiates the proceedings, he is the primary physical actor. The *get* must be given of his free will and must be accepted of her free will; he cannot be compelled to execute a divorce<sup>1</sup> and reciprocally she cannot be compelled to accept one. A *get* that is coerced or which is given or accepted under duress is invalid, known as a *get meuseh* or forced or tainted *get*. If a husband refuses to give a *get*, a wife becomes anchored to a dead marriage against her will, an *aguna*<sup>2</sup>. Such is the structure of Jewish religious divorce which may place women in a predicament, making them *agunot* and this study will explore such instances.

Despite a couple of attempts to dissuade me from within my community, I began to research the realities post the civil reforms to the *Divorce Act* and *Family Law Act* here in Toronto, and in New York as well I looked at the realities after the civil reforms to the *Domestic Relations Law*, the state legal amendments that would try to remedy *get* refusal. I quickly discovered that *get* refusal persists despite the civil remedies and despite the claims of their success<sup>3</sup>. *Get* refusal also persists despite the numerous *halakhic* (Jewish-legal) remedies available. This reality made me deeply distressed. You see, the (Orthodox) Judaism I was raised with (and in which I still partake) is one where questioning was welcome and one where answers or solutions to queries and problems could be and were found. However, as I began to ask

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<sup>1</sup> Babylonian Talmud: Tractate Yevamot 112b.

<sup>2</sup> The reciprocal may also occur. I will elaborate on the differences in chapter two

<sup>3</sup> Yael C.B. Machtinger, "Sounds of Silence: A Socio-Legal Exploration of Siruv Get and Iggun in Toronto" (Major Research Paper, York University, 2009).

questions about *get* refusal's persistence, I could find no answers, I could find no solutions. So, my connection to *get* refusal was not familial, nor was it in the name of a liberal-feminist agenda, it was far bigger. I became interested not because it was my problem or because it was a women's problem, but because the phenomenon of *get* refusal is a moral, human problem about a basic freedom and right, a phenomenon which has persisted across time and place.

As I began speaking to *mesuravot get* (women refused a *get*), their narratives illustrated that there is a deep and persistent gap between legal regulation (law on the books) and social behaviour (law in action), as well as distinct resistance to manage and even acknowledge *get* refusal in Toronto, with these realities impacting the *mesuravot get* in a myriad of previously unrecognized and silenced ways. Women are fighting to balancing their multiple value systems when seeking both their right to religion and their right to divorce free from abuse. In other words, and based on my primary research, I argue that *get* refusal persists despite the civil legal remedies, indicating that the ongoing interactions between the civil and *halakhic* legal systems have unintended consequences at times. For example, the narratives of *mesuravot get* demonstrated that culture is still more potent than some might believe and in fact all types of Jewish women are holding out for a Jewish divorce regardless of the state, civil law and regardless of their degree of observance or affiliation. The narratives further reveal that even today, all types of Jewish women are silenced, alone, and abused in the context of *get* refusal, and this is particularly manifest in Toronto. It is untenable that we allow this to persist. And that is why I, a 'not-yet-married, nice, Jewish observant girl' became passionate about 'a topic like this'. And why I believe you should be too.

## A Story

I purposefully begin here with a narrative because narratives anchor this study as its methodological foundation from which our analyses spring, stemming (in part) from critical legal pluralism which understands women as legal actors, innovators and mobilizers. Of the dozens of narratives I could have chosen to open with, I did not choose the most evocative or the least egregious for I refuse to rank the narratives, creating a hierarchy of maltreatment. I simply hope to create a process of inclusion.

Before we met over coffee, S.L.<sup>4</sup> said, *“I’m not sure I’m worth your time”* because she thought *“her story wasn’t really bad enough or sexy enough”*, concerns expressed by a number of the women I interviewed. I assured S.L. that every story is significant. She was the ‘expert in this field’; she, and her story were worthy.

S.L. is in her mid 30s. She is not religious. She is very well educated, with 2 MAs, and an NYU alumna.

S.L. was married for five years and has 2 daughters who love gymnastics. (She shows me pictures from their meets).

She described, *“My ex is not religious. I refer to my ex-husband as my ex because I finally received my get. I’m still happily civilly married. (Laughs; sarcastically)*

*We are still civilly married and I have the Coalition Against Abuse on my side in court working for me pro bono since I experienced significant domestic violence.*

*The civil route is not the answer and it’s not any better than Beit Din<sup>5</sup>. You are still just a number, it’s just a day at work and that’s all. Civil lawyers or judges are even less invested than rabbis... the laws don’t matter. Also, civil law had no upper hand; it can NOT influence religious traditions and should not. (Emphasis by participant)*

*Our marriage appeared so strong from the outside. No one would believe me if I hadn’t gone to the hospital after being beaten over and over again.*

*I was so badly abused.*

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<sup>4</sup> Pseudonyms are used throughout.

S.L., interview with author, October 23, 2013, Starbucks, Great Neck, New York.

<sup>5</sup> *Beit Din* is ‘house of law’ or rabbinic court or tribunal, where matters are adjudicated. *Batei din* is the plural.

*Fighting for my get gave me a sense of control, when I had none. ...Getting the get was like getting my life back ... it freed me...I refused to be victimized any longer.*

*You have to self-advocate, because otherwise you are just a number.*

*I'm not religious, nor do I ever want to be religious but the get became so important to me. I felt it was my legal right. I fought for it for 5 years.*

*I want to spread the message to women- 'Don't accept that you don't need a get even if you are reform' ...it's my freedom and my power and a get is my right regardless of my non-observance.*

*There should be NO 'alternate' International Beit Din. Why should I accept an alternative simply because I'm not religious. I deserve the get according to the most stringent of standards, NOT an alternative remedy from an alternative beit din. (Emphasis by participant)*

*Throughout the process I felt like a slave. I'm not putting rabbis down. It's not their fault- my husband had power over them. He abused and manipulated them and the religion, just as he did me. We were trapped.*

*He had no ties to community and is a criminal. How can you embarrass someone who is not already embarrassed about who he really is, an abuser, a bad parent and spouse, and a criminal. None of that embarrassed him so why would not giving a get embarrass him? Especially since he really had no ties to any community being that he is non-religious.*

*Even though all rabbis, dayanim<sup>6</sup> supported me- I still felt separate from them.*

*I was all alone ... but ORA was amazing in their support.<sup>7</sup>*

*I definitely feel like it was gendered but I don't want to say that I wasn't supported...it's just that if you walk into the room with all one gender... you do feel that... At the end of the day, as a Mom I'm willing to do whatever it takes to protect my girls. Like a brown bear protecting her cubs.*

*Withholding a get is the ultimate control because you can't run from it like you can from physical or emotional abuse.*

*I smiled a million times more than I did on my wedding day when he finally dropped my get into my waiting hands.*

*It will give you something you didn't know you needed (the get)*

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<sup>6</sup> Dayanim is judges, plural; dayan is a judge, singular.

<sup>7</sup> ORA is an acronym for Organization for the Resolution of Agunot, the main non-profit organization working on get refusal in the United States.

*Even though it took a year of mourning, I'm back to myself now, even stronger than before. Every time I talk about it I get stronger and I want to speak out more and more because I am the proof- people need to know it's NOT a frum problem".<sup>8</sup>*

I chose this narrative for its teller's matter-of-factness and because this narrative weaves together multiple threads of the coming analyses. The narrative highlights that *get* refusal's persistence is itself an unintended consequence arising despite state, civil intervention which intended to remedy *get* refusal. It illustrates another unintended consequence as well; the importance and even dominance of culture, or religion (more accurately), which drives diverse Jewish women to continue to demand a *get*, challenging the notion that women are passive and framing them instead as active agents, shaping unanticipated legal norms. The narrative also exemplifies the reality that all types of Jewish women may be *mesuravot get*, silenced, abandoned, and abused, although they may simultaneously be their own legal advocates or agents affecting law and legal change just as much as they are affected by law and legal change. It is not only an Orthodox phenomenon. The connection to domestic violence, the tensions between state and religious orders and the gendered nature of *get* refusal are also all underscored.

### **Research Questions:**

My doctoral research is driven by these interrelated and nuanced set of questions, among others: Do changes to state legal systems elicit changes to religious/Jewish legal orders? Do they impact changes to religious (or ritual) social norms or behaviours? What are the consequences of this, if any? Why are gaps between law reform and social behaviour in Toronto regarding *get* refusal *different* from similar legally plural communities (such as New York)? What are the socio-legal impacts of those differences? How are these messy entanglements experienced and

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<sup>8</sup> *Frum* is a Yiddish adjective used to describe someone committed to the observance of Jewish religious law.

navigated by women from within the religious culture and how are they perceived by the culture and communities, and are there distinctions between Toronto and New York?

This study of *get* refusal is a primary, comprehensive study with the most breadth and depth in the Canadian context to date, and the only comparative study between New York and Toronto - the largest and most diverse Jewish populations in their respective countries. At its most fundamental level, this enquiry will explore *get* refusal in Toronto and New York. I wanted to explore a classic socio-legal quandary- the gap between the law on the books and the law in action - but in so doing, to place the narratives and experiences of those at the centre of the case study, also at the centre of the scholarly analysis in a way that has not previously been achieved and in the tradition of some seminal socio-legal authors, such as Engel and Munger, and Engle Merry, among others.

I argue that there is a gap between legal regulation and normative religious and/or social behaviour (between law on the books and law in action) regarding *get* refusal and despite state regulation or civil legal remedies to solve *get* refusal, the phenomenon persists, and in Toronto particularly, there have been further unintended consequences. Perhaps unexpectedly, culture (or religion) continues to be a dominant force in the lives of women and they insist on a *get* even when they do not observe other religious aspects and rabbis often resist foreign legal remedies to internal problems, although they supported certain foreign remedies initially. Thus, while legal pluralist solutions are the most promising, to date they have not had their intended result<sup>9</sup>.

Concentrating on the narratives of women in the tradition of feminist legal research and using elements of oral history, ethnography to achieve a ‘thick descriptions’<sup>10</sup> of the realities of *get*

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<sup>9</sup> Sally Falk Moore, “Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study,” *Law and Society Review* 7, no. 1 (1973): 719-750, 744.

<sup>10</sup> Carol Weisbrod, *Butterfly, The Bride: Essays on Law, Narrative, and the Family* (Ann Arbor, MI: University of Michigan Press, 1999); Susan Sage Heinzelman and Zipporah Batshaw Wiseman, *Representing Women: Law,*



refusal, I will explore this and the other multiple layers of analysis weaving the plural threads of the goals and objectives together, making this study distinctive. Some of these threads run deeper than others, are more complex and entwined.

In this research I bring together methodologies such as feminist oral history inspired by Horowitz, Reinhartz, Leavy and others, and facets of ethnography to capture elements of Geertz's 'thick descriptions' of the realities of *get* refusal, as well as archival and even media and representational analyses stemming from Kurasawa's work in the context of slavery. I also bring together literatures and theoretical debates that had not previously been in conversation including Jewish law<sup>11</sup> and Jewish feminist<sup>12</sup>, in addition to socio-legal scholarship, with particular focus on legal pluralism<sup>13</sup> and law and religion<sup>14</sup>. To date, Jewish studies and Socio-Legal Studies

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*Literature, and Feminism* (Durham, NC: Duke University Press, 1994); Clifford Geertz, *The Interpretation of Cultures: Selected Essays* (New York, NY: Basic Books, 1973), 3-30.

<sup>11</sup> Among others, Rabbi David J. Bleich, "A Suggested Antenuptial Agreement: A Proposal in Wake of Avitzur," *Journal of Halakha and Contemporary Society* 7, (1984): 25-41; Rabbi David J. Bleich, "Jewish Divorce: Judicial Misconceptions and Possible Means of Civil Enforcement," *Connecticut Law Review* 16, no. 2 (1984): 201-290; Rabbi Irving A. Breitowitz, *Between Civil and Religious Law: The Plight of the Agunah in American Society* (Westport, CT: Greenwood Press, 1993).

<sup>12</sup> Among others, Susan Aranoff and Rivka Haut, *The Wed-Locked Agunot: Orthodox Jewish Women Chained to Dead Marriages* (Jefferson, NC: McFarland and Co. Inc, 2015); Rivka Haut, "A Factor in Preventing Cases of Agunah," *JOFA Journal* 1, no. 3 (1999); Susan M. Weiss, and Netty C. Gross-Horowitz, *Marriage and Divorce in the Jewish State: Israel's Civil War* (Waltham, MA: Brandeis University Press, 2012); Blu Greenberg, "The International Beit Din: Resolving the Agunah Crisis" and Norma Joseph, "Northern Exposure: Agunah in Canada" (presentation, JOFA- Jewish Orthodox Feminist Alliance Conference, Columbia University, New York, NY, January 15, 2017); *The Agunah Summit*, (New York University Law School, New York, NY, June 24, 2013) (Conference by The NYU Tikvah Center for Law and Jewish Civilization and JOFA-Jewish Orthodox Feminist Alliance); Rabbi Shlomo Riskin, *Women and Jewish Divorce: The Rebellious Wife, the Agunah and the Right of Women to Initiate Divorce in Jewish Law, a Halakhic Solution* (Hoboken, NJ: Ktav Publishing, 1989); Michael Rackman, "Kiddushei Ta'ut Annulment as a Solution to the Agunah Problem" *Tradition* 33, no. 3 (1999); Rabbi Eliezer Berkovits *T'nai B'nisuin Ub'Get* (Jerusalem, Israel: Mossad HaRav Kuk, 1966).

<sup>13</sup> Sally Engle Merry, "Legal Pluralism," *Law and Society Review*, 22 (1988): 869-896; Sally Falk Moore, "Law and Social Change," *Law and Society Review* 7, no.1 (1973): 719-750; John Griffiths, "What is Legal Pluralism," *Journal of Legal Pluralism* 24, (1986): 1-56; Courtney Bender and Pamela E. Klassen, *After Pluralism: Reimagining Religious Engagement (Religion, Culture, and Public Life)* (New York, NY: Columbia University Press, 2010), 98-123. William E. Connolly, *Pluralism* (Durham, NC: Duke University Press, 2005).

<sup>14</sup> Peter Fitzpatrick, *The Mythology of Modern Law (Sociology of Law and Crime)* (London, UK: Routledge, 1992); Emmanuel Melissaris, *Ubiquitous Law: Legal Theory and the Space for Legal Pluralism* (Burlington, VT: Ashgate Pub Co., 2009); Talal Asad, *Formations of the Secular: Christianity, Islam, Modernity* (Stanford, CA: Stanford University Press, 2003); Jose Casanova, *Public Religions in the Modern World* (Chicago, IL: University Of Chicago Press, 1994); Timothy Fitzgerald, *Discourse on Civility and Barbarity: A Critical History of Religion and Related Categories* (New York, NY: Oxford University Press, 2007); Jacques Derrida and Gil Anidjar, *Acts of Religion* (London, UK: Routledge, 2001); Jürgen Habermas, "Religion in the Public Sphere," *European Journal of*

scholars have not engaged with each other<sup>15</sup>. Thus, what this analysis offers, is a bridging or combining of these literatures. Within the existing, limited/emergent scholarship on this important area of research, Jewish scholars have approached *get* refusal from two general perspectives: 1) traditional/conservative analyses by rabbis posing Jewish-law solutions<sup>16</sup>; and 2) alternative/liberal, feminist analyses (at times by non-Orthodox) women (though not solely), abandoning Jewish law<sup>17</sup>. There is virtually no middle ground<sup>18</sup>.

Simultaneously, socio-legal literatures concerning the nexus of law and religion debate accommodation of religious norms and centre most often on the “casting out”<sup>19</sup> of religion, to borrow Razack’s term. In particular, its place in public schools<sup>20</sup> and on the veiling practices of

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*Philosophy* 14, no. 1 (2006): 1–25; Charles Taylor, *A Secular Age* (Cambridge, MA: Harvard University Press, 2007); Wendy Brown, *Regulating Aversion: Tolerance in the Age of Identity and Empire* (Princeton, NJ: Princeton University Press, 2006); Seyla Benhabib, *The Claims of Culture: Equality and Diversity in the Global Era* (Princeton, NJ: Princeton University Press, 2002); Avigail Eisenberg, *Reasons of Identity: A Normative Guide to the Political and Legal Assessment of Identity Claims* (New York, NY: Oxford University Press, 2011); Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Gloucestershire, UK: Clarendon Press, 1995); Ayelet Shachar, *Multicultural Jurisdictions: Cultural Differences and Women’s Rights* (Cambridge, UK: Cambridge University Press, 2001); Ayelet Shachar, “Privatizing Diversity: A Cautionary Tale from Religious Arbitration in Family Law,” *Theoretical Inquiries in Law* 9, no. 2 (2008): 573–607.

<sup>15</sup> The Jewish Law Association (and their journal) deals with the nexus of Jewish Law and Society known as “Mishpat Ivri”, but there has been no interaction between Jewish Studies and Social-Legal Studies and different sets of questions are asked.

<sup>16</sup> See note 11.

<sup>17</sup> See note 12.

<sup>18</sup> Perhaps these three authors are the exception. Rachel Levmore, *Spare Your Eyes Tears- “Min’ee Einyayich Me’Dimah”*: Complete Guide to Orthodox Jewish Pre-Nuptial Agreements-The Halakhic Prenuptial Agreement for Mutual Respect and Prenuptial Agreements for the Prevention of Get-Refusal (Jerusalem, Israel: Millennium Publishing, 2009); Rachel Levmore, “The Aguna – A Statistic or a real problem?” *Jerusalem Post*, August 30, 2009; Rachel Levmore, “A Coalition to Solve the Agunah Problem,” *Jerusalem Post*, February 23, 2013; Michelle Greenberg-Kobrin, “Religious Tribunals and Secular Courts: Navigating Power and Powerlessness,” *Pepperdine Law Review* 41, (2014): 997-1012; Rabbi Dr. Michael J. Broyde, “A Proposed Tripartite Agreement To Solve Some Of The Agunah Problems: A Solution Without Any Innovation,” *JOFA Journal* 5, no. 4 (Summer 2005): 1–24, [http://cslr.law.emory.edu/fileadmin/media/PDFs/Lectures/Broyde\\_Solutions\\_Agunah\\_Problem.pdf](http://cslr.law.emory.edu/fileadmin/media/PDFs/Lectures/Broyde_Solutions_Agunah_Problem.pdf); Rabbi Dr. Michael J. Broyde, *Marriage, Divorce and the Abandoned Wife in Jewish Law: A Conceptual Approach to the Agunah Problems in America* (Hoboken, NJ: Ktav, 2001).

<sup>19</sup> Sherene Razack, *Casting Out: The Eviction of Muslims from Western Law and Politics* (Toronto, ON: University of Toronto Press, 2008).

<sup>20</sup> Lori G. Beaman and Leo Van Arragon, eds., *Issues in Religion and Education: Whose Religion?* (Leiden, Netherlands: Brill, 2015); Benjamin L. Berger, “Religious Diversity, Education, and the ‘Crisis’ in State Neutrality,” *Canadian Journal of Law and Society* 29, no. 1 (2014): 103-122; Shauna van Praagh, “From Secondary School to the Supreme Court of Canada and Back: Dancing the Tango of ‘Ethics and Religious Culture’,” *Fides et Libertas – Secularism and Religious Freedom- Conflict or Partnership* (2012): 102-118; and others.

Muslim women<sup>21</sup> (at least in Canada). In fact, often socio-legal studies does not even employ the language of ‘religion’, favouring instead the language of ‘culture’, thus using the word ‘culture’ when actually referring to ‘religion’<sup>22</sup>. There is a concentration on ‘tolerating’ religion<sup>23</sup> so far as it does not disturb the Christo-normative assumptions<sup>24</sup> regarding the unthreatening ‘ideal’ of the ‘neutral state’. I include these discussions as context to my contention that religion itself and Judaism in particular is not bad or that which must be regulated. Indeed, *get* refusal is one site of interrogating the pretense of law’s secularism/neutrality<sup>25</sup>. I come to argue that nuanced socio-legal inquiries which acknowledge the mutual constitution of law and religion<sup>26</sup> are more suitable<sup>27</sup>. Consequently, legal pluralism, a method of inquiry and analysis concerning overlapping normative orders in specific social fields, per Engle Merry, Falk Moore and Griffiths<sup>28</sup>, and commensurability of vying legalities, per Glenn,<sup>29</sup> inspire my study. They allow

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<sup>21</sup> Natasha Bakht, “Moving Beyond Facial Equality: Examining Canadian and French Niqab-Bans,” in *Doing Peace the Rights Way: Essays in International Law and Relations in Honour of Louise Arbour*, ed. Fannie Lafontaine and François Larocque (Cambridge, UK: Intersentia Publishers, forthcoming); Amelie Barras, *Refashioning Secularisms in France and Turkey: The Case of the Headscarf Ban* (New York, NY: Routledge, 2015); and others.

<sup>22</sup> Wendy Brown, *Regulating Aversion* (Princeton, NJ: Princeton University Press, 2006); Seyla Benhabib, *The Claims of Culture* (Princeton, NJ: Princeton University Press, 2002); Avigail Eisenberg, *Reasons of Identity* (New York, NY: Oxford University Press, 2011); Will Kymlicka, *Multicultural Citizenship* (Gloucestershire, UK: Clarendon Press, 1995).

<sup>23</sup> Ibid.

<sup>24</sup> Tanja Juric, “Legitimizing Secularism: Developing a Critically Engaged and Informed Secularism to Serve Diverse Societies” (presentation, International Political Science Association Meeting, Montreal, QC, Thursday, July 24th, 2014).

<sup>25</sup> Though secularism is subtly in the background, it is not as central to this study, focused on the narratives of women who seek religious divorce.

<sup>26</sup> H. Patrick Glenn, “Are Legal Traditions Incommensurable?” *American Journal of Comparative Law* 49, (2001): 133-145; H. Patrick Glenn, *Legal Traditions of the World: Sustainable Diversity in Law* (New York, NY: Oxford University Press, 2007); Benjamin L. Berger, *Law’s Religion: Religious Difference and the Claims of Constitutionalism* (Toronto, ON: University of Toronto Press, 2015); Benjamin L. Berger “The Cultural Limits of Legal Tolerance,” in *After Pluralism: Reimagining Religious Engagement (Religion, Culture, and Public Life)*, ed. Courtney Bender and Pamela E. Klassen (New York, NY: Columbia University Press, 2010), 98-123.

<sup>27</sup> And in debating the place of religion in the public sphere, we need not focus solely on Islam (and the moral panic that seems to surround it).

<sup>28</sup> Sally Engle Merry, “Legal Pluralism”, *Law and Society Review* 22, (1988): 869-896; Sally Falk Moore, “Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study,” *Law and Society Review* 7, (1973): 719-750; John Griffiths, “What is Legal Pluralism,” *Journal of Legal Pluralism* 24, (1986): 1-56.

<sup>29</sup> Werner Menski, *Comparative Law in a Global Context: The Legal Systems of Asia and Africa* (Cambridge, UK: Cambridge University Press, 2006); H. Patrick Glenn, “Are Legal Traditions Incommensurable?” *American Journal of Comparative Law* 49, (2001): 133-145.

for the interaction and plurality of legal systems - religious and state, and these approaches give space for religion as a valid iteration of identity and valid legal system (contrary to other approaches). In particular, I build on and contribute to critical legal pluralism, based on Macdonald and Fournier's work, at times more implicitly than explicitly in this study, which is tied more closely to first person accounts of law and legal experiences, norms and knowledges, in this case, the stories of *mesuravot get*, framing them as law makers and mobilizers impacting and transforming social and legal norms<sup>30</sup>. In conducting this research, I embrace a new, interdisciplinary 'religious feminist' paradigm building on the work of Levmore and Greenberg Kobrin<sup>31</sup>, enabling engagement with Jewish law while embracing socio-legal methods and accepting a plurality of legal orders and remedies in line with similar methodological and theoretical projects in different contexts such as those by Bunting and Hirsch<sup>32</sup>. Additionally, this paradigm enables critical analysis of *get* refusal using feminist methods and methodologies<sup>33</sup> placing women's experiences at the centre, in the socio-legal tradition of gendered storytelling

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<sup>30</sup> Martha-Marie Kleinhans and Roderick A. Macdonald, "What is a *Critical Legal Pluralism*?" *Canadian Journal of Law and Society* 12, (1997): 25-46; Pascale Fournier, Pascal McDougall, and Merissa Lichtsztral, "Secular Rights and Religious Wrongs? Family Law, Religion and Women in Israel," *William and Mary Journal of Women and the Law* 18, no. 2(2012):333-362.

<sup>31</sup> Inspired by Rachel Levmore and Michelle Greenberg-Kobrin, to some degree (see note 18).

<sup>32</sup> Annie Bunting and Shadi Mokhtari, "Migrant Muslim Women's Interests and the Case of 'Shari'a Tribunals' in Ontario," in *Racialized Migrant Women in Canada: Essays on Health, Violence, and Equity*, ed. Vijay Agnew (Toronto, ON: University of Toronto Press, 2009); Shauna Van Praagh, "Changing the Lens: Locating Religious Communities Within U.S. and Canadian Families and Constitutions," *Arizona Journal of International and Comparative Law* 15, (1998): 125-141; Susan F. Hirsch, *Pronouncing and Preserving: Gender and the Discourses of Disputing in an African Islamic Court* (Chicago, IL: University Of Chicago Press, 1998).

<sup>33</sup> Ann, Oakley, "Interviewing Women: A Contradiction in Terms?" in *Doing Feminist Research*, ed. Helen Roberts and Paul Kegan (London, UK: Routledge, 1988), 30-61; Patricia Lina Leavy, "The Practice of Feminist Oral History and Focus Groups Interviews," in *Feminist Research Practice: A Primer*, ed. Sharlene Nagy Hesse-Biber (Thousand Oaks, CA: Sage Publications Inc., 2007), 149-190; Marjorie L. DeVault and Glenda Gross, "Feminist Interviewing: Experience, Talk and Knowledge," in *Handbook of Feminist Research: Theory and Praxis*, ed. Sharlene Nagy Hesse-Biber (Thousand Oaks CA: Sage Publications Inc., 2007), 173-198; Elizabeth Anderson, "Feminist Epistemology: An Interpretation and a Defense," *Hypatia* 10, no. 3 (1995):50 - 84; Sandra Harding, "Rethinking Standpoint Epistemology: What is "Strong Objectivity"?" in *Feminist Epistemologies*, eds. L. Alcoff and E. Potter (New York, NY: Routledge, 1993): 49-82; Sidonie Smith, *A Poetics of Women's Autobiography: Marginality and the Fictions of Self-Representation; Women, Autobiography, Theory*, (Bloomington, IN: Indiana University Press, 1987); Helene Cixous, *Writing the Feminine*, (Lincoln, NE: University of Nebraska Press, 1991); Audre Lorde, *Sister/ Outsider: Essays and Speeches*, (Trumansburg, NY: Crossing Press, 1984).

inspired by Brooks and Gewirtz and Weisbrod, to name but two<sup>34</sup>. As a result *get* refusal is revealed to be a form of domestic abuse some Jewish women may face and women refused a *get* are accurately exposed as active agents fighting for their right to religion and their right to divorce, rather than solely understood to be chained victims through a critical legal pluralist approach.

Here I would like to expand a bit further on three key aspects: *get* refusal as domestic abuse, critical legal pluralism, and the centrality of women's narratives. I make different claims about the connections between abuse and *get* refusal throughout the study, taking my cue from the women's own narratives and experiences. I examine and critique the intra-marriage dynamic as well as the marriage-community-state dynamic, including how community structures may contribute to the invisibility and/or persistence of domestic abuse, all of which provide the theoretical and methodological basis for exploring *get* refusal as a form of domestic abuse. In these contexts, I analyze the effectiveness and gaps of both state and religious formal legal norms. In particular, and although *get* refusal is understood as domestic abuse in variegated pockets, I highlight the detrimental disregard given to *get* refusal as a form of domestic abuse in the collective consciousness of Jewish communities at large and its leadership more broadly, including, in some cases, rabbis, and women's support groups particularly in the Toronto context.

Critical legal pluralism generally tends to focus on how individuals or groups treat law rather than focusing (exclusively) on how law treats them. Thus building on a critical legal pluralist approach might examine ways in which people decide whether particular laws or norms

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<sup>34</sup> Carol Weisbrod, *Butterfly, The Bride* (Ann Arbor, MI: University of Michigan Press, 1999); Heinzelman, Susan Sage and Zipporah Batshaw Wiseman. *Representing Women* (Durham, NC: Duke University Press, 1994); Peter Brooks and Paul Gewirtz, eds., *Law's Stories: Narrative and Rhetoric in the Law* (New Haven, CT: Yale University Press, 1998); David M. Engel and Frank W. Munger, *Rights of Inclusion: Law and Identity in the Life Stories of Americans with Disabilities* (Chicago, IL: University of Chicago Press, 2003).

are relevant to them and to what extent they will determine their behaviours. In the context of this analysis, I suggest throughout this study that the individual is a site of law creation- that she, the individual *mesurevet get*, is an agent in writing and applying ‘law’ herself- drawing on the interaction of formal and informal normative systems relevant to her experience and position. Critical legal pluralism also then highlights sites of interaction such as the need for lawyers and judges to understand Jewish law and its nuances as well as the brilliant tactic by one participant who turned a doorstep into a demand for the *get* at her synagogue, to name but two examples elaborated in the coming study. Individual women emerge as legal innovators and mobilizers who can (re)shape and produce law, legal, and social norms.

It is natural then that an approach contributing to the growing scholarship on critical legal pluralism might also embrace a methodological approach to research which takes seriously women’s experiences and narratives. The narratives woven throughout this study demonstrate the role of *mesuravot get* in changing norms; for example, in their legal demands for the right to religion and the right to divorce. In fact there are narratives opening each chapter indicating their centrality, but also enmeshed within each chapter which illuminate the lived realities of women refused a *get* while also bolstering the contentions made about a diversity of best solutions, the similarities and differences between New York and Toronto, and the heterogeneity of women who might be refused a *get*, among other things. Incorporating narratives based on primary interviews into socio-legal scholarship brings together feminist research methods and methodologies and critical legal pluralism in a way that elicits a form of disruptive storytelling.

My arguments echo Sally Falk Moore’s words, peppered throughout this study that legal change may not always result in social or behavioural change despite the fact that it is precisely such social and behavioural changes that are in fact the intended consequences of the legal

change. The reason for this is largely due to unexpected or unforeseen circumstances which pre-exist, but which are not anticipated. In other words, although the legal amendments or *get* laws intended to remedy *get* refusal and thus lead to normative social and behavioural changes, in reality, *get* refusal persists and existing social and legal dynamics within communities<sup>35</sup> are more forceful and potent than some (particularly those who argued for reform) would have.

Thus, through a critical analysis both from ‘outside in’ and from ‘inside out’, my findings include that legal remedies -both religious/*halakhic* and state- are not working as intended, including the *get* laws. In other words, *get* refusal continues as a phenomenon in New York and Toronto, and is not easily ‘corrected’ in a straightforward way by legislative initiatives. In addition, the dynamic or relationship between state and religious law in a particular jurisdiction can be fruitfully examined to understand why religious legal mechanisms might resist, or provide a counterweight to, state intervention in religious communities. For example the women’s narratives will illustrate that particularly in Toronto, *batei din* do not work for women. I have also found that pre-nuptial agreements have great potential to remedy *get* refusal and change the social consciousness around *get* refusal as abuse and extortion (although they will never be an exhaustive solution), but they too have some problems, particularly in Toronto (both legal/external and social/internal). Community reactions and activism can work and has worked in many cases (particularly when adapted to include ‘e-shaming’) and this remedy is the most traditional and least controversial but again, there is a void in Toronto (perhaps ironically since this is a remedy that would be very effective).

The narratives of women refused a *get* not only lead to the aforementioned findings regarding the existing remedies, they also highlighted a number of findings regarding the women themselves. In particular, individual women’s narratives are rich sources for real insight and

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<sup>35</sup> Including but not limited to Judaism and *halakha* in part.

innovative action and, by extension, collective action by women and their supporters can have significant impact on individual and institutional behaviour and attitudes within religious communities (for example, their legal demands for their right to religion and their right to divorce). The women also illustrated that *get* refusal impacts all types of Jewish women, at all levels of religious observance, and not just Orthodox. Coupled with that, all types of women, at all level of religious observance want a *halakhic*/ Jewish legal divorce- a *get*- and not alternatives. Thus there must be an understanding that alternative solutions will never be the viable solutions, they may work for some, but will never work for all<sup>36</sup>. There are two final key findings emerging from this research I would like to highlight here: the centrality of domestic violence in the lives of *mesuravot get* (in fact, *get* refusal is symptomatic of a pattern of other abuses). Moreover, the intra-marriage dynamic of power imbalance and abuse is as important to understanding the persistence of *get* refusal as are the actions of religious authorities and institutions. I also want to reiterate that religion or women's piety is not the cause of the abuse of *get* refusal; and the latter is a theoretical outcome that can be applied more broadly in other contexts.

The foremost policy outcome that is driven by my findings is that there needs to be a plurality of options available to women who are *mesuravot get* who are now in the shadows. Certainly there are limitations with this diversity, but ultimately, women will benefit with this approach, asserting their right to religion and to divorce simultaneously.

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<sup>36</sup> The Conservative movement also sees itself as following *halakha* even though their responses to certain questions of *halakha* are different. In a Conservative context, the terms remain the same: a man is the one who issues a *get* - so the problem of *get* refusal exists there, too- and although this was not reflected in the experiences of my participants, who were from a broad cross-section of the Jewish population, it is likely that for some women who see themselves as committed Conservative Jews, bound by *halakha* as the Conservative movement adjudicates it, obtaining a *get* is important, but for some, a valid Conservative *get* may do the job.



Drawing on Mnookin and Kornhauser's celebrated contribution, "Bargaining in the Shadow of Law: The Case of Divorce"<sup>37</sup>, I build on and develop a broad theoretical frame for the entire project. Mnookin and Kornhauser illustrated that state legal mechanisms are always factoring into divorce cases, even when individuals attempt to escape drawing on the law by avoiding courts and attempting instead to invoke alternative means of mediating marital breakdowns. So too, I build on their findings and illustrate in the context of *get* refusal that there is more to family law experience than legislation notwithstanding the persistent impact both state and religious legislation has on individuals (particularly women, in this case). I demonstrate this throughout the study in different ways and the women's narratives interspersed throughout the study reflect and confirm this claim. As a result, I come to the conclusion that women refused a *get* are in the shadows of legal pluralism, always impacted by family law legislation stemming from both spheres, and yet at times unable to employ remedies in one or both of those regulating jurisdictions. As a result, *mesuravot get* strategically and purposefully navigate between legal orders attempting to exact the most favourable outcomes, in particular, the *get*.

### **Deliberate Decisions - Sites of Analysis, Participants, Language**

I must address here, early on, my deliberate choices regarding my sites of analysis, my focus on certain participants, and my insistence on particular language. These selections are not made without consideration; they are calculated. I chose Toronto and New York as my sites of analysis for a plurality of reasons; the most expedient of which is that I live in Toronto and have many professional and personal contacts by way of family, friends, scholars, and activists in New York. Of course, those networks of affiliation helped with the research project significantly.

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<sup>37</sup> Robert H. Mnookin and Lewis Kornhauser, "Bargaining in the Shadow of Law: The Case of Divorce," *Yale Law Journal* 88, (1978-1979): 950-997.

However, upon closer reflection, New York and Toronto have more meaningful albeit more nuanced connections which make them appropriate comparators. This introductory assessment will highlight the comparative nature of this project, and more importantly it will underscore aspects surrounding *get* refusal that have been successful and that ought to be celebrated and proliferated (as well as shortcomings and malfunctions that ought to be acknowledged and corrected).

### Sites of Analysis: Similarities, Parallels & Scale, Diversity, Reciprocity

One of the first Jews in Canada, Lieutenant Aaron Hart, arrived from New York in 1760<sup>38</sup>. The evidence of the earliest Jewish settlement in the Toronto area was in York in 1817, when a Jewish marriage was recorded<sup>39</sup>. The 1846 census had twelve Jews living in the area. By 1849 a Jewish cemetery was established, and synagogues followed in the 1850s<sup>40</sup>. By the turn of the century there were three thousand Jews in the Toronto area. Jewish life in New York began about one hundred years prior to that of Toronto, in the mid 1600s<sup>41</sup>. Jewish life grew more rapidly there and by the turn of the century, there were approximately 400,000 Jews living in the New York area with numerous synagogues and other Jewish institutions<sup>42, 43</sup>.

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<sup>38</sup> Denis Vaugeois and Käthe Roth, *The first Jews in North America: The Extraordinary Story of the Hart Family, 1760-1860* (Montreal, QC: Baraka Books, 2012).

<sup>39</sup> Stephen A. Speisman, *The Jews of Toronto: A History to 1937* (Toronto, ON: McClelland and Stewart Ltd, 1979), 11.

<sup>40</sup> Stephen A. Speisman, *The Jews of Toronto* (Toronto, ON: McClelland and Stewart Ltd, 1979), 22.

<sup>41</sup> Abraham J. Peck, "Jewish New York: The Early Years Challenges and Triumphs since 23 Jews Landed in New Amsterdam in 1654," <http://www.myjewishlearning.com/article/jewish-new-york-the-early-years/>.

<sup>42</sup> <http://www.jewishvirtuallibrary.org/jewish-population-in-the-united-states-by-state>.

<sup>43</sup> Although New York and Toronto are *not* the capitals of their countries. In fact a small fraction of Jews (and often rather homogenous groups) live in either country's capital cities-Washington D.C. and Ottawa. Ottawa has between 12-14,000 Jews while Washington DC (not including Baltimore) has 28,000. <http://www.cija.ca/resource/canadian-jewry/basic-demographics-of-the-canadian-jewish-community/>; <http://www.jewishvirtuallibrary.org/washington-d-c-jewish-history>.

Today, New York and Toronto are the largest and most diverse Jewish centres in their respective countries. The Greater New York Area has the largest concentration of Jews in the United States with over two million of the roughly five million Jews living throughout the country<sup>44</sup>. The most recent numbers place the Jewish population of the Greater Toronto Area at approximately 200,000 and the Jewish population of all of Canada at about 390,000. This means, there are more Jews in the Greater Toronto Area than there are Jews in all of the rest of Canada combined<sup>45</sup>. While the Greater Toronto Area has the most significant Jewish population in Canada, and in this way is similar to the Greater New York area, it is nonetheless approximately one tenth of the size of the Jewish population of New York. I will revisit this point later in this project, when I elaborate on some of the differences between the two hubs. That said both New York and Toronto are the centre of the Jewish world in their respective countries (and some would go so far as to argue that New York is the centre of the Jewish world in the Diaspora, outside of Israel). There is a rich and significant diversity within each of these Jewish populations which is less common in many other locations where Jews live and which is thereby reflected in my participant pool.

While the demographics are noteworthy, this study looks beyond numbers. The significance of the comparison between these two centres is more important than size alone. Toronto and New York are also cities with great diversity both beyond and within Jewish communities and this is expressed not only by the level of Jewish *halakhic* observance, but in Jewish ritual observance, sexual orientation, languages spoken, ethnicity, national origin, among

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<sup>44</sup> This includes some cities in New Jersey roughly along the New York-New Jersey border, which have significant Jewish populations, <http://www.pewresearch.org/>.

<sup>45</sup> The next largest Jewish population centres in Canada are Montreal, with between 80-91,000 Jews and Vancouver with 26,000. Ottawa, Canada's capital has estimates between 11-14,000 Jews.

CIJA- The Centre for Israel and Jewish Affairs is a national, non-partisan, non-profit organization dedicated to improving the quality of Jewish life in Canada by advancing the public policy interests of Canada's organized Jewish community <http://www.cija.ca/resource/canadian-jewry/basic-demographics-of-the-canadian-jewish-community/>; Statistics Canada <http://www.statcan.gc.ca/eng/start>.

other identity markers. For example, Toronto and New York also each have large South African, South America, Russian, Bukharian, Middle Eastern (Persian, Syrian, Spanish Moroccan, French Moroccan), and Israeli Jewish populations. The diversity within these communities is evident also through schools, synagogues, and *batei din* which exist across all denominations. The size and diversity of Greater Toronto and Greater New York are indicative of the broader trends in both locales, beyond Jewish communities. The culture and diversity of each of these large and vibrant metropolises echoes the diversity that exists within their Jewish communities.

New York and Toronto share more similarities than their large and diverse Jewish populations. In fact there has been significant exchange of ideas and movement of bodies across borders between these two hubs for well over two hundred and fifty years<sup>46</sup>. Consequently, there is a deeper and sustained historical relationship between these two metropolises which endures to this day. I want to emphasize that by choosing these two cities as comparators I am contributing this longstanding tradition of reciprocity of ideas.

In 1909, New York boasted a Jewish Arbitration Court known as the Kehillah (Hebrew for congregation)<sup>47</sup>. It was not a *beit din* and it was not religious, but nor was it secular (it did not refer to the Talmud, or to Civil Codes or jurisprudence)<sup>48</sup>. The Court existed parallel to the *Beit Din* and there was extensive overlap, with many family law matters arising at *Kehillah*<sup>49</sup>. The arbitration panels most often consisted of one rabbi, one lawyer, and one layman, all volunteers, and decisions were often announced in Yiddish and often reported in (Yiddish) newspapers or

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<sup>46</sup> Stuart Schoenfeld, "The Jewish Religion in North America: Canadian and American Comparisons," *Canadian Journal of Sociology* 3, no. 2 (1978): 209-231; Irving Abella, *A Coat of Many Colours, Two Centuries of Jewish Life in Canada* (Toronto, ON: Lester and Orpen Dennys Limited, 1990); Robert J. Brym, Morton Weinfeld and William Shaffir eds., *The Jews in Canada* (Toronto, ON: Oxford University Press, 1993).

<sup>47</sup> Joseph Kary, "Judgments of Peace Montreal's Jewish Arbitration Courts, 1914-1976," *American Journal of Legal History* 56, no. 4 (2016): 436-489, 5.

<sup>48</sup> Joseph Kary, "Judgments of Peace" *American Journal of Legal History* 56, no. 4 (2016): 31.

<sup>49</sup> Some of the matrimonial cases that came through the court and which required dissolution via a religious court and/or civilly, were referred to *batei din* or civil courts. *Ibid*, 30.

even aired live on the radio. By 1914, influenced by New York, Toronto had established its own version of the New York Jewish Arbitration Court. The Jewish Arbitration Court of Toronto decided 135 cases in its first nine months<sup>50</sup>. Thus the arbitration courts already signalled the complex and nuanced ways in which Jews navigated overlapping social and legal orders and expectations which in turn informs today's strategic and purposeful navigation of legal systems by women refused a *get*, illustrated throughout this study.

Moreover, as the largest Jewish city in the world throughout the 20th century, New York was the capital of Jewish culture in North America and its Yiddish-language newspapers, which reported on the *Kehillah* and the cases that flowed through the New York Jewish courts, were read widely by Torontonians Jewish immigrants<sup>51</sup>. While today, the exchange of ideas occurs largely over the internet and social media, historically the Jewish communities of New York and Toronto shared ideas through the popular press. Particularly during the early 20<sup>th</sup> century, many Yiddish papers were published both in the New York and Toronto areas. Some papers published the same or similar editions in both locations, such as *Der Forverts* or *The Jewish Daily Forward*, while others swapped and reprinted features and stories under different banners such as the *Keneder Adler* or *Odler*, or *The Canadian Eagle* or *The Jewish Daily Eagle* (which went to press beginning in 1906)<sup>52</sup>. Picking up on earlier discussions about media representations of agunot in chapter six, both the New York and Toronto papers exchanged and reprinted features about missing/deserting husbands from each city, known as *Galeriye der Farshvundene Mener*,

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<sup>50</sup> Ibid, 18.

<sup>51</sup> Ibid.

<sup>52</sup> I reviewed original copies of some of these newspapers during my archival work in New York and Toronto. These secondary sources further address some of these newspapers and their significance: Bluma Goldstein, *Enforced Marginality: Jewish Narratives on Abandoned Wives* (Berkeley, CA: University of California Press, 2007); Isaac Metzker, ed., *A Bintel Brief: Sixty Years of Letters from the Lower East Side to the Jewish Daily Forward* (Garden City, NY: Doubleday, 1971); Anna R. Igra, *Wives Without Husbands: Marriage Desertion and Welfare in New York, 1900-1935* (Chapel Hill, NC: University of North Carolina Press, 2007); Bill Gladstone, "Through the Eyes of the Eagle", August 22, 2011, [www.billgladstone.ca](http://www.billgladstone.ca).

(or *A Gallery of Vanished Husbands*) well into the mid 20<sup>th</sup> century. In fact, even today *The Jewish Press* (the largest independent Jewish newspaper in the United States), which is published in New York prints a *seruv* listing<sup>53</sup> including men from Toronto.

Today much of the rabbinic leadership in Toronto across all denominations has come through New York. The Union of Reform Judaism (URJ), Jewish Theological Seminary (JTS), and Yeshiva University (YU) are leading institutions which ordain Reform/Reconstructionist, Conservative, and Orthodox rabbis, respectively<sup>54</sup>. There are also numerous Ultra Orthodox *yeshivot* which ordain Ultra Orthodox rabbis, some of which opened *kollels*, or institutional gatherings of Talmudic learning in Toronto. Canadian students often travel to these educational and religious institutions and American graduates of these institutions often come to lead Canadian congregations after graduating. In fact, each of these American institutions based in New York has their Canadian offices in Toronto. Moreover, governing bodies of rabbis, such as the Rabbinical Council of America (RCA) (Orthodox) and The Rabbinical Assembly (Conservative) both of which include numerous Toronto rabbis are also located in New York. Thus there is exchange not only of information; there is reciprocity among rabbinic leadership and organizations as well<sup>55</sup>. Again, this is a sustained, historical tradition. For example, in 1933, in the shadows of the stock market crash and the Great Depression, principal, Rabbi Treiger, of the Brunswick Talmud Torah (located on Brunswick Street, in Toronto), informed his board that the school's teachers had not been paid in 24 weeks and were threatening to quit. When the

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<sup>53</sup> A *seruv* is an order of contempt issued by a *beit din* for failing to appear to dissolve the marriage with a *get*. (The Torontonians listed as being in contempt did *not* receive their *seruv* from the Toronto *Beit Din*, as the Toronto *Beit Din* does not follow protocol and does not issue these orders of contempt, as I have illustrated earlier and will elaborate further below).

<sup>54</sup> This contention was made in Stuart Schoenfeld's important work in 1978, but remains true today. Stuart Schoenfeld, "The Jewish Religion in North America: Canadian and American Comparisons," *Canadian Journal of Sociology* 3, no. 2 (1978): 209-231, 218.

<sup>55</sup> However, the New York rabbis or RCA affiliated rabbis are not on *Beit Din* hence we do not see a New York influence on matters of divorce.

school was finally forced to temporarily close in 1935, an emergency campaign was launched by board member and businessman, Samuel Godfrey, and with the help of a professional fundraiser the school was saved with money raised in New York City. This endeavor was the predecessor for the Federation of Jewish Philanthropies of Toronto.<sup>56</sup>

Jewish services, cultural and ritual goods, as well as kosher products are also in constant exchange between these two centres<sup>57</sup>. In fact, Artsroll, the largest printing/publishing house of Jewish prayer books and materials in the Diaspora is located in the Greater New York Area.

These books fill most, if not all, of the Toronto synagogues. There are even chartered Jewish bus services that make the New York-Toronto, cross-border trip a few times per week. Moreover, among the Orthodox and Ultra Orthodox, the New York-Toronto relationship is also a central factor in match-making (and thus perpetuating this connection for future generations).

On the particular issue of *get* refusal, New York and Toronto share one significant commonality: both have the potential to benefit from the *get* laws on the books in each respective jurisdiction (at least from the perspective of the women) and yet are not able to necessarily rely on state regulation to protect them from being refused or extorted a *get*. In other words, both Toronto and New York have seen state legal regulation attempting to remedy a Jewish legal phenomenon, both of which were enacted at roughly the same time and both of which have had unintended consequences result. Although the legislation's enactment is noteworthy and teaches us much about regulating religious pluralism or differences, it has not served as the impactful remedy it was originally hoped to be (perhaps unexpectedly). As I establish in chapter two and explore throughout the study, the *get* laws directly targeted and attempted to remedy *siruv get*, or *get* refusal, by lessening a recalcitrant husband's bargaining power in civil courts when refusing to

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<sup>56</sup> Jack Lipinsky, *Imposing Their Will: An Organizational History of Jewish Toronto, 1933-1948*, (Kingston, ON: McGill-Queens University Press, 2011).

<sup>57</sup> As can be seen from local advertisements such as *The Community Link*, *The Toronto Grapevine*, among others.

grant a wife her *get*. The first New York Get Law (NYGL1), as it has come to be known, came into force in 1983 with an amendment to the *Domestic Relations Law* where as the second New York Get Law (NYGL2) was an amendment to New York State's equitable distribution laws in 1992<sup>58</sup>. Around the same time, amendments were made to laws in Canada both federally to the *Divorce Act* in 1985, and provincially in Ontario to the *Family Law Act* in 1990<sup>59</sup>. To date, these are the only *get* laws in North America. The civil amendments to the state laws in New York and Toronto occurred around the same time because women's support and advocacy groups were strong, active and united at that time. The International Coalition for Aguna Rights, ICAR, was founded by 1990<sup>60</sup> by Canadian activist, Norma Joseph, American activist, Rivka Haut, as well as others. Indeed both in New York and Toronto women's organizations played a key role in lobbying governments and organizing communal, grassroots initiatives which included community/pulpit rabbis and laypeople from across all denominations and even significant representation from other religions that might benefit from the amendments, such as Muslim leaders. The Ontario Jewish Archives made reams of meeting notes, event proceedings and internal memos available to me from various women's groups in Toronto, who were working with women's groups in New York, including B'nai Brith Women, Jewish Women International Canada, and others, who each had dedicated committees to addressing the *aguna* issue at the time in Toronto Thus, the establishment of *get* laws in New York and Toronto is another way in which there was, and continues to be exchange between these two hubs of Jewish life.

As this analysis progresses, I argue that to some degree, the impacts of the state remedies have been similar in both locales, and yet in some distinct ways they have also been quite

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<sup>58</sup> NYS, *Domestic Relations Law*, Section 253 (1-9), 1983; NYS, *Domestic Relations Law*, Section 236(B)(5) and (6)(d), 1992.

<sup>59</sup> *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.) sec. 21.1; *Family Law Act*, R.S.O. 1990, c. F.33 subsections 2(4) to 2(7).

<sup>60</sup> Norma Joseph, founding member of ICAR, in person conversation, January 15, 2017, New York.



different. The similarity is that women - both American and Canadian- are not able to necessarily rely on state regulation to protect them from being refused a *get* or extorted for a *get* in either New York or Toronto. In other words, though the legislation's enactment is noteworthy and teaches us much about regulating religious pluralism or differences, and about the positive interactions that can occur when state and religious law meet, it has not served as the impactful remedy it was originally hoped to be. This is an unexpected outcome of the regulation. As well, the narratives illustrate that many women -both American and Canadian- do not feel the state legal system is any more beneficial or detrimental than the Jewish legal system; neither system can adequately protect them, despite best efforts<sup>61</sup>. One *mesurevet get* explained, "*It became clear that secular family courts in Nassau County are extremely unsympathetic to the plight of aguna even despite the prominence of Jews in the area ...or perhaps because of that*"<sup>62</sup>. This participant was networked with a group of *mesuravot get* on Long Island in various communities and at various level of observance. Another woman expressed, "*a religious right is not one of the things you deal with in court. Court is for 1) custody and 2) assets. Courts aren't equipped to deal with religious issues and rabbinic courts aren't equipped to deal with court issues*"<sup>63</sup>. She reiterated later in our interview, "*there is always a risk with a civil judge who doesn't know religion and its nuances... (and so) it's all too easy for a civil judge to view this right for a woman as a man's asset and enable the negotiation/ extortion of a get for other legitimate civil matters in return, like custody and other assets*"<sup>64</sup>. Echoing these sentiments, I also heard things like, "*If you ask me, it wasn't the secular court that got me my get in the end; it was a miracle.*

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<sup>61</sup> To clarify women in the United States and Canada expressed that neither the state and Jewish legal systems/courts help women secure a *get* nor do they adequately protect women when they are not committed to each of those objectives. One is not necessarily more favourable or beneficial than the other.

<sup>62</sup> D.D. October 24, 2013.

<sup>63</sup> S.H. October 29, 2013.

<sup>64</sup> Ibid.

*People have to sit with secular court and explain the issue, especially when it's only the women who want a get. Secular courts and judges don't always get it*'<sup>65</sup>.

However, one impact of state regulation that has been divergent between the two locales is the ways in which *get* refusal was dealt with subsequent to the state intervention. In Toronto, as will be established, complacency, indifference, denial, and silence were principally the reaction of communities, rabbis, the Jewish media, and the rabbinic court. This has not been the case in New York. In New York it seems the difficulties surrounding the legislation are accepted and acknowledged by some communities (including the modern Orthodox and pockets of ultra Orthodox as well), some rabbis, the Jewish media, and some courts including the Beth Din of America, whereas that is not the case in Toronto. In fact often there exists the perception that the regulation was so successful it 'solved the aguna problem'<sup>66</sup>.

I have illustrated here that the relationship between New York and Toronto is well-established and in many ways, it endures and upholds a long-standing tradition of reciprocity. While there are lasting connections between the two locales that run deep, there are nonetheless some important points at which they diverge (at times significantly) and these will be explored in the coming chapters. Nonetheless the rich and enduring relationship between these two locales supports my deliberate decision to choose them as comparative sites of analysis<sup>67</sup>.

### Participants

Along with the purposeful decision to explore *get* refusal in New York and Toronto, I also made the decision to focus on the narratives of the *mesuravot* get themselves- the women

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<sup>65</sup> A.A. June 6, 2014.

<sup>66</sup> John Syrtash, on numerous occasions. Syrtash is a family law attorney, instrumental in Canada's *get* legislation.

<sup>67</sup> Doing a three city study proved to be beyond the scope of this project. Montreal is being an important Jewish city in Canada with historical and cultural significance to the makeup of Jewish communities in Canada. However, Montreal is no longer the Jewish hub of Canada, as it once was. Perhaps future research will include Montreal.

experiencing the phenomenon. Over the course of my research I did interview broad and inclusive stakeholders such as rabbis, *dayanim*, activists, feminists, academics and lawyers however, these were to buttress the centrality of the ‘true experts’ narratives- that is the women who have been refused a *get* themselves. From time to time I have been asked at conferences and among communities ‘why did I not interview men?’ This is of course, a loaded question. At this point, the narratives of men are beyond the scope of this study for a number of reasons. Men who perpetrate this type of domestic violence do not need another platform to attempt to rationalize their abuse, they are already centre stage in much of the existing literature (particularly the Jewish law and even to an extent, the early Jewish feminist literature), and certainly they are centre stage in communities and in courts. In other words, men have generally benefitted from having a voice that is heard and having legal agency. Yet, the women who are refused a *get* have been on the margins rather than the main stage, and I am attempting to rectify that. This is my small way by creating an inclusive space. There exists the rare occasion where a wife refuses to accept the husband’s issued *get* but men have alternative ways out of Jewish marriage and far lesser social and legal ramifications (regarding stigmas and *mamzerut*<sup>68</sup>) and so they are not in need of a stage in the same way as women. Moreover, *get* refusal is overwhelmingly gendered, impacting women significantly more than men and hence my mindful choice to focus on them. I also decided against interviewing children impacted by *get* refusal. That was beyond the scope of this study, but that would be a rich analysis worth examination in future work. Again, while I did interview others in the field of *get* refusal, such as rabbis, *dayanim*, activists, scholars, and lawyers, their narratives serve only to buttress the central narratives of the women and the arguments herein.

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<sup>68</sup> A *mamzer* is considered to be illegitimate offspring, a status which holds severe consequences for those who bear it. This will be elaborated in chapter two. *Mamzerim* is the plural *mamzerut* is the general status. These decisions and contentions will be elaborated in the coming chapters.

## Language

I also made deliberate decisions regarding language. Early on I discovered that the term *aguna* encapsulated both too much and too little. An *aguna* is someone who is anchored to an unwanted marriage, tied down, or delayed from remarrying<sup>69</sup> either because of a husband's disappearance, his mental incapacity to give a *get*, or simply his recalcitrance (as was explained above); this definition was too broad for this study. Simultaneously, women may only get the legal designation of becoming an '*aguna*' after a period of time during which a *beit din* must issue *hazmanot*, and ultimately a *seruv*<sup>70</sup>; this was too narrow because *batei din* do not always issue *seruvim* and yet women may still be refused a *get*, and stuck in limbo status. Consequently, I determined that calling the women '*mesuravot get*' or women refused a *get* was both more direct in reflecting the true status of those women but also an activist statement in opposition to the co-opting of the term *aguna*. To be clear and for example, there may not necessarily be women legally designated as '*agunot*' in Toronto, and yet, there are women who have been refused a *get*. I refuse to continue to undercut and silence these women and so I use the term *mesuravot get* throughout the study to reflect the reality that there are women refused a *get*, tied to an unwanted marriage, even if there is no *seruv* and they are not technically, *halakhically* designated as an *aguna*.

My language is also decisive regarding the term 'victim'. Being that women have been silenced and abused, the term is fitting and yet it is an inadequate representation of the multitude of women I met who were refused a *get*. The women I met were active agents juggling numerous responsibilities and vigorously attempting to exact a *get*. They are not passive, submissive, or

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<sup>69</sup>Book of Ruth 1: 11-13; Babylonian Talmud: Tractate Baba Kama, 80a; Rashi; Babylonian Talmud: Tractate Baba Batra, 73a.

<sup>70</sup>*Hazmana* is literally an invitation, but in this context it is a letter or summons to appear to *beit din*. *Hazmanot* are the plural. A *seruv* is an order of contempt. *Seruvim* are the plural.

powerless as the term often connotes and therefore I avoid it altogether. The women are powerful, and labelling them as victims (only) conceals their agency and strength.

### **Chapter Breakdown**

Chapter two lays out the necessary background to be equipped to engage thoroughly with the subsequent analyses. The chapter sets up a primer to the Jewish laws around marriage and divorce, incorporating some legal history and legal precedents in order to establish a working understanding of *halakhic*, or Jewish, legal development and its objectives. Thus, the chapter will outline some of the advancements made in *halakha* which empowered women as well as outlining the persisting phenomenon of Jewish divorce, or *get* refusal. Along with historical background, the chapter incorporates legal background and contextualizes the proposed and contemporary remedies, both the proposed ‘external’ or state legal remedies as well as the proposed ‘internal’, *halakhic* legal remedies such as *get* laws and *halakhic* prenuptial agreements, to name but two.

Chapter three sets up the theoretical and socio-legal context, focusing on law, religion, and culture, exploring debates in socio-legal literatures and existing studies of *get* refusal, thus situating this study of *get* refusal in a specific, socio-legal, legal-pluralist context. There I begin to consider questions about the dynamic relationship between law and religion as I reflect on the extent to which legal regulation impacts religious social norms and the extent to which religious social norms impacts legal regulation in the case of Jewish divorce in Toronto and New York and/or in what ways. The historical tradition of Judaism interacting with the state legal systems with which it was in contact comes to bear on these considerations and will also be considered. In particular, my discussions there illustrate the messy nexus of law and religion in the context of

get refusal and the legal pluralist remedies that have emerged. This analysis situates my study squarely within the field of Socio-Legal Studies. I come to legal pluralism as the socio-legal approach that takes religion seriously as a valid iteration of identity and parallel legal system. In other words, the eschewing or “casting out” of religion<sup>71</sup> has created a tension or gap in the socio-legal field, and in shifting the field’s understanding of religion by considering legal pluralism enriches our understanding of law and religion in socio-legal studies<sup>72</sup>. Consequently, framing this research around the principles of legal pluralism will be elucidated. In addition, (and as an extension or development stemming from legal pluralism,) I will elaborate here on the central role of critical legal pluralism in the study, which supports the feminist and socio-legal approaches of storytelling and placing the subjects at the centre of the legal phenomena, also at the centre of the scholarly analysis, accurately reflecting their roles as active socio-legal agents who impact law just as it impacts them. I must also situate the study among the existing discourses within the literatures discussing *get* refusal, exploring some of the key contributions of these literatures, at the nexus of law, religion, gender, and storytelling. As a result, the benefits and lessons of the existing research will emerge, including those contributions made by John Syrtash, Pascale Fournier, and Susan Weiss. I will utilize the existing contributions, particularly the adaptation of critical legal pluralism, as a springboard for this study.

In chapters four-six, using both interviews<sup>73</sup> and archival sources<sup>74</sup>, I create a space of inclusion for women’s historiography of marriage, focusing primarily on voicing the void of the

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<sup>71</sup> Sherene Razack’s Term, *Casting Out: The Eviction of Muslims from Western Law and Politics* (Toronto, ON: University of Toronto Press, 2008).

<sup>72</sup> Ginnine Fried, “The Collision of Church and State: A Primer to *Beth Din* Arbitration and the New York Secular Courts,” *Fordham Urban Law Journal* 31, no. 2 (2004): 633-655; Suzanne Last Stone, “The Intervention of American Law in Jewish Divorce: A Pluralist Analysis,” *Israel Law Review* 34, no. 2 (2000): 170-210.

<sup>73</sup> Douglas D. Heckathorn, “Respondent-Driven Sampling: A New Approach to the Study of Hidden Populations,” *Social Problems* 44, (1997): 174-199; Douglas D. Heckathorn, “Respondent-Drive Sampling II: Deriving Valid Population Estimates from Chain Referral Samples of Hidden Populations,” *Social Problems* 49, (2002):11-34;

women refused a *get*<sup>75</sup>, while examining the overlapping messiness of social norms confronted with Jewish and state laws. In discussing the distinct methodological and epistemological considerations arising from the research design, chapter four will describe the ‘religious, feminist approach’ taken in this analysis, it will probe the consequences of my own membership in an Orthodox Jewish community illustrating the potential risks as well as benefits of my positionality as an ‘insider’<sup>76</sup>, and it will consider the challenges with the push to quantify *agunot*. Chapter four will also address more fundamental considerations regarding research methods such as: how many participants were included in the study, how I found them, where and when we met, among other considerations. In chapter five I ask particularly how these muddled entanglements are experienced and navigated by women from within the religious culture and how they are perceived by the Jewish culture and communities at large. This chapter takes a closer look at narrative excerpts from *mesuravot get*’s stories, picking up on key words and themes and analyzing the gendered stories of *siruv get*. The greater part of this chapter will highlight the lived realities of *mesuravot get*, revealing what is most often invisible in the mainstream discourses. Placing the women’s voices at the centre of our analysis, this chapter explores the questions driving this study explicitly through the women’s own perspectives and experiences. Using the method of *milot manchot* or ‘leitworts’ (used in the study of Biblical narratives) and the patchwork quilt metaphor (used by Deleuze and Guattari) allows us to explore both the

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Bruce L. Berg, *Qualitative Research Methods for the Social Sciences*, Seventh Edition (Needham Heights, MA: Pearson: 2001).

<sup>74</sup> Carolyn Steedman, *Dust: The Archive and Cultural History* (New Brunswick, NJ: Rutgers University Press, 2002).

<sup>75</sup> Marjorie L. DeVault, and Glenda Gross, “Feminist Interviewing: Experience, Talk and Knowledge,” *Handbook of Feminist Research: Theory and Praxis*, ed. in Sharlene Nagy Hesse-Biber (Thousand Oaks, CA: Sage Publications Inc., 2007); Patricia Lina Leavy, “The Practice of Feminist Oral History and Focus Groups Interviews,” in *Feminist Research Practice: A Primer*, ed. Sharlene Nagy Hesse-Biber (Thousand Oaks, CA: Sage Publications Inc., 2007), 149-190; Ann Oakley, “Interviewing Women: A Contradiction in Terms?,” in *Doing Feminist Research*, ed. Helen Roberts and Paul Kegan (London, UK: Routledge, 1988), 30-61.

<sup>76</sup> Sandra Acker, “In/out/side: Positioning the Researcher in Feminist Qualitative Research,” *Resources for Feminist Research* 28, no. 1 and 2 (2000): 189-208; B. Mullings, “Insider, Outsider, Both or Neither: Some Dilemmas of Interviewing in a Cross-Cultural Setting,” *Geoforum* 30, No. 4 (1999): 337-350.

exceptionality and the generalizability of particular narratives. It is based on these narratives that I come to much of the analyses that follow, informing both the comparisons and the conclusions reached in this study.

In chapter six, I make a point of exposing aspects of *get* refusal which have heretofore been hidden from view such as the correlation between domestic violence and *get* refusal, “e-shaming” as activism and agency, and an analysis of the (at times, troubling) imagery associated with *get* refusal. The use of social media by *mesuravot get* to assert their agency and in galvanizing an updated version of *kherem* or ‘e-shaming’ will be investigated, inspired by Rae Anderson’s piece “Three Voices”, Fuyuki Kurasawa’s model of iconography (originally used in the context of contemporary forms of slavery), and Roman Williams and Kyle Whitehouse’s “visual sociology of religion”. *Get* refusal as a distinct site of inimitable and dishonorable domestic abuse will be examined relying on analyses that explore the nexus of religion and domestic violence, such as the work of Nancy Nason-Clark, Robin Fretwell Wilson, Rabbi Dr. Abraham Twerski, and others. Finally, this chapter explores the culture of ‘*get* giving’ that has developed into an acceptable bargaining tactic to exact civil concessions. (There is a collection of images to be read in tandem with the first section of this chapter).

In chapters seven and eight, building off of the lessons emerging from the narratives of *mesuravot get*, I address the significance of my findings, highlighting the similarities and differences between my sites of analysis and I propose some explanations for the disparities, as I interweave the plural strands of analysis together. Comparing and contextualizing the sites, using the narratives as the grounding enables us to consider the (socio-legal) gaps between the perceptions and the realities existing within communities and in existing literatures, considering the over-arching question, how have legal regulation and social norms impacted one another and



how have women refused a *get* experienced the consequences. I elaborate on the perceptions versus the realities, reiterate my conclusions, and reflect on where we might go from here.

## **Chapter Two - Contextualizing: Jewish Family Law Past and Present**

*I was married at the age of 21. I was married more than 25 years. Then I was an aguna for close to five years. My husband was a drug addict and alcoholic and had been through many rehabs.*

*In retrospect, I don't think it's about money or extortion; rather it's all about control.*

*The get law here in New York did nothing to protect me because I was the plaintiff. ..This was not explained to me- that you have to be the defendant for the law to be effective. Anyway, because I had to go to civil court first, because I needed order of protection, I became the plaintiff.*

*The secular judge was resistant to putting my husband in contempt of court ...until 3-4 years later... In the mean time, ORA picketed but even that didn't help. Ours was a well-known case at the time but he wasn't embarrassed in Boro Park with ORA posters everywhere. Although come to think of it, maybe that is what finally did it? I'm not sure why he finally gave the get.*

*There were no prenuptial agreements being signed in religious communities at the time of our marriage. And what do I think about it now?... well, it's ok but who really enforces it? Beit Din has no power to enforce the money owed as maintenance so that gives power to secular court, away from halakha/rabbis. Even if people are okay with this, it is still more time and costly to the wife and so I don't think they'll help. Although both my daughters signed them when they got married but not my sons...*

*If you ask me about the possibility of state remedies, I do think it should be possible for secular remedy to solve iggun. We should be able to go there for help like I thought the get law could do... But, I also think that Beit Din should issue a psak that if a guy gives a get because of contempt of court, it IS still halakhically acceptable!*

*What's the solution? I'm frum...but....Rabbi Rackman's court makes sense- I went there while I was an aguna and got an annulment because of the drugs and non-support of wife as per ketuba. I believe these behaviours should be viewed as breach of (ketuba) contract because a woman should be allowed, not right away, but after some number of years to go to Beit Din for these types of issues – fraud and remedies like hafka'ot or mekach taut should be permitted. But, “alternate Beit Din” is dangerous because as it is, in the communities, women are made to feel like chopped liver. I had a 10 year old son- no one offered to go to shul with him, or to kiddush...*

*I still needed a get, but it felt good to do something.*

*Because a lot of rabbis have their heads in the clouds- if it doesn't touch them or it if wasn't their daughters than they aren't aware- they need to be made aware and do whatever it takes to modify halakha to change things. Women are losing their child-bearing years and we need to replenish our population after the Holocaust. I'm in support of anything short of violence (although some friends sponsored kiddush in honour of Mendel Epstein the week he was arrested).*

*Beit Din was made aware of the situation and were happy to be vehicle to help me, but it left bitter taste in my mouth...I've lost tremendous respect for the word 'rabbi'. I can't give respect to a title that was uncaring and disappointing. I don't stand up for them anymore when they enter a room. They kept saying, "what more can you give him". I was my own advocate and the rabbis can do more.*

*That said, there must have been a reason that Hashem kept the get from me for that exact number of years until the point when I was meant to get it. It strengthened my emuna because logically it makes no sense, so you have to look higher or deeper; there must be some reason Hashem is doing this, there must be a plan but you just don't know it at the time.*

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*We were married in 1986. We had 5 kids and in 2007 I filed for divorce and then spoke to a beit din.*

*I originally come from a very Orthodox family, they were mostly Chasidic, though my husband was more modern, not really affiliated. I consider myself to be Modern Orthodox.*

*After the 2<sup>nd</sup> hazmana from Rabbinical Council of America he agreed to go to badatz of Lakewood, a very stringent beit din. He said he'd give the get for the civil, but schlepped on for 6 years. I just got my get this past spring, but technically I was not considered an aguna... He outsmarted batei din. It bothered me that he was able to one up them- by requesting changes in batei din, like a change of venue, he basically successfully halted the hazmana and serv process- because this way I was not even deemed an aguna and his name couldn't even be in the press- but I was still without a get for years.*

*The New York Get Law had no effect because I was the plaintiff but I only found out about this catch once it was too late, once I was already in court.*

*My mother-in-law also paid my father-in-law for her get, by the way.*

*Are bottom up approaches ever going to change someone who knows they have something over you? It's power. Beit din should have power to issue a get with/if you have enough reason. I also think that secular solutions are good, they can't hurt. But secular remedies won't change religious behaviours. After seeing this though, it puts religion in a negative light. It makes religion seem negative because it's my children's father who is not religious, yet able to do this- to manipulate religion...*

*I would have done anything for the get it separates your neshama from each other and that is what I wanted - to be finished in that sense. I didn't want to date or remarry at that time. It made me question my religion at the time but I have no bad feeling toward rabbis. My kids also questioned.*

*It is so frustrating that nothing can be done when they can come up with solution if they wanted to. Who's gaining by not doing this?*

In this set of narratives, both women discuss the potential successes of civil and religious remedies including *get* legislation, prenuptial agreements, annulments, as well as their own suggestions for best practices. Although both these narratives are from women in the Greater New York area, they similarly reflect the sentiments of Torontonians women, their frustrations and their inability to rely on the consistency and efficacy of the proposed remedies to date- both civil and religious. These narratives foreshadow and give specific examples of some of the proposed remedies on which I elaborate in the coming chapter and are tangible examples of Jewish and civil divorce law in action.

In addition to picking up on many aspects of Jewish family law and state law discussed in the coming chapter, the narratives also highlight some important facets which I develop further throughout the study. For example, the women are reflecting the need for a 'grab-bag' or plurality of remedies indicating that different women will be comfortable with different mechanisms or legal orders, rather than a uniform, 'one-size-fits-all-approach'. The narratives also illustrate that women tend to have complex relationships with their faith and religious

leaders rather than blaming them for their husbands' abusive refusal of a *get*. Ultimately, these narratives, like all those included in this study, and particularly those in between chapters, which are given space rather excerpted, highlight the importance of women's socio-legal storytelling which is in keeping with feminist principles of research as well as principles of critical legal pluralism; both of which seek to place women at the centre of the analysis, accurately reflecting them as active participants who have an impact on both social and legal changes.

In this chapter I begin to untangle the intricate system of Jewish law regarding marriage and divorce by way of background. I briefly establish the historical context by inserting samplings of the well-established interconnectedness or reciprocity between Jewish and state legal systems regarding family law throughout the chapter and shedding light on their modern-day application. I also introduce and contextualize the contemporary remedies to *get* refusal, including the *get* laws in New York and Toronto<sup>77</sup>, and the movement toward prenuptial agreements, all of which are legal-pluralist solutions aiming to remedy a Jewish legal phenomenon. Thus this chapter is meant to equip the readers with the necessary framework, via historical and legal background, to readily engage with the subsequent analyses, arguments, and primary research in a meaningful and thorough way.

### **Jewish Family Law Primer**

While this subsection may be dense for those unfamiliar with the evolution of Jewish family law, for an in-depth understanding of the significance of the issue of *get* refusal, its

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<sup>77</sup> *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.) sec. 21.1; *Family Law Act*, R.S.O. 1990, c. F.33 subsections 2(4) to 2(7); NYS, *Domestic Relations Law*, Section 253 (1-9), 1983; NYS, *Domestic Relations Law*, Section 236(B)(5) and (6)(d), 1992.

impact on women in contemporary times, and its interplay with legal pluralism in Toronto and New York, it is imperative to first (briefly) examine the Jewish legal system and its functions, as they have developed over many centuries. Indeed, for thousands of years Jews have been adjudicating with their own court system composed of *batei din* and in accordance with *halakha*<sup>78</sup>. *Halakha* means law but its literal translation is ‘the way on which one goes’ and *beit din*, is ‘house of law’ or rabbinic court or tribunal, where matters are adjudicated. *Halakha* is an entire legal framework that, depending on how observant one is, governs every aspect of one’s life and behaviour. *Halakha* is based on the written law of the Bible or Old Testament given by G-d to Moses on Mount Sinai, and the oral law which was written, developed, and eventually, compiled and codified, by rabbinical authorities in the *Mishna* (200 C.E.) and *Talmud* (400 C.E.-*Talmud Yerushalmi*; 500 C.E. *Talmud Bavli*). The Code of Jewish Law includes numerous other sources of *halakha* which are slightly more contemporary including the *Shulkhan Arukh* (written in Tzefat, Israel and published in Venice in 1500 C.E.) and works by Maimonides (1135 Spain-1204 Egypt) and which offer interpretation and explanation of the written, Biblical law and oral law preceding.

The doctrine that was to become the basis for defining ‘church-state’ relations in Jewish law, outlining the instances in which there was deference to secular law, is *dina d’malkhuta dina*<sup>79</sup>. The Talmud attributes the principle *dina d’malkhuta dina*, ‘the law of the land (kingdom) is the law’ to the Babylonian sage Samuel, of the 3rd century to the Common Era. Even from the Talmudic era there were debates on how and to what extent this principle should be followed<sup>80</sup>.

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<sup>78</sup> Babylonian Talmud: Tractate Gittin, 88b; Shulkhan Arukh, Hoshen Misphat 26:1; Rabbi Ovadia Yosef, Yabia Omer 7 Even Ha’ezer 23.

<sup>79</sup> Babylonian Talmud: Tractate Nedarim 28a; Babylonian Talmud: Tractate Gittin 10b; Babylonian Talmud: Tractate Baba Kama 113a/b; Babylonian Talmud: Tractate Baba Batra 54b-55a. This concept will be discussed further in the coming analysis.

<sup>80</sup> Talmudic commentators tended to support an ‘ownership theory’ where the Jews recognize the king’s law and the land as his personal possession. Whereas later, medieval commentators, supported a ‘contractual theory’ where laws

Questions arose about the principle outside of Israel, in Diaspora, as well as inside Israel, and questions arose regarding foreign and Jewish kings, among other difficulties. As the principle developed, and largely until today, it is said to only apply to *mamona*, or civil and fiscal matters<sup>81</sup>. Thus it is only on these matters where the principle can legitimately supersede even Torah law. The principle does not apply to *isura*, or forbidden or religious matters so that the state (secular) laws ought not to be followed in such cases<sup>82</sup>.

In other words, Jewish law accords *halakhic* recognition to the validity of enacted laws of the state jurisdiction as they pertain (primarily) to business, property, and commercial affairs. While the principle of *dina d'malkhuta dina* assigns state law more authority, it forbids Jews from allowing the state law to supersede the requirements of Jewish ritual law such as Sabbath and kosher, nor are Jews permitted to follow the principle when the state law imposes on issues of 'personal status' that have to do with the requirements of marriage and divorce<sup>83</sup>. Additionally, in order for the principle to have validity in placing secular law above religious law for its observers, the state law in question must be "non-discriminatory, serve a valid public purpose, not contravene religious practice, and be the enactment of a legitimate government"<sup>84</sup>. Of course, this is how the principle is understood in modernity; it may have had alternative meanings in the 3<sup>rd</sup> century, for example.

During the history of Jewish dispersion following the Biblical period, the state generally did not interfere with the observance of the Jewish religion. During the Persian period (roughly

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of the ruling king are binding upon subjects of the realm because subjects agree innately to accept the king's laws. Mark Washofsky, "Halakhah and Political Theory: A Study in Jewish Legal Response to Modernity," *Modern Judaism* 9, no. 3 (Oct., 1989): 294.

<sup>81</sup> Menachem Lorberbaum et al., eds., *The Jewish Political Tradition: Volume 1 – Authority* (New Haven, CT: Yale University Press, 2000), 433–434; Gil Graff, *Separation of Church and State Dina de-Malkhuta Dina in Jewish Law 1750-1848* (Tuscaloosa, AL: University of Alabama Press, 1985).

<sup>82</sup>Ibid.

<sup>83</sup> These laws are included in the category of *yehareg v'al ya'avur*, literally translated as 'let him be killed rather than transgress' - or laws

<sup>84</sup>Teshuvot Beit Yitzchak (Schmelkes), Responsa Yore Deah, vol.2, no.75.

539 B.C.E-400 B.C.E), the religious authority over the Jews was vested in high priests while in the Hellenistic period (roughly 322 B.C.E- 1<sup>st</sup> century B.C.E) the priests largely remained the spiritual leaders of the Jews. Similarly, when the Romans annexed Judea (1<sup>st</sup> century B.C.E), they appointed ‘procurators’, civil authorities, who most often did not interfere with the religious life of the Jewish people<sup>85</sup>. However, after the year 70 when the Second Temple was destroyed, and particularly after the collapse of the Bar Kochba Revolt in 135, Jews regarded the Romans as conquerors who ruled by force and not by right. Thus, the principle of *Dina d’Malkhuta Dina* was not applicable to the Roman rule. From this time, the application of the principle is variegated<sup>86</sup>. Consequently, understanding the principle’s application is exceedingly complex, especially during the subsequent historical periods.

The practice of self-adjudication has endured - although perhaps slightly differently among various communities and within certain legal centralist<sup>87</sup> vacuums - and was originally established due to Talmudic bans on Jews voluntarily presenting their cases to courts governed by idolatrous peoples, initially being the courts of *Akkum* or courts governed by idolatrous peoples<sup>88</sup>. Accordingly, while the state legal centralist adjudication of today, whether in the United States or Canada, may be just and democratic, and no longer governed by ‘idolatrous

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<sup>85</sup> Leo Landman, *Jewish Law in the Diaspora: Confrontation and Accommodation*. (Philadelphia, PA: Shulsinger Bros., Inc., 1968).

<sup>86</sup> Leo Landman, *Jewish Law in the Diaspora*, 13.

<sup>87</sup> Harry Arthurs, *Without the Law: Administrative Justice and Legal Pluralism in Nineteenth Century England* (Toronto, ON: Toronto University Press, 1985).

~ I use the concept of legal centralism as opposed to legal pluralism and in the way Harry Arthurs uses the concept. He states therein, “legal centralism rests upon the assumption that law lies at the centre of events...and engages the power and prestige of the state” (which is most often secular).

<sup>88</sup> Ginnine Fried, “The Collision of Church and State: A Primer to *Beth Din* Arbitration and the New York Secular Courts,” *Fordham Urban Law Journal* 31, no. 2 (2004): 633-655, 635-636.

~ It is important to note here, as Ginnine Fried also makes explicitly clear, that the concept of religious self-adjudication was by no means unique to Judaism. Early Christians similarly did not permit the use of Roman courts.



peoples’, interpretation of the Talmud suggests “an obligation to utilize a Jewish forum to adjudicate disputes still exists”<sup>89</sup>.

Furthermore, there are additional *halakhic* reasons for adjudication in rabbinic courts or *batei din*. The concept of *chillul Hashem*<sup>90</sup>, which will be addressed at length in chapter six, may occur when a Jew accuses another Jew in a state, civil court by bringing a dispute between Jews outside of the Jewish community and within the public eye. The idea is that this unnecessarily publicizes the wrongdoing, and additionally degrades G-d’s law by exposing a Jew in violation of it. In order to avoid this, many Jews feel (regardless of their level of observance), Jewish adjudication is the preferred route for many matters, private law in particular. That said, the general ban from the state courts is not absolute. The Talmudic ban only prohibits state centralist courts from being the courts of first resort<sup>91</sup>. Moreover, the ban does not apply when a Jew is summoned to appear in courts or if they appear there because their profession necessitates them<sup>92</sup>. In fact despite the bans, at times *batei din* might encourage, recommend, or give permission for individuals to go to state courts<sup>93</sup>. Despite the ambiguity that surrounds the principle’s application, I include the principle *dina d’malchuta dina* here as an introductory concept signaling an issue at the centre of our analysis- the interactions, and at times the tensions between Jewish and state law and their courts. Some of these interactions will be further elaborated in the coming chapters.

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<sup>89</sup> Ginnine Fried, “The Collision of Church and State,” 636.

<sup>90</sup> Literally meaning, ‘the desecration of the Name’ and refers to the ‘major sin of denunciation’. This occurs when one publicly sins, and as a result makes the entire group, their beliefs, their G-d be seen in a negative and often shameful light.

<sup>91</sup> Babylonian Talmud: Tractate Baba Kama 92b; Shulchan Arukh, Hoshen Mispat 26:1 note 13.

<sup>92</sup> Ibid.

<sup>93</sup> Babylonian Talmud: Tractate Baba Kama 113, Babylonian Talmud: Tractate Gittin 10; Rambam/Maimonides, Mishnah Torah: Hilchot Sanhedrin 26:7.

## Jewish Marriage

Jewish marriage is regulated by Jewish law, or *halakha*; it has a legal framework. Thus Jewish weddings entail a religious ceremony that has its own set of laws and rituals. Jewish marriage entails two steps: *eirusin* or *kiddushin* commonly translated as engagement or betrothal, but actually separates or sanctifies the bride and groom for each other alone; and *nisuin*, the actual marriage ceremony. In Talmudic times, the two were conducted as separate ceremonies, often a year apart, but since roughly the 12<sup>th</sup> century, the two steps are done successively, beneath the *khupa*, or marriage canopy<sup>94</sup>. There are three ways to betroth a woman: 1) through a financial transaction whereby a man gives a woman money or an object of value, known as *keseif*, 2) sexual intercourse with the intention that it consummates the marriage<sup>95</sup>, known as *biah*, and 3) a document whereby the man states his intention to marry a woman, known as *shtar*<sup>96</sup>. *Kiddushin* reserves the woman's sexual (and other) capacities for the husband alone. Although each betrothal method is initiated by the male, the Talmud specifies that in all cases a woman can only be betrothed with her consent<sup>97</sup>; she has the right to refuse or accept, although a man's potential power in marriage is certainly signaled here, at its inception.

A Jewish wedding is sealed with a *ketuba*, a legal marriage contract, binding the marriage and ensuring maintenance and protection for the woman in case of mistreatment, neglect, or refusal of rights, such as the right to adequate sustenance and the right to be sexually satisfied by her husband<sup>98</sup>. In fact, over the course of centuries there has been significant development to *halakha* whereby the rabbis have attempted to limit the man's unilateral power in divorce<sup>99</sup>

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<sup>94</sup> Likely due to the expense of two ceremonies due the poverty of many Jewish communities.

<sup>95</sup> The rabbis subsequently forbade betrothing through intercourse, making it a punishable offense.

<sup>96</sup> Babylonian Talmud: Tractate Kiddushin 1:1.

<sup>97</sup> Babylonian Talmud: Tractate Kiddushin 2a-b.

<sup>98</sup> Rambam/Maimonides, Mishnah Torah: Hilchot Ishut 12:6, 8; Shulkhan Arukh, Even Ha'ezer 66:9.

<sup>99</sup> Norma Baumel Joseph, "*Bruker v. Marcovitz*: Awarding Damages to Agunot in Canada," *HBI UNTYING THE KNOTS*, April 14, 2008.

(similar to today's prenuptial agreements, which will be elaborated below) and instituting the *ketuba* is a prime example of this. The *ketuba* includes a marriage payment guaranteed to the wife upon divorce or the 'husband's demise'<sup>100</sup>. A specific amount, 200 *zekukim kesef tzaruf*, 200 pure silver coins as well as a lien on all the possessions of a husband, even after his death are guaranteed in the *ketuba*, similar to a maintenance payment. Effectively these stipulations make divorce more difficult and unappealing for husbands (which protected the wives for whom divorce was akin to death in these times)<sup>101</sup>, and they prevented men from abusing their power to simply dismiss their wives or not provide for them<sup>102</sup>. Judaism was the first religion to produce a document (thousands of years ago) that held the woman's rights in any esteem and it is still used widely today in the original Aramaic in Orthodox circles and beyond. The rabbis were so intent on protecting the rights of Jewish women that they prohibited a man to live with his wife for even one hour without a *ketuba*<sup>103</sup>. To seal the marriage two kosher witnesses or *eidim* are also required. There are, as well, many ritual practices which have become normative in Jewish weddings such as *khupa*, mentioned above, and breaking a glass to signify the destruction of the Temple, among others.

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<sup>100</sup> Stanley R. Brav, "Marriage With a History," in *Marriage and the Jewish Tradition: Toward a Modern Philosophy of Family Living*, ed. Stanley Brav (New York, NY: Hallmark-Hubner Press Inc. 1951), 83-103, 92.

<sup>101</sup> Michael Satlow, "Reconsidering the Rabbinic Ketuba Payment By Way of Comparison: Some Greek Families," in *The Jewish Family in Antiquity*, ed. Shaye J.D. Cohen (Atlanta, GA: Scholar's Press, 1993), 133-154, 134.

<sup>102</sup> Of course, the problem emerging today is that women are not seeking to remain in marriages but actually to terminate marriages halakhically, with a *get*. This is indicative of stigmas shifting about remaining in abusive marriages and about divorce or 'broken homes' (this echoes Rabbi Aryeh Klapper's remarks, "The Interplay Between Social Justice and the Jewish Divorce Process" (presentation at Brandeis University, Waltham, MA, February 2, 2017).

<sup>103</sup> Babylonian Talmud: Tractate Ketubot 57a.

Michael Satlow, in *Reconsidering the Ketuba Payment*, takes a look at the *ketuba* and makes the claim that the marriage contract was not known in Jewish communities before the 1st-2nd centuries<sup>104</sup>. He states,

Around the time of the first century BCE, because it was easy for the husband to divorce his wife, Simeon ben Shetakh changed the primary Jewish marriage payment to a marriage settlement which became known as the rabbinic ‘*ketuba*’....<sup>105</sup>

Studying a series of texts before this era, Satlow concluded that the *ketuba* was not known in Jewish communities before this period (Simeon ben Shetakh lived from 120-40 BCE). Although there had been verbal agreements in use before this time, rabbis determined they no longer sufficed to adequately protect women. The Talmud in describing the need for a *ketuba* enactment uses the phrase *shakdu chachamim al takanot bnot yisrael*, sages had a sense of urgent concern regarding legal enactments or amendments for the daughters of Israel, because men were starting to break their verbal contracts and the rabbis foresaw the possible abuse to the women in marriage<sup>106</sup>. Ben Shetakh found that in the Biblical literature and in literature from the Second Temple “not a single reference to anything similar to the *ketuba* payment” existed<sup>107</sup> and concluded that the institution of the *ketuba* may likely have been a “rabbinic innovation” of the time. Yet he also noted that other legal systems of the ancient Near East “required payments very similar to the *ketuba*,” citing the Code of Hammurabi and similarities to the Demotic marriage documents from Egypt<sup>108</sup>.

Thus, Simeon ben Shetakh was either a ‘precedent-setting’ rabbinic figure who changed the nature of marriage with his institution of a settlement known as the *ketuba*, or the change in

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<sup>104</sup> Michael Satlow, “Reconsidering the Rabbinic Ketuba Payment”; Also noted by Stanley R. Brav, “Marriage With a History,” 92.

<sup>105</sup> Michael Satlow, *The Jewish Family in Antiquity*, 134.

<sup>106</sup> Babylonian Talmud: Tractate Ketubot 7a.

<sup>107</sup> Michael Satlow, *The Jewish Family in Antiquity*, 136

<sup>108</sup> *Ibid.*

the settlement of Jewish marriages emerged out of, or was influenced by the marriage settlements that were used in the legal traditions of their non-Jewish neighbours. In fact both of these processes may have been occurring in the Talmudic era. Moreover, remnants of these two approaches are echoed in the proposed solutions to *get* refusal emerging in the 21<sup>st</sup> century such as a ‘rabbinic reboot’ of the Rackman *beit din* or the International *Beit Din* (IBD) which uses *halakhic* innovations to ‘solve’ *get* refusal, and the influence of prenuptial agreements creatively borrowed from the secular sphere to expressly prevent the Jewish issue of *get* refusal, both of which will be explored in greater detail later in this chapter. While it is unclear which factor more likely led to the evolution of the *ketuba* payment, it is a significant example indicating the commensurability and even reciprocal relationship the legal orders shared throughout history regarding Jewish marriage and divorce, persisting today.

Again, sometime around 960-1028 C.E., we see another example of instituting a new legal norm impacting marriage which would come to influence other legal systems. Rabbeinu Gershom<sup>109</sup> instituted a *takana*, a new legal precedent or amendment (for what we now understand applies only to Ashkenazic Jews)<sup>110</sup> which came to be known as the criminalization of polygamy due to his concern that the phenomenon is making women’s status in marriage too precarious. Rabbeinu Gershom merely removed the *heter*, or permission, to marry more than one wife, rather than technically prohibiting it. Yet because of his widespread influence and reverence as the leading rabbinic scholar of the time that made this, and other of his decrees, so powerful, and indeed a lasting precedent impacting Jewish family law. He not only served to

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<sup>109</sup>Known as ‘light of the exile’, a German Jewish rabbi and scholar.

<sup>110</sup>Stanley R. Brav, “Marriage With a History”, 93; Avraham Grossman, “The Historical Background to the Ordinances on Family Affairs Attributed to Rabbeinu Gershom Me’Or ha-Golah (‘The Light of the Exile’),” in *Jewish History, Essays in Honour of Chimen Abramsky*, ed. A. Rapoport-Albert and S.J. Zipperstein (London, UK: Halban, 1988), 3-23, at 15.

protect women through this amendment, but in so doing, he also established a legal precedent benefiting women from which other legal orders would come to learn.

### **Jewish Divorce**

Jewish divorce law emerges from the Bible, "...he writes her a bill of divorcement, hands it to her, and sends her away..."<sup>111</sup>. Thus G-d, the religion itself, and the leadership permit divorce when necessary. However, individuals who were married in accordance with *halakha* must obtain a divorce in accordance with *halakha*, in contemporary times, most-often executed with the aid of a rabbinical court<sup>112</sup>. A *get* is needed to sever or dissolve the institution of marriage<sup>113</sup> and being that a *ketuba* is a legal marriage contract, the *get* (since the incorporation of the *ketuba*) also serves to legally dissolve it, being a Jewish bill of divorcement. A *get* is the legal way of releasing the husband from his *ketuba* contract and *kiddushin* entitlements; it is a contractual release. The *get* is a written document that must be composed by a *sofer* (scribe) in the presence of a *beit din* (court of Jewish law), after a man has requested that it be written. The *get* consists of roughly twelve lines wherein there is no mention of rabbis or G-d and did not used to require rabbinic supervision as it is not necessarily considered a religious document, but a legal one<sup>114</sup>. A *beit din* cannot authorize the writing of a *get* without the will of the husband or at a wife's request alone. Moreover, a civil divorce alone is immaterial if the individual parties want or choose to remarry within their faith and remain in their communities. A husband

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<sup>111</sup> Deuteronomy 24:1.

<sup>112</sup> In practice, rabbinic authorities have viewed as binding and requiring a *get* unions or marriages that came about differently, or not *halakhically*/without the components of the *halakhic* marriage ceremony i.e.: betrothal without marriage, among other examples.

<sup>113</sup>Originally called '*sefer kritut*', Deuteronomy 24:1. "...let him write her a bill of divorcement, and give it in her hand..."

<sup>114</sup> John Syrtash, *Religion and Culture in Family Law* (Toronto, ON: Butterworths Canada Ltd., 1992), 119. Some might contend that because *halakha*, Jewish law, governs everything, everything is thus religious, including a *get*. Others might suggest that while there is ritual practice associated with the giving and receiving of the *get*, the fact that it is a *halakhic*, or Jewish legal requirement, does not necessarily in and of itself make it also religious.

refusing to give a *get* to his wife, even while divorced under state law, remains married to his wife under Jewish law.

Further, it is important to note that while other benefits of using *batei din* include their speed and cost-effectiveness<sup>115</sup>, particularly as opposed to legal centralist adjudication, according to (Orthodox) *halakha*, *batei din* have exclusive jurisdiction in the divorce process and consequently in these instances individuals may be compelled to use the *batei din* for this reason alone. A *beit din* is most often composed of three rabbis who sit as *dayanim* or judges of *halakha* along with two qualified *eidim* or witnesses and one *sofer* or scribe<sup>116</sup>. Parties can bring their litigation to an existing *beit din* or alternatively they can create a *zabla beit din*. *Zabla* is an acronym for *zeh borer lo echad*, which means each party is able to choose one of the *dayyanim* from a pool of rabbis with expertise in various fields of Jewish law and then the two together choose a third to complete the *beit din*. When using a *zabla* both parties must agree to be bound by the decision the *beit din* reaches. Proceedings have traditionally begun with the signing of an arbitration agreement by which both parties agree to be bound. Nonetheless, rabbis often turn proceedings into negotiations leading to a voluntary settlement as opposed to issuing rulings<sup>117</sup>. In Ontario, this process has been disturbed by the ban on religious arbitration since 2006 (which

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<sup>115</sup> John Tibor Syrtash, *Religion and Culture in Canadian Family Law*, 119.

~ In Canada, Syrtash states cost is “minimal” on page 119; and in the United States, *Beth Din* of America-[www.bethdin.org](http://www.bethdin.org) quotes the standard *get* rate at \$500.

<sup>116</sup> In Toronto, the *Beit Din* is administered by Rabbi Ochs; In the United States Rabbi Shlomo Weissmann is the director of the *Beth Din* of America out of New York City.

<sup>117</sup> John Tibor Syrtash, *Religion and Culture in Canadian Family Law*, 104.

~ As Syrtash notes, “The reason for this odd intersection of arbitration and mediation lies in the Jewish religious values which inform the entire process. Litigants are better to reach a ‘guided settlement’ in the shadow of Jewish law, than to insist on a decision imposed by the court.”

will be explored in the coming chapters). Despite movements to form alternative and non-Orthodox courts, the majority of *batei din* are still Orthodox<sup>118</sup>.

Husbands are the ones who must grant a *get* by physically placing the document in the wife's waiting, open hands "according to the laws of Moses and Israel", the same verse used to formalize a marriage. Even if the wife is the one who initiates the proceedings; he is the primary physical actor. The *get* must be given of his free will and must be accepted of her free will; he cannot be compelled to execute a divorce<sup>119</sup> and reciprocally, (since the medieval period as I note below,) she cannot be compelled to accept one. Judaism permits one or both parties to be absent from the proceedings, appointing a representative, or *shaliakh* in their place. However, a *get* that is coerced or which is given or accepted under duress is invalid, known as a *get meuseh* or forced or tainted *get*. Mutual consent is the preferred method of dissolving a marriage, and is the most common since rabbinic law established that there need be no grounds for divorce other than mutual consent (another move on behalf of rabbis to aide women). In instances of mutual consent, divorce is simple and fast<sup>120</sup>. The divorced man may remarry immediately (although if he is a *cohen*, a descendant of the priestly class he cannot marry a divorcée) while the divorced woman must wait 90 days to ensure she is not pregnant (and cannot marry a *cohen*).

Historically in Judaism, in order to protect the status of women in divorce, another significant precedent emerged from Rabbeinu Gershom in the medieval period (the first of which was noted above). Rabbenu Gershom's *takana*, or precedent, sometime around 960-1028 B.C.E., prohibited a Jewish (Ashkenazi) husband from divorcing a wife against her will, ensuring marriage *and* divorce are contractual, and necessitating the consent of *both* parties, unlike in

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<sup>118</sup> Ginnine Fried, "The Collision of Church and State" and John Tibor Syrtash, *Religion and Culture in Canadian Family Law*, chapter 2, chapter 3 at pages 114, 117; Steve Lipman, "Alternative Beit Din Gaining Some Traction," *The Jewish Week*, July 20, 2007.

<sup>119</sup> Babylonian Talmud: Tractate Yevamot 112b.

<sup>120</sup> No-fault divorce has been available to Jews long before it has been in most secular, 'modern' states.



neighbouring regions and cultures, particularly those practicing Islam, where some types of divorce are unilateral until today<sup>121</sup> (and which had previously also been the case permitted under biblical law).

Thus, at first glance, it might seem as though a husband's and wife's positions are equivalent. This process has the guise of equality, addressing key components of marriage that had previously been unequal. However, in practice, the position of the husband and wife are different in a crucial way. That a husband must first physically drop the *get* document into a wife's waiting hand gives him, and indeed all men, the absolute right in divorce. Although a wife must also accept the divorce, a significant equalizing force, the initial step, and thus the power to potentially take advantage of the legal structure, is literally in the hands of men. Moreover, "the necessity for the man's consent to give the *get*, the Jewish writ of divorce, is biblically ordained, *d'oraita*, while the woman's consent is necessary by rabbinic decree, *d'rabbanan*<sup>122</sup>. This difference facilitates resolving of the situation when a man is a victim of *get* refusal"<sup>123</sup> more easily, while a woman remains without the same opportunity for dissolution<sup>124</sup>. This has led to a phenomenon whereby women (disproportionately<sup>125</sup>) become *agunot* or "chained women" or more accurately, *mesuravot get*, women refused a *get*. Instances of *siruv get* occur principally due to the husband's refusal of issuance deemed as the absence of his free will. The husband

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<sup>121</sup>Avraham Grossman, *Pious and Rebellious: Jewish Women in Medieval Europe* (Waltham, MA: Brandeis University Press, 2004), 77, 252.

<sup>122</sup> Biblically ordained implies that the command was given by G-d, and recorded in the Torah and therefore has more weight or authority, whereas, rabbinically ordained, implies that the command was added years later, by rabbinic authorities, in order to clarify and hone. Rabbinical laws are considered to be as binding as Torah laws, but there are differences in the way we apply laws that are from the Torah and laws that are from the rabbis. For example: *d'oraita* takes precedence over *d'rabbanan*.

<sup>123</sup> Rachel Levmore, "A Coalition to Solve the Agunah Problem," *Jerusalem Post*, February 23, 2013, <http://www.jpost.com/Opinion/Op-Ed-Contributors/A-coalition-to-solve-the-agunah-problem>.

<sup>124</sup> This is known as *heter mea rabbanim* or permission by one hundred rabbis domiciled in at least three different jurisdictions to allow the husband to remarry without the wife's acceptance of the *get* in particular situations warranting an exemption.

<sup>125</sup> The term can be applied to men, *agunim* or *agun* is the singular. This disproportionality will be elaborated later in the analysis.

cannot be compelled to execute a divorce as it is believed to be coerced or under duress, and thus becomes nullified. It is at this point, where a spouse refuses to cooperate, when Jewish divorce becomes difficult and messy.

### **Get Refusal**

*Iggun* in Hebrew literally means an anchor so an *aguna* is a woman who is chained, bound, or anchored to her marriage; *agunot* is the plural<sup>126</sup>. Generally, there are three instances when a woman might become an *aguna*. However, it has become an umbrella term including various reasons historically and geographically sensitive. The first and historically most common reason is that a woman's husband goes missing or deserts her (literally, or is kidnapped as is common with Israeli soldiers, or due to other tragedies like September 11<sup>th</sup><sup>127</sup>, or the death camps of Nazi Germany<sup>128</sup>). The whereabouts of the husband are unknown and hence he is unable to grant his wife a *get* and she remains trapped in the marriage, or his death was not witnessed and hence a wife cannot be deemed a widow. Historically, the conversion of the husband to another religion may have made him unable to issue a *get* and thus also made the wife an *aguna*. Second, a woman's husband may be mentally ill and incapable of issuing a *get*, and third, and relevant to us, is when the whereabouts of the husband *are* known, he *is* psychologically capable of issuing a *get* and yet the husband simply refuses to grant the *get*. In this case, she is more accurately

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<sup>126</sup> Term means anchored, tied, or slowed down from remarrying. First found in verb form in Book of Ruth 1: 11-13; Babylonian Talmud: Tractate Baba Kama, 80a; Rashi; Babylonian Talmud: Tractate Baba Batra, 73a.

<sup>127</sup> Rabbi Dr. Michael J. Broyde, *Contending with Catastrophe: Jewish Perspectives on September 11* (New York, NY: K'hal Publishing: 2011); Rabbi Chaim Jachter, "The Beth Din of America's Handling of the World Trade Center Agunot – Part One: Methodology of Agunah Crisis Management," <http://koltorah.org/ravj/Agunot%201.htm>; Leora Nathan, "Preventing an Agunah Crisis in the Wake of the World Trade Center Disaster by Establishing Death Through Various Forms of Evidence," *Alberta Law Review* 40, (2002-2003): 895-916.

<sup>128</sup> Rabbi Moshe Feinstein, *Igrot Moshe*, Even Ha'ezer 4:107. The Rabbinic Rulings of Rav Moshe Feinstein (discussing the case of "water without end" applying it to husbands who were not found in the Holocaust).

known as a *mesurevet get*, literally meaning ‘one who is refused a *get*’ and the refusing husband is recalcitrant and labelled a *sarvan*, or refuser.

To clarify, the *get* terminates the husband’s obligation to provide sustenance as per the *ketuba*, and nullifies his *kiddushin* entitlements from her (including her sexual capacity,) allowing her to move on with her life freely. Notwithstanding Rabbeinu Gershom’s *takana*, or precedent banning polygamy, marriage requires a woman’s sexual fidelity to her husband, but not the reciprocal. So that even if he cannot take a second wife while married, he is not deemed an adulterer if he has relations with another woman<sup>129</sup>. Hence *get refusal* has a disproportionate impact on women’s lives (in a way that is unequal to men). She remains bound literally, figuratively and sexually without a *get*. Consequently, it is predominantly husbands who trap their wives without issuing *gets* (rather than the reverse)<sup>130</sup> making it “primarily a disability women face”<sup>131</sup>. Most often *get* extortion exists as well, where women are compelled to forgo financial payments, custody or access in exchange for a *get* because their husbands are using the religious divorce as leverage to exact greater rewards in civil court, understanding that the *get* as a legitimate bargaining chip.

In instances where a spouse (the husband more commonly) refuses to appear at the *beit din* in order to begin the divorce process, there is a protocol *batei din* follow (although the workings of each *beit din* differ slightly according to the nuances of the community and the rabbis who serves as *dayanim*, or judges)<sup>132</sup>. Initially the *beit din* will call or send a *hazmana*, a letter or summons, via certified and regular mail asking the reluctant spouse to contact the *beit*

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<sup>129</sup> And that designation has consequences in the *halakhic* system.

<sup>130</sup> I have had no first-hand examples or interactions of men refused a *get* in my research in Toronto and New York, since 2009. ORA has said they have seen a couple of cases in New York amongst their 285+ cases to date. Private conversations with Rabbi Jeremy Stern.

<sup>131</sup> Rabbi Irving A. Breitowitz, Lunch Talk (Linden and Associates, Toronto, ON, February, 23<sup>rd</sup> 2015).

<sup>132</sup> Based on primary research, the Toronto *Beit Din* does not follow such protocol. They do not issue summons to appear, nor do they issue orders of contempt on the matter of *get* refusal. This will be elaborated at length in later chapters and in the narratives of women.

*din* for an appointment within fourteen days. Should there be no response, the *beit din* will send a second *hazmana* and if necessary a third *hazmana* as well. After three summonses have been issued without appropriate response from the reluctant spouse, the *beit din* will issue a *hatra'at seruv*, a letter of warning of the forthcoming issuance of a contempt order. If a satisfactory response is still not received from the spouse, the *beit din* may issue a *seruv*, a contempt order, that declares the spouse to be (officially) 'recalcitrant' and subject to public ostracism and condemnation, calling upon the community to take appropriate action<sup>133</sup>. This is noteworthy as well because women may only get the legal designation of becoming an '*aguna*' after a specific period of time wherein she is refused a *get* (ranging from nine months to two years, depending on the stringency of the particular *beit din*) and during which time a *beit din* must issue *hazmanot*, and ultimately a *seruv*. Without the *seruv*, a woman is does not legally 'merit' the *aguna* designation. An essential caveat however is that while the recalcitrant may be 'subject' to sanctions due to his contempt, they are not necessarily arranged by the *beit din* and they are not employed in sanctioning all recalcitrants. The sanctions are largely case and community specific.<sup>134</sup> *Kherem* and modern-day versions of this traditional tool, such as 'e-shaming', will be explored at length in chapter six.<sup>135</sup>

According to *halakha*, unless a husband freely gives a *get* and a wife freely accepts it, the couple is not divorced and neither party is free to re-marry. A woman who does not receive a *get* is deemed to be an adulteress if she cohabits with another man, being that she is still married to

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<sup>133</sup> Beth Din of America webpage – [www.bethdin.org/docs/FAQ\\_d.pdf](http://www.bethdin.org/docs/FAQ_d.pdf).

*Kherem*, or ostracism, shunning, or excommunication, has been used as a tool by Jewish communities since the Talmudic times, for a variety of offences, historically and socially relevant.

<sup>134</sup> Beth Din of America - [http://www.bethdin.org/docs/FAQ\\_d.pdf](http://www.bethdin.org/docs/FAQ_d.pdf).

<sup>135</sup> Again, per note 132, the primary research illustrates that the Toronto *Beit Din* does not follow typical *beit din* protocol. Being that they do not issue *hazmanot* or *seruvim*, they also do not put men in *kherem*.

someone else according to Jewish law<sup>136</sup>. Indeed, she can not engage in any form of sexual relationship without committing adultery. Of greater concern however is that any child born from her subsequent union then bears the burden of her decision *halakhically*, as well as in the form of a social stigma. Any children she has from her subsequent marriage are considered *mamzerim*; they are considered to be illegitimate offspring, a status which bears severe consequences. *Mamzer* is the singular of *mamzerim*, meaning illegitimate in Hebrew. The reason this status is so significant and detrimental is because there is no remedy to reverse this status. Furthermore, *mamzerim* and their progeny are restricted as to whom they can marry. A *mamzer* can only marry another *mamzer*, not any another Jew, and this status is checked and even researched, often by a rabbi before a marriage. As well, this status lasts for ten generations and affects certain rights in Israel, “no mamzer shall enter the assembly of the Lord; even to the tenth generation, none of his descendants shall enter the assembly of the Lord”<sup>137</sup>. Some authorities even interpret that ten generations implies that offspring are deemed *mamzerim* until the end of time. This issue is all the more salient in Israel where only Orthodox marriages are recognized as legal for Jews under state law. It does make sense then, that some women, in order to unlock the chains of *aganut* and move forward with their lives, will yield to extortionate demands and pay huge sums of money to their husbands in order to procure a *get*. The *get* is “critical, not only to one’s spiritual and social future, but also to one’s children and grandchildren and generations to come”<sup>138</sup>. This explains the enduring entanglement of legal systems coupled with the enduring desire for the *get*.

In contrast though, the husband, while remaining married to his wife according to Jewish law, is able to cohabit and have sexual relationships even to the point of having children without

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<sup>136</sup> Although, and as I elaborated above, the reverse is not true; if a man whose wife has not accepted the *get* engages in a new relationship or cohabits with another woman, that is *not* technically considered adultery, though there are ethical and communal considerations.

<sup>137</sup> Deuteronomy 23:3; Mishna: Nashim: Yevamot 8:3; Mishna: Nashim: Kiddushin 3:12.

<sup>138</sup> John Syrtash, *Religion and Culture in Canadian Family Law*, 116.

the same stigma and/or *halakhic* ramifications of *mamzerut* on his subsequent children. This would be the same case if there was a reversal, where a wife would not voluntarily accept the divorce, thereby trapping her husband and making him an ‘*agun*’. The asymmetry is clear. He can move on with fewer religious and social barriers, she cannot. Clearly, this disparity places an undue burden on women, without being onerous on men in the same gravity. This asymmetry in Jewish divorce law has created tragic consequences for women whose husbands refuse to grant them a *get* (and despite some attempts by rabbis to remedy the asymmetry, as I elaborate below).

Husbands who refuse to grant their wives a *get* are known as recalcitrant husbands, or *sarvanim*, refusers, (*sarvan* is the singular) and most frequently, when women are faced with recalcitrant husbands they are “forced to relinquish various financial or custodial rights as the price for obtaining a *get*”<sup>139</sup>. Men are deemed to be ‘recalcitrant’ when they “use power to withhold a *get* as a bargaining chip in negotiations over property, money, or child custody”<sup>140</sup>; in other words, when they attempt to extort the *get*. Outside of Israel, where religious law does not have the state backing it, there are greater challenges regarding the handling of recalcitrant husbands and discussions regarding the actions or inactions of the New York and Toronto *batei din* will follow throughout to some extent, and will be developed further in chapter seven. Rabbinic law does permit some sanctions designed to induce the husband to execute a divorce and protect women although the sanctions must not be so severe as to constitute an overpowering of the husband’s will. The Talmud states that, “in order to prevent the woman from becoming and *aguna*, the rabbis were lenient”<sup>141</sup> and Talmudic commentator, Rabbi Asher ben Yechiel (1250-1327) goes even further stating, “One must investigate all possible avenues in order to

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<sup>139</sup> Suzanne Last Stone, “The Intervention of American Law in Jewish Divorce: A Pluralist Analysis,” *Israel Law Review* 34, no. 2 (2000): 170-210, 171. Interview with women and lawyers confirmed this; see firsthand narratives in chapter five and throughout.

<sup>140</sup> *Ibid*, 175.

<sup>141</sup> Babylonian Talmud: Tractate Yevamot 99a.

release and *aguna*”<sup>142</sup>. In fact, the Mishna set out grounds for which a husband could be compelled to grant a *get*, even physically “forced”, and upon which Rambam (Maimonides, 1135-1204) famously commented<sup>143</sup>. “*Kofin oto ad she-yomar rotzeh ani*” refers to whipping the recalcitrant husband until he says “I want to [give a *get*]”, also known as compelling a husband to want to give a *get*, or to recognize that giving a *get* and ‘doing the right thing’ was in fact deep down, what the husband had always wanted and intended to do before his evil impulse took over<sup>144</sup>. This was not viewed by rabbis as coercion since the physical acts were simply to reveal the latent positive impulse. Rabbis were often creative and open in their interpretation of *halakha* and attempted to protect women from becoming *agunot* and from otherwise having inferior positions or lack of safety in marriage and divorce.

Historically, in Judaism, in order to protect that status of women in divorce, precedents emerged from rabbis’ decrees. From the “twelfth century onward, the view of Rabbeinu Tam (another famous medieval rabbinic figure, 1100-1171,) who was against forced divorce, emerged in contradiction to Rambam’s approach: a court could apply pressure upon a husband, but not actually compel a divorce”<sup>145</sup>. This was meant initially simply to discourage divorce altogether, because he felt divorce was becoming too frequent, to the detriment of women who were left bereft. However, this decree has had significant and long-standing effects on the *aguna* issue until present day. Rabbeinu Tam felt very strongly that the *get* procured by coercion is improper and places in doubt the very validity of the document<sup>146</sup>. Furthermore, Rabbeinu Tam also felt that those rabbis who supported compelling a divorce, including Rambam (discussed above),

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<sup>142</sup> Responsa Rabbi Asher ben Yechiel 51:2.

<sup>143</sup> Mishna: Nashim: Ketubot 7:10; Rambam/Maimonides, Mishnah Torah: Hilchot Ishut 14:8; Rambam/Maimonides, Mishnah Torah: Hilchot Gerushin 2:20.

<sup>144</sup> Babylonian Talmud: Tractate Yevamot 106a; Babylonian Talmud: Tractate Erchim 5:21a.

<sup>145</sup> Lois C. Dubin, “Jewish Women, Marriage Law, and Emancipation: The Civil Divorce of Rachele Morschene in Late Eighteenth-Century Trieste,” in *Acculturation and its Discontents: The Italian Jewish Experience Between Exclusion and Inclusion*, ed. David N. Myers et. al. (Toronto, ON: University of Toronto Press, 2008), 123.

<sup>146</sup> Avraham Grossman, *Pious and Rebellious* (Waltham, MA: Brandeis University Press, 2004), 243.

erred in their decision to permit coercion on the matter of divorce (particularly due to the illegitimacy of children produced subsequent to said coerced divorces). Thus, although the some rabbis dating back to Mishnaic times through Rambam, intended for the torture to merely reveal the husband's true desire to issue a *get* to his wife, subsequent rulings of other rabbis such as Rabbeinu Tam, forbade such torture because of concerns that such a *get* could be viewed as a *get me'useh* – a forced or coerced *get*, and therefore a *halakhically* invalid divorce. Thus, an edict soon followed, limiting the Mishnaic law and virtually nullifying this rabbinic legal innovation. While Rabbeinu Tam's decree may have left women in a less powerful position with regard to divorce, particularly in light of *get* refusal (indeed even until present day), Jewish women did maintain protection from one of the other key decrees around the same era which came from Rabbeinu Gershom, discussed above and indeed, there are some modern-day techniques that are used to help convince recalcitrant husbands to grant *gets*.

In Israel today there are some *siruv get* cases before the rabbinic court where there is power to invoke sanctions such as jail, revoking passports and driver's licenses, and removing job certifications<sup>147</sup> of recalcitrant husbands. In a directive on November 15<sup>th</sup>, 2016, the state prosecutor authorized criminal charges against husbands refusing a *get* once the Israeli Rabbinical Court orders a *get* to be given which could bring a man to trial for "ignoring a legal order, under section 287 of the penal code"<sup>148</sup>. Criminalizing divorce refusal itself, as opposed to imposing sanctions, means that the husband can be jailed even if he subsequently agrees to grant the divorce. These intersections of Jewish and state, civil laws are possible because the rabbinic court rulings on the matter of *get* refusal are fully backed by the civil powers of the state. Most

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<sup>147</sup> *Mekudeshet /Sentenced to Marriage*, DVD, Directed by Anat Zuria, New York, NY: Women Make Movies, 2004. Hebrew with English subtitles.

<sup>148</sup> "Israeli Men Could be Jailed for Refusing Divorce," *Times of Israel*, November 15, 2016, <http://www.timesofisrael.com/israeli-men-who-refuse-divorce-could-face-jail/>



recently there have also been cases where Israeli courts have forced the *get* refuser's family to pay support when the refuser absconded<sup>149</sup> and in March 2016, for the first time in history an Israeli rabbinical court in Tel-Aviv sentenced a man (who happens to be a "Jewish-American tycoon") to prison because his son will not grant his wife a *get*<sup>150</sup>. The court discovered that the son, at the encouragement of his father, was refusing a *get* to his wife even though he had abandoned his wife and kids ten years prior when she suffered a stroke and was disabled. "When the husband's parents visited from the United States the Tel-Aviv Rabbinic Court summoned his parents to testify and even issued a restraining order preventing them from leaving the country until they do so, itself an unprecedented decision"<sup>151</sup>. The wealthy parents attempted to put much pressure on the courts in an attempt to obstruct justice and consequently the Tel Aviv Rabbinical Court decided to jail the husband's father;

expressing the deep and unequivocal obligation of the rabbinical courts to help *agunot* and prevent refusals to divorce...the court appropriately used the *halakhic* and legal means at its disposal in order to expose the support that the recalcitrant husband's parents- illegally- give him, and so it took the appropriate action against the accomplices...This is an important message to women.. The court works to implement rulings and to find a true solution to recalcitrant husbands<sup>152</sup>.

Furthermore, in February 2016 another precedent-setting decree was established by the *Beit Din* of the *Rabbanut Ha'Rashit* (the central *beit din*) of Israel, headed by Chief Rabbi, Dovid Lau, asserting for the first time, "In a ground breaking decision, that it is not permitted to make any conditions or combine the giving of the *get* to the division of property. Only after the *get* is given

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<sup>149</sup> Shoshana Miskin, "Grandfather to Pay Child Support After Father Fled to Uman," *Arutz Sheva*, May 9, 2016, <http://www.israelnationalnews.com/News/News.aspx/211990>

<sup>150</sup> Shlomo Piotrovsky, "Unprecedented: Father Jailed for Son Refusing to Divorce Wife," *Arutz Sheva*, March 14, 2016, <http://www.israelnationalnews.com/News/News.aspx/209387>

<sup>151</sup> Ibid.

<sup>152</sup> Ibid.

may division of property take place”<sup>153</sup>. This powerful *halakhic* statement by leading rabbinic judges continues the historical tradition of rabbinic rulings with the intent to mediate the asymmetries innate to the Jewish divorce laws and is thus also a significant step in empowering women and preventing men from using the *get* as a tool for extortionate abuse by separating the assets from the *get*<sup>154</sup>. Consequently, while *siruv get* in Israel is complex, and beyond the scope of this study, it is notable that there are current examples of rabbinic innovations attempting to give women more protection and power while simultaneously discouraging abusive men from using the *get* as a weapon, preserving the long-standing tradition<sup>155</sup>.

However, to women outside of Israel, harmful “repercussions are exacerbated in the modern West by the loss of Jewish juridical autonomy...Juridical autonomy-at least in theory-provides a mechanism for alleviating (although not eliminating) imbalances in Jewish divorce law”<sup>156</sup>. However, outside of Israel, in the United States and Canada, rabbinic courts have no authority to revoke licenses, passports, or to jail recalcitrants as a means to help convince husbands to grant *gets* in line with the *harkhakot of Rabbenu Tam*, or the distancing from the permitted use of force by Rambam/Maimonides, which was outlawed by Rabbi Tam. In fact, in one extreme example in New York, a team of rabbis, led by rabbi Mendel Epstein, who often advocated for women’s rights in divorce (despite charging them a fee for services executed in exacting a *get*), were recently arrested in a costly FBI sting operation while attempting to aid

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<sup>153</sup>Allison Josephs, “Groundbreaking Ruling For Jewish Divorce Out of Israel,” *Jew in the City Blog*, February 11, 2016, <http://jewinthecity.com/2016/02/groundbreaking-ruling-for-jewish-divorces-out-of-top-jewish-court-in-israel/#ixzz3zv8F2Bh2>

<sup>154</sup> While some might ask, why go to such lengths to ‘mediate the asymmetries’ rather than simply changing the *halakha* or Jewish law altogether, I want to make clear that those who concern themselves with *halakha* understand that changing the law is not viable being that it is bound by strong Biblical precedent. (I discuss feminist elements of choice, or in this case choice to be religious or bound by *halakha*, in the coming chapters).

<sup>155</sup> I recognize that this line of reasoning may be understood as my suggesting that women in Israel may be better served when there is no separation of religion and civil law. Perhaps. However I caution that this type of conclusion regarding the Israeli context is beyond the scope of this study.

<sup>156</sup> Suzanne Last Stone, “The Intervention of American Law in Jewish Divorce”, 175.

women in need of a *get*<sup>157</sup>. Desperate women refused a *get*, who felt they had no alternatives means by which to secure a *get*, and with nowhere left to turn, would seek out Epstein to help convince their unwilling spouses to give *gets*. On occasion Epstein and his team (described by a sensationalized story in *Gentlemen's Quarterly* as “uncivilized and barbaric vigilantes” and “violent crime gangs”) would even track down men who disappeared to remote villages in South America and at times would go so far as to employ cattle prods in order to aid in the ‘convincing’ of husbands to grant their wives *gittin*<sup>158</sup>. While it is true that at times Epstein charged women tens of thousand dollars for his services (between \$10,000-60,000) , which included mild convincing, threats, and occasionally physical harm as well, I should note that two women I interviewed were adamant that Epstein was a hero and in fact only charged for his services when women had the means to pay. But, because of the separation between church and state, and during what would be their final attempt to help an *aguna*:

The FBI set out to lure rabbis who would actively-perhaps over-zealously- try to have a recalcitrant husband (who in this case did not exist) authorize the writing and delivery of a *get* to a weeping *aguna* (who, in this case, was in reality and FBI agent). The agent’s acting talent persuaded the trusting rabbis that she was authentic, particularly because she brandished a forged, but legitimate looking *ketuba* and a *seruv* signed by the presiding *dayan* of the Beth Din of America, which the FBI fraudulently secured<sup>159</sup>.

As a result of the FBI sting, the rabbis were eventually sentenced to terms ranging from three to ten years despite the fact that the FBI agents fraudulently obtained rabbinic court documents (*hazmanot* and *seruvim*) in attempting to also catch the Beth Din of America and ORA in wrongdoing. Furthermore the defense was not permitted to present any evidence of religious

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<sup>157</sup> Ken Serrano, “Rabbis in Divorce-Gang Sting Could be Out on Bail Soon,” *USA Today*, October 16, 2013, [www.usatoday.com/story/news/nation/2013/10/16/rabbis-fbi-divorce-sting-hearing/2996211/](http://www.usatoday.com/story/news/nation/2013/10/16/rabbis-fbi-divorce-sting-hearing/2996211/); Laurel Babcock and Bruce Golding, “New Accusers in Rabbi ‘Torture’ Ring,” *New York Post*, October 17, 2013, <http://nypost.com/2013/10/17/new-accusers-in-rabbi-torture-ring/>; “Mendel Epstein and Martin Wolmark ‘Plotted to Torture Husband’,” October 10, 2013, [www.bbc.co.uk/news/world-us-canada-24485128](http://www.bbc.co.uk/news/world-us-canada-24485128); Matthew Shaer, “The Orthodox Hit Squad”, *Gentleman's Quarterly*, September 2014, [www.gq.com/news-politics/newsmakers/201409/epstein-Orthodox-hit-squad?printable=true](http://www.gq.com/news-politics/newsmakers/201409/epstein-Orthodox-hit-squad?printable=true).

<sup>158</sup> Ibid.

<sup>159</sup> Nathan Lewin, “‘Gotcha’: The Misguided FBI Agunah ‘Sting’,” *Jewish Press*, January 6, 2016.

motivation and intent, which would have indicated that husbands often agree to issue a *get* with the fear of immanent physical harm. Rabbis did not intend to actually harm the (fictional) husband, and the motivation for their behaviour was to protect women, performing a *mitzvah* (a good deed done from religious duty) in helping to free an *aguna*<sup>160</sup>. As opposed to the state outside of Israel enabling religious courts to use mild-mannered pressure tactics (though this is an extreme case), state regulation works against the rabbinic courts (and thus by default against women refused a *get*). Women, having nowhere else to turn, enable and support a market for rabbis (or vigilantes) such as Mendel Epstein supplying *get-getting* services. Although this is a radical example, and physical violence is never condoned or encouraged, it does speak to the persisting gap between the state and religious legal norms and the lengths women will go to in order to achieve a *get* rather than an alternative remedy.

Outside of Israel, although there are some ways in which men can be pressured, there is no state law backing the rabbinical courts as in Israel. Moreover, we can imagine how insignificant ostracism or banishment from a community is in these digital times and with our work lives very rarely intersecting with our home or religious lives, and with the ease of movement in the era of globalization. Ostracism and social pressure, based on the *harkhakot of Rabbenu Tam*, creates a way to compel a husband to grant a *get*, removing the physical element<sup>161</sup>. These include primarily ostracism and banishment from synagogues and/or prayer services which prevent the recalcitrant spouse from saying *kaddish* and from getting *aliyot la'Torah* - a required prayer for the deceased, and an honorary prayer on the anniversary of the death of a relative or one's *bar mitzvah*, respectively. Additionally, other sanctions outside of Israel may include picketing in front of the recalcitrant husband's place of work and residence, as

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<sup>160</sup> Ibid.

<sup>161</sup> Responsa Rabbeinu Tam, Sefer HaYashar, 24; Shulkhan Arukh, Even Ha'ezer 154:21.

well as those of family members, as well as picketing in front of any other communal organization or individual not supporting the ostracism or banishment. In some cases there may be flyers posted around the city in which the recalcitrant spouse lives and works, in one case there were even subway ads with the recalcitrant's image<sup>162</sup>. *The Jewish Press*, a well-known and widely read American publication prints the names of some recalcitrant spouses in each publication - a phenomenon that is slowly spreading throughout Jewish communities worldwide, although it has not yet reached Toronto. Discussions around these phenomena are elaborated at length in chapter six. Encouraging the recalcitrant husband to grant the divorce using such mechanisms is complex and multi-faceted as the narratives will show. Briefly, in instances where there are children of the couple living in the same city as the recalcitrant, or in cases where the wife has been abused, and in some cities like Toronto, where there are no organizations that will arrange for continuous picketing, *mesuravot get* may actually oppose or reject the option of publicly sanctioning or may be unable to employ the few sanctions to which they have access outside of Israel simply because the city in which they reside is not equipped or willing to enable them<sup>163</sup>.

Before moving on to explore proposed remedies to the phenomenon of *get* refusal within the realms of Jewish law and state law, there are three additional points I want to emphasize.

In the vast majority of divorce cases, the legal asymmetry that exists within the *halakha* of divorce is simply a processual and banal legal step, and most women going through divorce are granted a *get* (despite the inherent asymmetry); there is no *get* refusal. Consequently, and notwithstanding the abuse that individual men might perpetrate taking advantage of the *halakhic* asymmetry, all rabbis, individual men, and particularly all of Orthodox Judaism and *Halakha*

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<sup>162</sup> A billboard was used in the DC Metro to pressure Aharon Friedman to give Tamar Friedman a *get* in 2012, after 6 years of *get* refusal. See page 297.

<sup>163</sup> As my primary interviews have shown.

must not be branded as misogynist, discriminatory or segregationist, as some critics have claimed<sup>164</sup>. In fact, although *mesuravot get* are at the mercy of their recalcitrant husbands who hold the absolute right in divorce<sup>165</sup>, many interviewed revealed that women refused a *get* themselves oppose such characterizations. The women themselves felt strongly that overstatements and inaccurate generalizations are offensive despite the actions of individual recalcitrant men, rabbis, *batei din*, and communities who do support a husband's *get* refusal (and thus his domestic abuse). Interviews with women refused a *get* have illustrated that women overwhelmingly believe that Judaism and *halakha* in and of themselves are not 'bad', but there are Jewish men who do bad things in the name of religion<sup>166</sup>. These perspectives will be elaborated in chapters throughout the exploration.

Moreover, the *get* itself consists of roughly twelve lines wherein there is no mention of rabbis or G-d and the writing and granting of the *get* did not use to require rabbinic supervision<sup>167</sup>. It was simply a legal exchange. Thus, it is noteworthy that the issue is with interpretation or manipulation of Jewish law, not with Jewish law, Judaism, or Jewish faith (in

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<sup>164</sup> I am engaging in this paper implicitly with the threads of three scholarly discourses:

- a) Wherein some feminist theologians say that any patriarchy in Christianity or Western culture is a legacy of Judaism. Judith Plaskow and Susannah Heschel have written on the anti-Judaic thrust. Judith Plaskow, "Blaming the Jews for the Birth of Patriarchy," in *Nice Jewish Girls*, ed., Evelyn T. Beck (Watertown, MA: Persephone, 1982), 250-254; Susannah Heschel, "Anti-Judaism in Christian Feminist Theology," *Tikkun* 5, no. 3 (1990), 25-28, 95-97.
- b) Wherein some Jewish feminists argue that Jewish marriage (and hence divorce) is inherently anti-woman, relegating women to the position of chattel, for example Rachel Adler. Rachel Adler, *Engendering Judaism: An Inclusive Theology and Ethics* (Boston, MA: Beacon Press, 1999).
- c) Wherein some argue that Judaism or Jewish marriage is *not* systematically anti-woman. Among others, Judith Hauptman and Avraham Grossman have written on this. Judith Hauptman, *Rereading the Rabbis: A Woman's Voice* (Boulder, CO: Westview Press, 1998); Avraham Grossman, *Pious and Rebellious: Jewish Women in Medieval Europe* (Waltham, MA: Brandeis University Press, 2004).

~ In the context of our particular case study, on *get* refusal, these critiques have been made to some degree by Susan M. Weiss and Netty C. Gross-Horowitz, *Marriage and Divorce in the Jewish State: Israel's Civil War* (Waltham, MA: Brandeis University Press, 2012).

<sup>165</sup> Blu Greenberg, "Where There is a Rabbinic Will, There is a Halakhic Way: A Defense and Critique" (presentation at the Twelfth Annual Caroline and Joseph S. Gruss Lecture at New York University School of Law, New York, NY, October 21, 2013).

<sup>166</sup> Men of all religions have historically used this approach, doing something 'bad' and even contrary to the principles of their own religions and/or contrary to equality in democracy, in the name of religion. Scholars of Religion and domestic violence pick up on this trend, see chapter 6 for further discussion.

<sup>167</sup> John Syrtash, *Religion and Culture in Family Law* (Toronto, ON: Butterworths Canada Ltd., 1992), 119.

G-d) writ large. Thus, *get refusal* may affect Jewish women (and men) of various and *all* observance levels, *not* only Ultra or Modern Orthodox<sup>168</sup>. To be clear, my discussion is situated within the religious spectrum of Judaism pertaining predominantly to the Orthodox and Conservative. There are however, a range of Jewish denominations and practices. The Conservative movement has its own set of responsa on divorce, its own *batei din* and *poskim*, or rabbinical arbiters, some of whom are women (which is not yet true of Orthodox Judaism). Reform Judaism has its own practices and ideas about what constitutes a religiously binding or sanctioned marriage and divorce. For example, Reform responses believe a civil divorce suffices to undo a religious marriage<sup>169</sup>. That said, the vital point to elucidate is that many Jewish women who do *not* self-define as Orthodox (or even observant in any capacity, falling within any denomination) may well want, or feel they are owed as a right, an Orthodox *get* and wish to satisfy Orthodox *halakhic* requirements<sup>170</sup> and as such, *siruv get* definitively has an inter-denominational impact.

To be clear, that while not all Jews feel these religious divorce proceedings are necessary, a significant number do, no matter to which sector of Judaism they adhere, as women have illustrated and as will be demonstrated throughout the women's narratives in this study.

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<sup>168</sup> This is confirmed by my interviews with participants in Toronto and participants from New York referred to me by ORA, Organization for the Resolution of Agunot, a non-profit organization that advocates for the unconditional giving of the *get*. They have helped hundreds of women, have approximately 70 active cases at any time, and have a constant list of women wait-listed.

a) Often, (Conservative and Orthodox) women who have been *mesuravot get* find their belief in G-d and faith in Judaism is strengthened during their plight (despite the length of refusal). They would often refuse to blame individual rabbis or *batei din* and insist the blame should be on the individual recalcitrant husband and his defenders. Often too, they agreed that it is the recalcitrant husband or 'rabbinic will' and interpretation that were the foes, not the *halakha* or religion itself.

b) Women self-identified with all types of denominations, including non-denominational and/or unaffiliated yet were still impacted by *get* refusal, some of whom insisted it is their "right" to receive their *get* despite the assortment of alternative remedies available to them which are embraced by the *batei din* and rabbinates that are non-Orthodox, including but not limited to *hafka 'ot*, or annulments.

<sup>169</sup> In 1869 the Reform movement voted to accept civil divorce alone as dissolving a marriage, though many reform rabbis still encourage a ritual ceremony for spiritual closure.

<sup>170</sup> As my primary interviews show and is elaborated later in this study (and to a lesser degree "Sounds of Silence: A Socio-Legal Exploration of *Siruv Get* and *Iggun* in Toronto" (Major Research Paper, York University, 2009).

## Contextualizing Proposed and Contemporary Remedies

I would like to shift to introduce and contextualize the proposed and contemporary remedies to the phenomenon of *get* refusal within the realms of Jewish law and state law. First I will review the Jewish law remedies including the entrenched and customary, and then those which had fallen into disuse but which are attempting to be revived by the International *Beit din* (IBD). I will then review the state/civil law remedies, which were amendments to existing state laws. These legal pluralist efforts attempting to remedy *get* refusal are at the intersection of dual legal systems empowered by the superior authority of the state. Subsequently, I will assess the movement toward prenuptial agreements as the best inoculation against *get* refusal. Each of these proposed remedies has its supporters and detractors, its benefits and its detriments. To date, no infallible remedy exists and no consensus as to which remedies are ideal and effective has been achieved.

### Jewish Law Remedies

The remedies that are incorporated into *halakha* are *hazmanot*, *seruvim*, and *kherem* (explained above, and *kherem* elaborated at length in chapter six). These tools are built in to the structure of divorce law in Judaism and are meant to deter and dissuade men from abusing the imbalance in the law itself. The threat of an order of contempt or *seruv* combined with the impending public shaming (rallying, picketing, etcetera) that follows with *kherem* was thought to be enough to discourage men from abusing their power. Today, *kherem* has taken on a modern reincarnation in ‘E-shaming’<sup>171</sup>, using social media and globalization which serves as a powerful

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<sup>171</sup> E-shaming has never been used in the context of *get* refusal, or *agunot*, though it has been employed in other contexts, such as shaming criminals, particularly those who have committed crimes against women and children. In this context I am defining e-shaming as the interaction between *get* refusal and technology wherein the use of technology helps to remedy instances of *get* refusal by shaming recalcitrant husbands.



remedy in many cases of *get* refusal (this thorough analysis can be found in chapter six as well). Along with *kherem* and e-shaming, Rabbinic law does permit some sanctions designed to induce the husband to execute a divorce and protect women although the sanctions must not be so severe as to constitute an overpowering of the husband's will. The Rambam's permission to 'convince' husbands to willingly grant *gets* in more creative ways is seldom used outside of Israel (where there is no Jewish juridical autonomy). In Israel there are state-backed legal strategies that rely on the ruling of 'kofin oto'<sup>172</sup> and the approval of a rabbinic court, such as jail time, revoking passports and driver's licenses, and removing job certifications<sup>173</sup> of recalcitrant husbands.

I must note here, that while there are cases where these ancient antidotes suffice, for them to work, there exists the prerequisite that they actually be employed. And yet, the research illustrates just the opposite, making these traditional mechanisms ineffective. In fact, every single Torontonians *mesurevet get* I spoke with in conducting this research<sup>174</sup> emphasized that the Toronto *Beit Din* does not follow this ancient and standard protocol which is utilized the world over by never issuing *hazmanot* and/or *seruvim*.

*"They had never even issued any hazmanot, and no seruvim."*<sup>175</sup>

*"This beit din is at least 50% of the problem in getting a woman her get in Toronto, and that's a very modest estimate".*<sup>176</sup>

*"The beit din refused to do anything even after calling them for more than a year"*<sup>177</sup>

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Yael C.B. Machtinger, "To Shame or Not To Shame? That is the Question," *Hadassah-Brandeis Institute Blog*, and *Canadian Jewish News*, March 23, 2016, <https://blogs.brandeis.edu/freshideasfromhbi/to-shame-or-not-to-shame-that-is-the-question/>; <http://www.cjnews.com/perspectives/ideas/to-shame-or-not-to-shame>

<sup>172</sup> Rambam/Maimonides, Mishnah Torah: Hilchot Ishut 14:8; Rambam/Maimonides, Mishnah Torah: Hilchot Gerushin 2:20.

<sup>173</sup> *Mekudeshet /Sentenced to Marriage*, DVD, Directed by Anat Zuria, New York, NY: Women Make Movies, 2004. Hebrew with English subtitles.

<sup>174</sup> Interviews with B.F.; J.D.; P.L.; D.R.; S.M.; M.G.; C.S.; E.L.; M.S. And indeed this was echoed as well in my Master's research, though the focus of which was altogether different.

<sup>175</sup> C.S. August 17, 2014.

<sup>176</sup> Anonymous advocate from <http://agunahandherget.com/>.

This disturbing assertion was confirmed by Rabbi Asher Vale, Director of the Toronto *Beit Din* who, at a large community event in 2012, acknowledged and defended the continued inaction of the court<sup>178</sup>. This revelation supports my contention that Toronto may be distinct when it comes to *get* refusal, moreover the inaction certainly perpetuates domestic violence, and it delegitimizes the power of the *beit din* itself.

### International Beit Din

A number of commentators (including feminist activists and rabbis) at the 2013 Agunah Summit suggested that an independent (alternative) international *beit din*, the International *Beit Din*, IBD, be established (noted briefly above)<sup>179</sup>. This court would, once again, attempt to supervise divorces using historic rabbinic mechanisms, some established up to 3000 years ago. These mechanisms are exceedingly controversial to some, in that they have been unused for years by Orthodox Judaism and there has been great resistance to their reintegration to the mainstream Jewish legal practice by the vast majority of Orthodox and Ultra Orthodox rabbis. These solutions include but are not limited to: *hafka 'ot*, *kiddushei ta'ut* or *mekach ta'ut*, *get al t'nai/kiddushin al t'nai*, or *get zikui* (annulments, mistaken or fraudulent marriage which are transactions entered into with a flawed understanding/without full disclosure or marriage nullification, conditional marriage, or *get* with the presumption of consent<sup>180</sup>). This new court,

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<sup>177</sup> B.F June 14, 2014.

<sup>178</sup> Rabbi Asher Vale, Director of the *Beis Din of the Vaad Harabonim* of Toronto, *The Plight of the Agunah in Our Community: Bridging Gaps Between Rabbinic, Academy, and Community* (panel discussion with Rabbi Daniel Korobkin, Yael Machtinger, Sharon Shore and Rabbi Asher Vale, Beth Avraham Yoseph of Toronto Congregation, Thornhill, ON, April 29, 2012),

[http://koshertube.com/videos/index.php?option=com\\_seyretandtask=videodirectlinkandItemid=4andid=11072](http://koshertube.com/videos/index.php?option=com_seyretandtask=videodirectlinkandItemid=4andid=11072).

<sup>179</sup> Rabbi Asher Lopatin, "The Role of the Rabbi", Rabbi Shlomo Riskin, "Discussion of Halakhic Solutions", Rabbi David Bigman, "Discussion of Halakhic Solutions" (presentations at The Agunah Summit, New York University Law School, New York, NY, June 24, 2013).

<sup>180</sup> Babylonian Talmud: Tractate Ketubot 3a; Rashba (*hafka 'ot*/annulments); Responsa Rabbi Moshe Feinstein, *Igrot Moshe*, Even Ha'ezer 1:80 (*mekach ta'ut*/ mistaken or fraudulent marriage or marriage nullification); Shulkhan

the IBD, is reminiscent of Rabbi Emmanuel Rackman's *beit din*, *Beit Din L'Inyanei Agunot*, established in 1997, which issued divorces on the basis of *kiddushei ta'ut*<sup>181</sup>, a Talmudic concept for mistaken marriage whereby a *beit din* declares that a woman would never have married her husband had she known he would act in an abusive manner during the marriage (caused by mental health problems, addictions, etcetera). This remedy is similar to *hafka'at kiddushin*, an approach that abrogates the marriage retroactively, annulling the *kiddushim* and thus obviating the need for a *get*, also found in the Talmud. Rabbi Rackman, though initially a respected Orthodox rabbi, faced immense criticism for his willingness to employ *kiddushei ta'ut* and many rabbis refused to officiate at the subsequent wedding of women who had been freed by Rackman's 'liberal' *beit din*, some going so far as to label children born to these subsequent marriages, *mamzerim* because their mothers were indeed still considered to be married, despite their annulments. "I asked my rabbi what's wrong with Rackman or this new court and he said Rackman was viewed as a pariah, he can't align with this because he too would be viewed as a pariah and same with me"<sup>182</sup>, said one of my participants.

Headed by Rabbis Simcha Krauss, Ronald Warburg, and Yosef Blau (three "mainstream modern Orthodox *talmedai chachamim*, or well-versed Torah scholar, with long admirable

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Arukh, Even Ha'ezer 38:36 (*kiddushin al t'nai*/conditional betrothal); Shulkhan Arukh, Even Ha'ezer 148:2 (*get al t'nai*/ conditional divorce); Responsa Rabbi Yitchak Herzog, Even Ha'ezer 2:55 (*get zikui*/ *get* with the presumption of consent).

Each of these alleviation mechanisms is complex and intricate, with much Talmudic basis. I have truncated definitions for purposes of brevity and scope. For further detail see Rabbi Shlomo Riskin, *Women and Jewish Divorce: The Rebellious Wife, the Agunah and the Right of Women to Initiate Divorce in Jewish Law, a Halakhic Solution* (Hoboken, NJ: Ktav Publishing, 1989); Rabbi Irving A. Breitowitz *Between Civil and Religious Law: The Plight of the Aguna in American Society* (Westport, CT: Greenwood Press, 1993); Michael Rackman, "Kiddushei Ta'ut Annulment as a Solution to the Agunah Problem," *Tradition* 33, no. 3 (1999) :102-108; Rabbi Eliezer Berkovits *T'nai B'nisuin Ub'Get* (Jerusalem, Israel: Mossad HaRav Kuk, 1966); Aviad Hacoen, et al. *The Tears of the Oppressed, An Examination of the Agunah Problem: Background and Halakhic Sources* (Hoboken, NJ: Ktav Publishing House Inc., 2004).

<sup>181</sup> Babylonian Talmud: Tractate Baba Kama 110a-111a.

<sup>182</sup> D.D. October 24, 2013.

records of Torah service”<sup>183</sup>) along with support from Blu Greenberg (Orthodox feminist and founder of JOFA, Jewish Orthodox Feminist Alliance) and others, the IBD has started adjudicating difficult cases in 2013-2014. They have ensured transparency to guarantee that *gittin* granted will be *halakhic* but their rulings had not been made public as of winter 2015 and subsequently have been “inadequate”<sup>184</sup>. The IBD focuses on the legal remedy known as *get zikui*, that is, annulling the marriage based on what is best for both parties, operating on the premise that divorce will benefit both wife and husband, whether he agrees or not. That said, the IBD will employ other legal mechanisms as well. “A number of tools can be used...each case will be evaluated on its own merit. The goal is to free women in a way that the decision will be accepted by the broader community”<sup>185</sup>. This *beit din* is said to also officiate at the remarriages of these women, attempting to avoid the fallout of the Rackman *beit din*, wherein the released women were nonetheless viewed by many rabbis as married and thus unable to marry again.

Some social activists<sup>186</sup> feel that these mechanisms, which already exist in the legal tradition, must be revisited and embraced as the IBD is doing, rather than relying (solely) on *kherem*, shaming, e-shaming, or even prenuptial agreements (discussed below). Yet a significant schism persists wherein many moderate Orthodox rabbis, and thus by extension, their congregations, and thus *mesuravot get* as well, remain skeptical, even critical of these ‘alternative’ remedies. Women I interviewed- including non-Orthodox -shared this sentiment, insisting on holding out for “*the real deal, no ‘alternate’ beit din*”<sup>187</sup>, insisting that there’s “*no*

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<sup>183</sup> Rabbi Aryeh Klapper, “The International Beit Din Controversy: A Statement and a Proposal,” October 15, 2015, <https://moderntoraleadership.wordpress.com/2015/10/02/the-international-beit-din-controversy-a-statement-and-a-proposal/>.

<sup>184</sup> Ibid.

<sup>185</sup> Rabbi Simcha Krauss, *Av Beit Din* of the International Beit Din, “Undoing the Chains!: The Creation of a New Beit Din for Agunot” (presentation at Torah In Motion Conference, Sha’arei Shomayim Congregation, Toronto, ON, December 14, 2014, Toronto).

<sup>186</sup> Blu Greenberg, Susan Aranoff, Rabbi Shlomo Riskin, Rabbi Asher Lopatin, and others.

<sup>187</sup> S.L., October 23, 2013.

*point to annulment if I can't move on within my community*"<sup>188</sup>. One woman shared, "I considered an alternative court with an alternative remedy but my rabbis asked me 'do you want a kosher get'? so I changed my mind."<sup>189</sup>

What is important to consider regarding the IBD is not the impact of the cases they are adjudicating, nor the efficacy of the controversial court, both of which are quite variegated and beyond the scope here. What is significant, is the court's creation and existence which in and of itself indicates willingness of some rabbis to help women, continuing in the tradition of Rabbeinu Gershom, and others. A couple of women shared that "*Rabbi Rackman's court makes sense in some cases... things my husband did like drug abuse and non-support of wife as per ketuba should be viewed as breach of (ketuba) contract and annulments should be permitted*"<sup>190</sup>; and "*A woman should not be allowed right away, but it's crazy that after 10, 20 years hafka'ot, mekach taut, or other old loopholes should still not be permitted*"<sup>191</sup>. Thus some may view the establishment of this court, like the institution of the *ketuba*, the ban on unilateral divorce and polygamy, and countless other *halakhic* innovations- as attempts to level the playing field by giving women alternatives rather than relying on the absolute right of recalcitrant husbands to give a *get* willingly. It is also an illustration of one set of proposed remedies in contemporary times.

### State Law Remedies

Before elaborating on the legal amendments of state law, I include here historical samplings or examples of this tradition- both to show the potential beauty and efficacy of legal

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<sup>188</sup> P.B., May 28, 2014.

<sup>189</sup> L.I. May 23, 2014.

<sup>190</sup> D.D., October 24, 2013.

<sup>191</sup> Ibid.

pluralist solutions and also to illustrate that these solutions are not novel or radical. On the contrary, the pluralist approach which sees the enmeshing, interwovenness of the legal orders is a customary strategy, steeped in our tradition from well-established Diasporic Jewish communities.

In the 14<sup>th</sup> and 15<sup>th</sup> centuries, the works of Fra Angelico and Lorenzo Costa depicted popular images of marriage. Historian Kenneth Stow compares them to the almost identical images of Jewish marriages from the same period, and through analysis, demonstrates that the matrimonial practices of Jews and Romans were more similar than different during this period<sup>192</sup>. Stow gives a detailed description and comparison of the marriage customs stemming from both the Roman as well as Jewish legal systems. He illustrates that already in the Medieval Period there are a number of emancipatory shifts for women regarding matrimonial arrangements both from within Jewish family law and state law respectively and likely reciprocally, particularly regarding the notion of *patria potestas*, a father's right to choose his daughter's husband, a popular legal rights concept which both Roman and Jewish law had embraced until this period. This example should signal to us, in the post-modern period, that there have been models throughout our history of positive integration amongst legal orders. But let us explore two more examples dealing with divorce from the Modern Period drive this point further.

In late eighteenth century Trieste, Rachele Morschene, a twenty-five-year-old Jewish woman was attempting to divorce her husband, Lucio Luzzato<sup>193</sup>. Initially Morschene sought a civil divorce because according to the law in Trieste at the time, which was under the jurisdiction of the Habsburg Empire, the state court had exclusive jurisdiction for resolving marital issues for

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<sup>192</sup>Kenneth R. Stow, "Marriages are Made in Heaven: Marriage and the Individual in the Roman Jewish Ghetto," *Renaissance Quarterly* 48, no.3. (1995): 445-491, particularly 455-451.

<sup>193</sup>Lois C. Dubin, "Jewish Women, Marriage Law, and Emancipation: The Civil Divorce of Rachele Morschene in Late Eighteenth-Century Trieste", 119-147,119.

all citizens (although they were ‘culturally and religiously’ sensitive)<sup>194</sup>. The Habsburg Empire included tolerance and recognition of confessional differences, and adjustments were made to the civil law which outlined civil procedure for divorce for Jews (and Protestants) since their religious laws permitted it<sup>195</sup>. Consequently, “the civil-religious hybrid and the respect for denominational differences made the system, and Morschene’s case in particular, extremely complicated”<sup>196</sup>. Yet, despite the challenges, the civil court ultimately ruled in Morschene’s favour, asking a rabbi to declare whether the marriage was religiously dissoluble so that ultimately, “all the proper civil and religious steps would be taken”<sup>197</sup>. This historical example is effective in illustrating the tradition of entanglement of Jewish and state legal orders in matters of marriage and divorce. Indeed, Morschene’s legal arguments simultaneously addressed Habsburg and Jewish laws. The divorce proceedings in this case indicate, as H. Patrick Glenn notes, that the boundaries between legal orders are ambiguous and porous<sup>198</sup>. By allowing Jews to divorce because Jewish religious law permitted it, Habsburg law partially incorporated Jewish divorce within a civil framework.

In a different context, a similar precedent emerged. In Imperial Russia a state- run Rabbinic Commission was established, composed of ‘state rabbis’ well versed in state law and Jewish law and there existed simultaneously non-state ‘spiritual rabbis’ with no ties to the state. Both types of rabbis worked together in dissolving contentious divorces and those unique to the Russian context. For example, what to do with a woman who becomes an *aguna* because her husband was sent to Siberian exile and his whereabouts and condition are unknown. This, like

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<sup>194</sup>Lois C. Dubin, “Jewish Women, Marriage Law, and Emancipation”, 119-121,132.

<sup>195</sup>Ibid, 121.

<sup>196</sup>Ibid.

<sup>197</sup>Ibid, 127.

<sup>198</sup> H. Patrick Glenn, “Are Legal Traditions Incommensurable?” *The American Journal of Comparative Law*, no. 1 (2001): 133-145.

the Morschene case, is similar to women refused a *get* in contemporary times who intentionally navigate and straddle both the internal, Jewish legal system and the external, official state system simultaneously and strategically. I highlight these brief historical examples to demonstrate that there has always been an interesting duality and to some degree even acceptance of multiple legal systems for Jews in Diasporic communities- whether the Roman Empire, Imperial Russia or the Habsburg Empire. Thus advocating a pluralist approach in 21<sup>st</sup> century North America is not novel or revolutionary, it is simply perpetuating a traditional “logic of fuzziness” because in the real world boundaries are never sharp”<sup>199</sup>. There are also examples of contemporary proposed remedies to *get* refusal which are based in state law, or implement state and religious legal orders, they are legal pluralist, maintaining the tradition.

In the 1980s and 1990s, amendments were made to the *Family Law Act* provincially, in Ontario, and the *Divorce Act* federally in Canada, and twice to the *Domestic Relations Law* in New York. These amendments were secular legal changes that, although state enacted, directly impacted and attempted to remedy *siruv get* by lessening a recalcitrant husband’s bargaining power when refusing to grant a wife her *get*. There are cases where invoking the amendments in order to aid in the giving of a *get* may be viewed as coercive, and thus invalid by a *beit din*, known as a *get meuseh*, a coerced *get*. This is especially true in Toronto, where the amendments were initially supported by *beit din*, but are now most often resisted by them<sup>200</sup>. Nonetheless, willingness to use these legal pluralist *get* laws would support *mesuravot get*.

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<sup>199</sup>Esin Orucu and David Nelken, eds. *Comparative Law: A Handbook*, (Portland, OR: Hart Publishing, 2007), 6.

<sup>200</sup> Sharon Shore, *The Plight of the Agunah in Our Community: Bridging Gaps Between Rabbinic, Academy, and Community* (panel discussion with Rabbi Daniel Korobkin, Yael Machtinger, Sharon Shore and Rabbi Asher Vale, Beth Avraham Yoseph of Toronto Congregation, Thornhill, ON, April 29, 2012), [http://koshertube.com/videos/index.php?option=com\\_seyretandtask=videodirectlinkandItemid=4andid=11072](http://koshertube.com/videos/index.php?option=com_seyretandtask=videodirectlinkandItemid=4andid=11072).



### New York Get Laws

The first New York *Get* Law (NYGL1), as it has come to be known, came into force in 1983 with an amendment to the *Domestic Relations Law* where as the second New York *Get* Law (NYGL2) was an amendment to New York State's equitable distribution laws in 1992<sup>201</sup>. NYGL1 had broad rabbinic support, including the support of the ultra Orthodox/ conservative group Agudath Yisrael of America. This is significant in that it indicates that the ultra Orthodox did not take issue with state involvement nor did they find the amendment coercive in any way, leading to a *get meuseh*. NYGL1 stipulates that when a civil divorce is sought in New York State, the plaintiff, the party initiating the divorce must file an affidavit stating that 'to the best of my knowledge all steps have been taken solely within my power to remove all barriers to the other party's remarriage'<sup>202</sup>. As we will see below, this is similar to the current *get* law in Canada.

In 1992, and as a result of the infamous *Schwartz v. Schwartz* case<sup>203</sup>, NYGL2 opened the door for a judge to take into account an *aguna's* inability to move on with her life and remarry when deciding on division of assets and financial support. In the case, the *mesurevet get* was the daughter of the owner of *The Jewish Press*, Rabbi Sholom Klassen. The recalcitrant husband was a columnist. He withheld the *get*, attempting to exchange it for large ownership of the paper. After years of litigation, Justice William Rigler determined that withholding a *get* should be taken into consideration by a judge when determining support and dividing assets. In other words, a judge should be able to grant more support, than would be otherwise entitled and more than 50% of assets. Rigler's precedent became law when New York State legislature

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<sup>201</sup> NYS, *Domestic Relations Law*, Section 253 (1-9), 1983; NYS, *Domestic Relations Law*, Section 236(B)(5) and (6)(d), 1992.

<sup>202</sup> Ibid.

<sup>203</sup> *Schwartz v. Schwartz* [1992]153 Misc. 2d 780, 583 N.Y.S 2d 716.

unanimously passed the NYGL2. Having a potentially harsh penalty for the refuser, NYGL2 was interpreted by rabbis as far more controversial than NYGL1 and did not benefit from the unanimous support as did its predecessor. Agudath Yisrael and other Orthodox rabbis felt the reach was too far, NYGL2 did constitute coercion, making the free will (of a husband) impossible. Thus, they sought to have the law repealed (and still do)<sup>204</sup>. Young Israel and the Orthodox Union, more moderate or ‘modern Orthodox’ factions, strongly supported the NYGL2 at the time, but in another similarity to the Canadian scenario (to be discussed below), they since have distanced themselves and reneged their support of NYGL2. Agudah eventually went so far as to maintain that the threat of financial loss as issued by a state judge for withholding a *get* was so coercive that it negated the husband's free will and made it *halakhically* impossible for men to give a kosher *get*. They concluded by default that NYGL2 made it impossible for women to obtain a *get* in New York State since one must assume that all men who are faced with divorce may have been coerced by NYGL2’s existence on the books, so to speak<sup>205</sup>.

### Canadian Get Laws

The movement toward legislative amendments began in the 1980s with intense lobbying by various Jewish organizations such as the Vaad Harabonim of Toronto<sup>206</sup>, B’nai Brith Canada, The Canadian Jewish Congress, Women on Get of Montreal, and was notably spearheaded by a few Toronto women, who inundated the Ontario government with vast amounts of mail, phone

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<sup>204</sup> Rivka Haut and Susan Aranoff, *The Wed-locked Agunot: Jewish Orthodox Women Chained to Dead Marriages* (Jefferson, NC: McFarland, 2015), 164-165.

<sup>205</sup> Brief for Agudath Israel of America as Amicus Curiae Supporting Defendant Appellant at 3, *Becher v. Becher* [1998] 667 N.Y.S 2d 50 (App. Div. 1997) (No. 97-03205), appeal dismissed, 694 N.E.2d 885.

<sup>206</sup> Translates as the Toronto Board of Orthodox Rabbis (many of whom also sit on the Toronto *Beit Din*).

calls, and visits to politicians<sup>207</sup>. One of these women ran an *aguna* hotline single-handedly out of her home<sup>208</sup>. As well, a *Get* Committee was formed including members of all branches of Judaism<sup>209</sup>. The significant contributions of women, who propelled the advocacy is especially noteworthy in light of the critical legal approach this study embraces, which sees women as law-makers, and sees law (both state and *halakha*) as arising from, belonging to, and responding to individuals, in this case, women. After the lobbying efforts were concluded, “in a scant three months”<sup>210</sup>, and after consultation with various secular associations and leaders of “50 religious groups of every stripe” including all the branches of Judaism, Buddhists, Islamic groups, and with the specific agreements of the Roman Catholic, Presbyterian and Anglican churches, the Canadian government was “urged to cooperate with Orthodox rabbis so as to get a *get* law passed in Canada”<sup>211</sup>. Here too, like in New York, the Orthodox rabbinate was on board and did not find the language of the state to be coercive, invalidating a *get* that might result from the encroachment of state law. In 1990, the then Minister of Justice, Doug Lewis, introduced amendments to the *Divorce Act*, Bill C-61<sup>212</sup>. At the Bill’s second reading, the Minister outlined some of the motivations for these amendments. He interestingly explained:

*The bill before us today is an amendment to the Divorce Act which would provide a court with discretionary powers to preclude a spouse from obtaining relief or proceeding under the Divorce Act where that spouse refuses to remove a barrier to religious remarriage and where the power to remove the barrier to religious remarriage lies solely with that person. . .*

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<sup>207</sup> Initially, the Tories supported the amendments and agreed to introduce it to the Ontario legislature, it was opposed by the Liberals, then the head of a minority government, and supported by the NDP who saw the issue as a human rights concern, per my conversation with John Syrtash, April 2009.

<sup>208</sup> Yael C.B. Machtinger, “Sounds of Silence: A Socio-Legal Exploration of Siruv Get and Iggun in Toronto” (Major Research Paper, York University, 2009).

<sup>209</sup> Tirzah Meacham, Professor of Talmud and expert in legal/religious status, University of Toronto, meeting January 28, 2009. She also sat on the *Get Committee* that went to Parliament in Ottawa.

<sup>210</sup> John Tibor Syrtash, “Celebrating the Success of Canada’s “Get” Legislation and its Possible Impact on Israel” (presentation at *Resolving Get Refusal in Civil Laws and the Corresponding Halakhic Approach*, Bar-Ilan University, Ramat Gan, Israel, September 13, 2005. I obtained copy of presentation April 24th, 2009), 5.

<sup>211</sup> *Ibid*, 7 and *Bruker v. Markowitz* [2007] SCC 54. Docket No. 31212. Para 7.

<sup>212</sup> *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.) sec 21.1.

*. . . A spouse should not be able to refuse to participate in a Jewish religious divorce — called a Get — in order to obtain concessions in a civil divorce. The Get should not be used as a bargaining tool for child custody and access or monetary support.*

*. . . I am concerned about protecting the integrity of the Divorce Act and preventing persons from avoiding the application of the principles contained in the act. For example, a wife may feel compelled to agree to custody arrangements which are not truly in the best interests of a couple's child in order to obtain a Get.*

*I want to take a few minutes to describe briefly the dilemma certain Jewish persons face because of their divorce procedures. ... While difficult, remarriage within the Jewish faith for a man in the same circumstances is not impossible.. . . the government is moving where it can and where it is brought to the government's attention to eliminate gender bias in the law. . . .*<sup>213</sup>

It is clear from Lewis' remarks that the legislation would seek to balance the integrity of both *halakha* as well as the civil law while simultaneously implementing the civil law to aide a problem that occasionally arises from within *halakha*. A delicate balance is sought whereby state law simultaneously must protect women from abuses that may result from their religious affiliation- or their right to divorce- whilst still promoting their right to practice their religion. Furthermore, the amendment continues the legal pluralist tradition of a multiplicity of overlapping and (at times even reciprocal) legal orders. In 1991, at third and final reading of these amendments, Kim Campbell, who succeeded Mr. Lewis as Minister of Justice spoke about the need for *get* legislation. Campbell “confirmed the policy rationale for this legislative initiative”<sup>214</sup> in her remarks affirming that:

*The purpose of this bill is to assist Jewish citizens whose spouses are withholding a religious divorce, which is called a get, in order to obtain concessions in a civil divorce.*

. . .

*The consequences to women deprived of a get and loyal to their faith are severe. They may not remarry within their faith, even though civilly divorced...The vast majority of adherents to the Jewish faith condemn as unfair this practice of bargaining with the get yet . . . Persuasion by rabbis has often proved ineffective. Since the dispersion of the Jews*

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<sup>213</sup> *House of Commons Debates*, vol. VI, 2nd Sess., 34th Parl., February 15, 1990, at pages 8375-77.

<sup>214</sup> *Braker v. Markovitz* [2007] SCC 54. Docket No. 31212. Para 8.

*there is no central Jewish authority to amend the Jewish legal code . . . which governs the get. Nor is there any modern-day authority within rabbinical courts to enforce the offer and receipt of gets. Full support for Bill C-61 was expressed by major Jewish organizations who attended the hearings before the legislative committee. Representatives of the three Parties praised the bill and quickly passed two minor technical amendments... As well, the Toronto Board of Orthodox Rabbis . . . endorsed the legislation and the two amendments.*

*Bill C-61 will enable Canada's Jewish community to preserve its traditions without destabilizing models of family life. It also ensures that the principles of the Divorce Act with respect to alimony and custody are applied equally to all Canadians.*<sup>215</sup>

Minister Campbell then proclaimed, “*the Get law is Canada’s gift to the Jewish people*”<sup>216</sup> and since it happened to be a Friday afternoon, she then concluded by wishing them a “*Good Shabbat*”<sup>217</sup>. Indeed Campbell’s remarks were noteworthy because they highlight the exchange and interaction between *halakha* and Canadian law. Both Ministers Lewis and Campbell displayed a thorough understanding of the complexity of the issue and Campbell explicitly notes that the amendments were endorsed by the Toronto Board of Orthodox Rabbis - a key point and one that will be further discussed throughout the study, particularly chapters five and seven.

The two major legal amendments enacted with the hope of remedying *iggun* in Canada were section 21.1 of Canada’s federal *Divorce Act (DA)* and section 2(4)-(6) of Ontario’s provincial *Family Law Act (FLA)*. These legal amendments (the contents of which may be found in appendix G) allow the courts discretion to dismiss any matrimonial claim or a defence to any matrimonial claim and strike out any pleadings filed by any spouse who fails to remove all barriers to his or her spouse’s religious remarriage within his or her spouse’s faith within 15 days after receiving an affidavit requesting that he or she do so. The matrimonial claim that such a recalcitrant spouse could risk having dismissed across Canada, under the *DA*, if he (in cases of

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<sup>215</sup> *House of Commons Debates*, vol. VIII, 2nd Sess., 34th Parl., May 4, 1990, at pp. 11033-34. Emphasis Added.

<sup>216</sup> *Ibid.*, and John Tibor Syrtash, “Celebrating the Success of Canada’s “Get” Legislation”, 5.

<sup>217</sup> *Ibid.*

*siruv get* where women are *agunot* as opposed to men, which is infrequent) refuses or fails to consent to a *get* within fifteen days may include claims for a civil divorce, spousal support, child support, child custody, access to children and court costs. Additionally, in Ontario, where the *FLA* applies, a recalcitrant who refuses to consent to a *get* can also lose the benefit of having his claims determined by the court in his favour if they pertain to matrimonial property rights. Similarly, if the recalcitrant would merely be defending a property rights claim his defence would also be dismissed if he refuses to provide a *get* thereby removing all barriers to religious remarriage within the allotted time<sup>218</sup>. The recalcitrant is no longer a party since his claim or defence has been dismissed and the wife - the remaining party wins by default such that there is no consideration whatsoever to the recalcitrant's position or conduct<sup>219</sup>.

As I noted above, invoking the *get* laws may be (and often is) viewed by rabbis and the Toronto *Beit Din* as coercive- an unkosher *get meuseh*. Although the amendments were initially supported by *beit din*, numerous Torontonians women as well as Orthodox attorneys within the community have all affirmed that they have reneged and strongly dissuade use of the amendments, leaving *agunot* vulnerable and trapped between her religious will and her marital will. (My analysis as to why the *beit din* has changed their stance can be found in chapter seven, though briefly- I suspect it is largely connected to the removal of religious arbitration in Ontario and the *beit din*'s attempt to hold on to what little power remains in their control). I should note that often just the threat of invoking the *get* laws has been an effective strategy in some cases and

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<sup>218</sup> John Tibor Syrtash, "Celebrating the Success of Canada's "Get" Legislation", 2-3. Attorney Sharon Shore, family law expert and *get* refusal activist, Partner at Epstein Cole, Toronto, meeting July 8, 2009. She also chaired Jewish Family and Child.

<sup>219</sup> John Tibor Syrtash, "Celebrating the Success of Canada's "Get" Legislation", 11.

the threat alone has resulted in the issuance of a *get* despite the fact that the *beit din* precludes its actual use<sup>220</sup>.

Civil legislation alone can provide limited relief. The *get* laws are beneficial in that they may help some women some of the time. They are ‘religion-neutral’, meaning they can have a positive impact outside of Judaism, and they are gender neutral. They use language of “removal of barriers to remarriage”, not specifically stipulating a *get*, so other religions can (and do) make use of the amendments which is a fine example of (regulated) religious/legal pluralism which I will elaborate on in the next chapter. Yet, the amendments do have significant detriments as well. For example, these civil laws are useful only when there was a civil marriage and in fact many ultra Orthodox unions leave out this civil component, marrying *halakhically* only, thereby missing out on the potential protection from civil remedies. This is true for any jurisdiction and I saw this phenomenon in both Toronto and New York. There is also a significant problem with NYGL1- women are most always the plaintiffs. It has no leverage against a recalcitrant husband who is not the plaintiff, which is most if not all recalcitrant husbands in New York. Under this law, she can get her civil divorce, but remain without her *get*, which is in fact the most harmful for a woman being that she loses her leverage, and so the *get* law is largely ineffective<sup>221</sup>. Moreover, NYGL 2 is only effective when a husband has declared income or assets that can be garnished for the wife (which does not always occur), and looming large, the question of constitutionality of both the NYGLs remain and can be challenged at any point<sup>222</sup>.

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<sup>220</sup> Sharon Shore, “Gender-Based Advantages and Disadvantages in the Halakhic and Secular Family Law Systems” (presentation at Hadassah-Brandeis Institute’s workshop on “The Interaction between Religious Divorce Law and Secular Family Law: A Workshop on Practical Approaches” Brandeis University, Waltham, MA, May 17, 2017).

<sup>221</sup> Rivka Haut and Susan Aranoff, *The Wed-locked Agunot* (Jefferson, NC: McFarland, 2015), 162.

<sup>222</sup> *Ibid*, 169. Indeed, as I make revisions to this chapter, an Orange Country Supreme Court Justice, Catharine Bartlett has refused to go past the guidelines of the New York state’s divorce statute when granting spousal maintenance and child support in the *Masri v Masri* case- or in other words she has refused to invoke the NYGL

In theory, *get* laws are a powerful tool. These state enacted legal changes directly impact and attempt to remedy the *aguna* issue by lessening a recalcitrant husband's bargaining power when refusing to grant a wife her *get*. Nonetheless, despite much work being done, both social and legal, the gap between legal realities and social realities continues within Jewish communities, particularly Toronto. The legal remedies have not changed the social norms and behaviours 'on the ground' and in Toronto have led to the problematic misconception that *siruv get* has been 'solved' by these amendments. The legal approaches have managed *get* refusal largely as an issue of religious pluralism (as a question of religious freedom and the rights of communities), while local communities have taken a variegated approach. To put it bluntly, although these amendments were initially intended to act as remedies, there are often cases where the amendments lead to an invalid *get*. Consequently, the potential success of the *get* legislation has not been an infallible solution and the issue of divorce refusal persists.

### *Prenuptial Agreements*

The most popular contemporary remedy to *get* refusal proposed to date has been prenuptial (and postnuptial) agreements. In the United States, the popularity of these agreements is at least in part due to the *Avitzur v. Avitzur* [1983] case wherein a civil court upheld the obligations under a Conservative (Jewish) marriage contract by "relying solely upon the application of neutral principles of contract law, without reference to any religious principle"<sup>223</sup>. Thus, *Avitzur* set the stage for couples to draft agreements regarding aspects of Jewish divorce,

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believing it is unconstitutional, beginning what is sure to be a long and controversial challenge. Joel Stashenko, "Judge Refuses to Compel Husband to Grant Wife a 'Get'," *New York Law Journal*, January 17, 2017; Michael A. Helfand, "Get Out of Here! Did a New York Judge Just Order Orthodox Women to Stay in Unwanted Marriages?" *Forward*, January 25, 2017, <http://forward.com/opinion/361210/get-out-of-here-did-a-ny-court-just-force-Orthodox-jewish-women-to-stay-in/?attribution=articles-hero-item-text-1>.

<sup>223</sup> *Avitzur v. Avitzur* [1983] 58 NY 2d 113. At 115. This case implemented what became known as the Lieberman Clause, realized by the Conservative movement and resisted by the Orthodox.



which would be upheld by civil courts, like necessitating appearance before a rabbinical court to begin arbitration for a *get*, which is in effect precisely what prenups now necessitate. In fact, courts not only upheld these agreements but also found men to be in contempt, even going so far as to order incarceration in one case (similar to Israel) when recalcitrant husbands attempted to renege on their contracts<sup>224</sup>. It was clearly the antecedent of the modern-day prenuptial agreement.

I should note that similar to the evolution of *get* laws in both the New York and Canadian contexts, the prenuptial movement (‘prenups’) also emerged, at least in part due to women’s demands for both their right to religion and their right to divorce. The widespread and normative use of prenups (particularly in the New York context) and the growing acceptance of prenups in other contexts has largely been precipitated by the activism and legal mobilization of women, both those at the helm of the *aguna* movement, such as Rachel Levmore and Susan Weiss, but also individual women (such as Stephanie Markovitz, Mrs. Avitzur, Rachel Light, and many others). These women, through their legal agency, gradually changed legal and social norms because of their legal demands and as a result of their experiences being impacted by, but also impacting the legal systems in which they find themselves- both state, and *halakhic*.

Today, there are a variety of prenuptial agreements available, from a variety of denominations including perhaps the most widely accepted, *Halakhic* Prenuptial Agreement (HPA). The HPA is a binding arbitration agreement endorsed by the Rabbinic Council of America (RCA) and Beth Din of America (BDA) respectively<sup>225</sup>, and was created by the BDA back in 1993. The RCA passed motions in 1993 and 1998 encouraging the use of prenups

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<sup>224</sup> *Margulies v. Margulies* [1973] 344 NYS 2d 482, 42 A.D. 2d 517; *Kaplinsky v. Kaplinsky* [1993] 198 A.D.2d 212; 603 N.Y.S.2d 574.

<sup>225</sup> The main professional organization of ordained Orthodox rabbis (in North America, including Canada); and the main network of American Orthodox rabbinic courts. I should note however that two (of a number of) leading *kharedi* rabbis who have strongly opposed the prenuptial agreement are Rav Elyashiv and Rav Shternbach.

although it has only gained real traction in the last number of years. In 2006, the RCA passed a resolution declaring that rabbis should not officiate at a wedding where a proper prenuptial agreement has not been executed<sup>226</sup>. In fact, up to 33 percent of RCA members said they refuse to officiate weddings unless a prenuptial agreement was signed<sup>227</sup>. Most recently, in September 2016, the RCA came out with its strongest mandate yet, requiring “each of its members [to] utilize, in any wedding at which he is the officiant (*mesader kiddushin*), in addition to a *ketuba*, a rabbinically-sanctioned prenuptial agreement, where available, that aids in our community's efforts to ensure the timely and unconditional issuance of a *get*”<sup>228</sup>. In Israel too, the Agreement for Mutual Respect or *Heskem L’Kavod Hadadi* created by Dr. Rachel Levmore and a new version of the prenuptial agreement created by the modern Orthodox group Tzohar in conjunction with the Israeli Bar Association, which meets both rabbinical requirements and demands of the Israeli court system, are both endorsed by many *halakhic* authorities and gaining traction. In the United States, Rabbi Dr. Michael Broyde has also authored the Tripartite Agreement which while potentially very effective, and likely the agreement of the future (according to Jeremy Stern), is too controversial for mainstream Orthodoxy at this point and Broyde himself has clearly asserted, it is “*shelo l’halakha*”, or not to be taken seriously as *halakha* or *halakhically* permissible at this time.<sup>229</sup>

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<sup>226</sup> <http://www.theprenup.org/rabbinic.html>.

<sup>227</sup> Lisa Fishbayn Joffe, “The Impact of “Foreign Law” Bans on the Struggle for Women’s Equality under Jewish Law in the United States of America,” in *Women’s Rights and Religious Law: Domestic and International Perspectives*, eds. Fareda Banda and Lisa Fishbayn Joffe (London, UK: Routledge Press, 2016) :179-201, 191.

<sup>228</sup> “A Powerful Advance to Prevent Using Jewish Law to Cause Human Suffering,” September 22, 2016 <http://www.rabbis.org/news/article.cfm?id=105862>.

<sup>229</sup> Rabbi Jeremy Stern, “Lessons from the Front,” and Dr. Rachel Levmore, “Discussion of Halakhic Solutions” (presentations at The Agunah Summit, New York University Law School, New York, NY, June 24, 2013). Stern and Levmore are celebrated advocates for prenuptial agreements. Jeremy Stern advocates for the RCA prenuptial agreement in North America <http://www.theprenup.org/> and Rachel Levmore advocates for the Young Israel Agreement for Mutual Respect in Israel.

Tzohar [www.tzohar.org.il/English/in-the-press/](http://www.tzohar.org.il/English/in-the-press/).

The RCA prenup is an agreement signed before the marriage wherein a couple accepts binding arbitration regarding the *get* and occasionally other matters arising from divorce (such as division of property, child support and custody, etcetera), by a specific, named *beit din*, most often a member court of the umbrella organization, the BDA<sup>230</sup>. In the contract, the husband assumes liability for support payments to the wife from the date of separation until the termination of the marriage by the issuance of a *get*, as per the *ketuba* requirement for a husband to ‘maintain’ his wife, make *parnasa* or earn a living. The wife loses her right to the continued maintenance if she is the one who refuses to appear before *beit din* when summoned or if she refuses to accept the *get* once issued, in essence making the prenuptial agreement gender neutral to some degree. The current version of the prenup has the maintenance payment set at \$150 per day, though this rate may be negotiated and adjusted for inflation. This would amount to \$55,000 per annum and it cannot be offset by a wife’s assets or earnings. What is further noteworthy about the prenup is that the payment is framed deliberately as maintenance, in line with a prior *ketuba* obligation, rather than a penalty for not issuing a *get*. This is significant because, if the payment would be framed as a penalty for not issuing a *get*, the *get* would then be *meuseh*, coerced or given under duress, thus making it invalid. This is an important distinction and despite being framed in this way, this is often the single reason some rabbis approve or disapprove of the use of prenups.<sup>231</sup>

In 2012, a state court officially affirmed the constitutionality of the *halakhic* prenup in a Connecticut judge’s ruling that the *mesurevet get* in *Light v. Light*, Rachel Light, was eligible to

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Rabbi Dr. Michael J. Broyde, “A Proposed Tripartite Agreement To Solve Some Of The Agunah Problems: A Solution Without Any Innovation,” *JOFA Journal*, 5, no. 4 (Summer 2005): 1–24, [http://cslr.law.emory.edu/fileadmin/media/PDFs/Lectures/Broyde\\_Solutions\\_Agunah\\_Problem.pdf](http://cslr.law.emory.edu/fileadmin/media/PDFs/Lectures/Broyde_Solutions_Agunah_Problem.pdf).

<sup>230</sup> This is significant because, as Jeremy Stern, Director of ORA, has highlighted, often troubles regarding *get* refusal first emerge over disagreements about which *beit din* to attend, creating acrimony ‘right off the bat’. This bypasses that tension altogether.

<sup>231</sup> A version of similar discussions is also found in Lisa Fishbayn Joffe’s, “The Impact of “Foreign Law” Bans on the Struggle for Women’s Equality under Jewish Law in the United States of America”, 191.

demand more than \$100,000 from her husband under the terms of their *halakhic* prenup, which had stipulated that her husband Eben Light, had to pay \$100 (maintenance) for each day the couple remained married<sup>232</sup>. The husband was never asked to grant the *get*, or even to appear at *beit din*, she asked only for the maintenance payment or daily damages which were set in the prenup. “The husband had objected, arguing that enforcing the prenup would violate the First Amendment prohibition against judicial entanglement in religion, in violation of the Establishment Clause”<sup>233</sup>. However, the court saw it differently and found that the prenup could be upheld using the neutral principles of Connecticut contract law, requiring no religious belief or observance on the part of the court, or the husband. This decision was seen as a victory for women, *get* refusal activists, and the RCA and BDA composed of rabbis, all of whom were reassured that the prenuptial agreements were in fact enforceable in civil courts<sup>234</sup>. The ruling also touched on the comments of one of my participants, who said, “Men may not be afraid of rabbis, but they are afraid of courts and so a prenuptial agreement is the best solution available”<sup>235</sup>.

Related to the prenuptial agreement movement, some lawyers and advocates have recommended suing for damages in civil court, which has worked in a variety of jurisdictions. For example, and similar to the *Light* case, in the 2007 Canadian Supreme Court case, *Bruker v. Marcovitz*, Justice Rosalie Abella for the majority insisted the Court was *not* wading into in the “religious thicket” in their decision to award Stephanie Bruker \$47,500 in damages for Jason Marcovitz’s breach of contract despite the breach having to do with a religious undertaking

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<sup>232</sup> *Light vs. Light* [2012] Conn. Superior Ct. 55 Conn. L. Rptr. 145. Docket No. NNHFA124051863S.

<sup>233</sup> *Ibid.*

<sup>234</sup> Paul Berger, “In Victory for ‘Chained’ Wives, Court Upholds Orthodox Prenuptial Agreement: First Ruling Beth Din of America’s 20 Year Old Contract,” *Jewish Daily Forward*, February 8, 2013.

<sup>235</sup> S.Z. October 30, 2013.

(giving the *get*)<sup>236</sup>. In their separation agreement, he had agreed to give his wife a *get* upon finalizing their civil divorce, yet 15 years later, he had not done so. Though the Supreme Court of Canada decision did not compel Marcovitz to grant a *get* (and in fact, he had done so well before the ruling came down), the decision was nonetheless touted as a victory for *get* refusal activists. Furthermore, already in 2001, Susan Weiss of the Center for Women’s Justice began suing husbands in civil courts for damages in tort suits in Israel. In 2004, she won her first award for approximately \$125,000, “reflecting that *get* withholding constitutes actual damages”<sup>237</sup>.

The success of the tested, contracts, primarily the *Halakhic* Prenuptial Agreement, which has been upheld in civil court as justiciable, has made it a viable, legal pluralist remedy, being accepted in both the religious and state realms alike<sup>238</sup>. Nonetheless, prenuptial agreements are precluded in the largest Jewish community in Canada, Toronto. In fact, the reason the existing prenuptial agreements are precluded in Toronto is twofold. They are disallowed due to legal and *hashkafic* (religious- *halakhic* worldview) reasons. To clarify the legal reason, in 2003, Syed Mumtaz Ali announced on that The Islamic Institute of Civil Justice would start offering arbitration which met both Islamic and Canadian law standards<sup>239</sup>. A heated debate ensued due to a moral panic that arose regarding Sharia law and perceived honour killings and because some groups such as the Canadian Council of Muslim Women and International Campaign against Sharia Court in Canada led by Iranian feminist Homa Arjmand expressed concern for women’s rights under the existing faith based arbitration regimes<sup>240</sup>. “The question of whether religious

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<sup>236</sup> *Bruker v. Marcovitz* [2007] SCC 54. Docket No. 31212.

<sup>237</sup> Batya Ungar-Sargon, “Israel Has a Marriage Problem. One American-Born Lawyer is Trying to Solve it,” *Tablet Magazine*, October 9, 2013, [www.tabletmag.com/jewish-news-and-politics/148148/susan-weiss-americanagunahwarrior](http://www.tabletmag.com/jewish-news-and-politics/148148/susan-weiss-americanagunahwarrior); Susan M. Weiss and Netty C. Gross-Horowitz, *Marriage and Divorce in the Jewish State: Israel’s Civil War* (Waltham MA: Brandeis University Press, 2012).

<sup>238</sup> *Light vs. Light* [2012] Conn. Superior Ct. 55 Conn. L. Rptr. 145. Docket No. NNHFA124051863S.

<sup>239</sup> Anna C. Korteweg, “The Sharia Debate in Ontario,” *Gender and Society* 22, no. 4 (2008): 434–54; Anna C. Korteweg and Jennifer A. Selby, *Debating Sharia* (Toronto, ON: University of Toronto Press, 2012).

<sup>240</sup> *Ibid.*

arbitration ought to be accommodated was broached indirectly through the more general issue of how multiculturalism prioritized the distinctive values held by different Canadian religious groups”<sup>241</sup>. Indeed, as I argued above, in the end, the reason for the ban was largely due to a moral panic around Sharia law generally, and ‘honour killings’ in particular<sup>242</sup>. Despite the former attorney general Marion Boyd’s recommendation in her report, *Dispute Resolution in Family law: Protecting Choice, Promoting Inclusion*, not to ban religious arbitration for numerous reasons, including protecting women from inequalities they may face in navigating conflicting rights- like their rights to divorce and religion<sup>243</sup>- the Ontario government on direction of Liberal Premier, Dalton McGuinty, nonetheless passed an amendment to the 1991 *Ontario Arbitration Act* on September 11, 2005<sup>244</sup>. In February 2006, the provincial Parliament passed the amendment to the 1991 *Arbitration Act*, excluding arbitration based on Jewish (and all other religious) principles<sup>245</sup>.

The character of the public debate in Ontario and beyond meant that no sustained discussion or description of the principles of Sharia or the role and importance of religious arbitration to devout Muslims (or any other religious group, including Jews) occurred in the public debate or in the Boyd Report [...] this kind of discussion did not fit the primary terms of the debate, about the nature and limits of multicultural principles<sup>246</sup>.

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<sup>241</sup> Ibid, 54.

<sup>242</sup> Anna C. Korteweg, “The Sharia Debate in Ontario: Gender, Islam, and Representations of Muslim Women’s Agency,” *Gender and Society* 22, no. 4 (2008): 434-54; Anna C. Korteweg and Jennifer A. Selby, *Debating Sharia: Islam, Gender Politics, and Family Law Arbitration* (Toronto, ON: University of Toronto Press, 2012); Anver E. Emon, “Islamic Law and the Canadian Mosaic: Politics, Jurisprudence and Multicultural Accommodation,” *The Canadian Bar Review* 87, no. 2 (2009): 391-425.

<sup>243</sup> Marion Boyd, *Dispute Resolution in Family law: Protecting Choice, Promoting Inclusion* (Toronto, ON: Ministry of the Attorney General, 2004),

<https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/boyd/executivesummary.html>

<sup>244</sup> *Arbitration Act*, 1991 S.O. 1991, c.18 amended; “McGuinty to Ban Religious Tribunals,” *Kitchener Record*, September 12, 2005; Lorraine E. Weinrib, “Ontario’s Sharia Law Debate: Law and Politics Under the Charter,” in *Law and Religious Pluralism in Canada* ed., Richard Moon (Vancouver, BC: University of British Columbia Press, 2008), 239-263.

<sup>245</sup> *Arbitration Act*, 1991 S.O. 1991, c.18 amended.

<sup>246</sup> Emphasis added by author. Avigail Eisenberg, “Identity Quietism and Political Exclusion”, 55.

This ban essentially went ahead with the goal to contain the threat of religion (and despite the entrenched multicultural policies)<sup>247</sup>. Thus, legally, the *halakhic* prenuptial agreements are not viable because they necessitate arbitration and, due to the ban on “foreign laws”<sup>248</sup> or the removal of religious arbitration for family law matters in Ontario, the prenuptial agreements are impracticable. (Canadian courts will also not permit monetary sums such as those set up in the pre-nup, to be enforced by rabbis or rabbinic courts). Additionally, (and even if the matter of arbitration was moot) rabbis and the *beit din* of Toronto would have to support the initiative *hashkafically*. Currently, some of Toronto rabbis and the *beit din* do not, in principle, support prenuptial agreements, viewing them as a coercive tool and a subject inappropriate at a time of marriage (planning for divorce before marriage)<sup>249</sup>, despite the fact that leading rabbinic figures in New York and Israel have supported prenuptial agreements, including some rabbinic figures who are considered *kharedi*, or ultra-Orthodox<sup>250</sup>. Yet, rabbi Shochet, of the Toronto *Beit Din*, was quoted saying, “the last thing couples want to hear about when getting married is about a divorce...it’s one of the solutions we don’t use in Toronto for technical reasons as well as certain

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<sup>247</sup> Anna C. Korteweg, “The Sharia Debate in Ontario”; Anna C. Korteweg and Jennifer A. Selby, *Debating Sharia*; Anver E. Emon, “Islamic Law and the Canadian Mosaic”.

<sup>248</sup> As Lisa Fishbayn Joffe puts it, “The Impact of Foreign Law Bans on the Struggle for Women’s Equality Under Jewish Law in the United States of America,” in *Women’s Rights and Religious Law* (London, UK: Routledge Press, 2016) :179-201.

<sup>249</sup> Rabbi Shochet, member of the Toronto *Beit Din* quoted in the *Canadian Jewish News*. Paul Lungen, “Israeli Prenup to Help Agunot Likely Not Effective in Canada,” *Canadian Jewish News*, March 12, 2015, Page 12. And Paul Lungen, “Montreal Rabbi Promotes Prenup to Address Agunot,” *Canadian Jewish News*, February 4, 2016. Page 16; Rabbi Asher Vale, Director of the *Beit Din of the Vaad Harabonim* of Toronto, *The Plight of the Agunah in Our Community: Bridging Gaps Between Rabbinic, Academy, and Community* (panel discussion with Rabbi Daniel Korobkin, Yael Machtinger, Sharon Shore and Rabbi Asher Vale, Beth Avraham Yoseph of Toronto Congregation, Thornhill, ON, April 29, 2012), [http://koshertube.com/videos/index.php?option=com\\_seyretandtask=videodirectlinkandItemid=4andid=11072](http://koshertube.com/videos/index.php?option=com_seyretandtask=videodirectlinkandItemid=4andid=11072).

<sup>250</sup> This is not a comprehensive list, but some notable rabbis include: Rav Nota Greenblatt, Rav Zalmen Nechemia Goldberg- *Beth Din* of Jerusalem, Rav Osher Weiss, Rabbi Ovadia Yosef z”l- former Sephardic Chief Rabbi of Israel, Rav Yitzchak Yosef- current Sephardic Chief Rabbi of Israel, and from the modern Orthodox world, Rabbi Gedalia Dov Schwartz -Av Beth Din of the Beth Din of America, Rabbi Mordechai Willig, Rabbi Hershel Schachter- Yeshiva University. Read more: <http://jewinthecity.com/2015/03/historic-backing-of-halachic-prenup-by-haredi-rabbis/#ixzz4FkZdMf4U>.

*hashkafic* reasons according to some rabbis<sup>251</sup>. He also noted that prenuptial agreements are redundant because we have *ketubot* which already are a written requirement that a husband support his wife and it is enforced in Jewish religious court, not secular court, though Shochet fails to acknowledge that the *beit din* never enforces the *ketuba* maintenance payment in cases of *get* refusal and a *beit din* has little enforceability in a secular framework. He also fails to acknowledge that per Canadian law, a *ketuba* is *not* considered a neutral contract and is *not* justiciable in civil courts<sup>252</sup>. In fact, this is precisely part of the motivation for the creative use of prenuptial agreements.

Rabbi Michael Whitman of Montreal recently proposed a prenuptial agreement which he claims bypasses the legal challenges raised above (Appendix H). His document is said not to be an arbitration agreement, though it looks and acts like one, and there are no financial payments (of maintenance) attached. It does include a provision requiring the couple to each get independent legal and rabbinic advice. Yet, without the essential financial inducement imposing the maintenance obligation, some feel the prenup is “toothless”<sup>253</sup>. The document also directs Canadian couples, to the BDA, to adjudicate disputes and maintains that the parties comply with its orders. It does not refer Canadians to a Canadian rabbinic tribunal, bypassing them altogether, which would pose challenges for local communities- both its laypeople, and its rabbinic leadership. Whitman says, “the prenup would function by a Canadian court being asked to look at a legally-binding document that obliges the parties to appear before the Beth Din of America, or another rabbinic court that the BDA designates, for the purpose of following the direction of

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<sup>251</sup> Rabbi Shochet, member of the Toronto *Beit Din* quoted in the *Canadian Jewish News*. Paul Lungen, “Israeli Prenup to Help Agunot Likely Not Effective in Canada,” *Canadian Jewish News*, March 12, 2015, Page 12.

<sup>252</sup> *Re Morris and Morris* (1973), 42 D.L.R. (3d) 550 (Man. C.A.).

<sup>253</sup> Rabbi Chaim Strauchler quoted in the *Canadian Jewish News*. Paul Lungen, “Montreal Rabbi Promotes Prenup to Address Agunot,” *Canadian Jewish News*, February 3, 2016. Page 16.



that *beit din* concerning giving/receiving a *get* [religious divorce] only”<sup>254</sup>. Whitman has said there are legal endorsements (including one from a Supreme Court Justice) and *halakhic* endorsements, but unfortunately, neither has been made public to allay legitimate concerns, raising significant questions regarding the utility of his noteworthy efforts.

Furthermore, in addition to the legal challenges, the Canadian prenup is still faced with considerable *hashkafic* challenge. To clarify, the local rabbinate in Toronto would have to ‘get on board’ for any prenuptial remedy to be viable, and they simply are not. Rabbi Shochet from the Toronto *Beit Din* has also recently said on record, “The prenup is not acceptable. I don’t think it will pass the *beit din* of Toronto or of Montreal. In my opinion, it’s not correct. There are positions stated there that are not *halakhically* correct... This is a discussion for rabbis and rabbinic discussions do not have a place in newspapers”<sup>255</sup>. This is the official stance of the Toronto *Beit Din* despite the successes of prenuptial agreements elsewhere. Thus I argue, “until a civil court rules on the prenup’s validity and a rabbinic court endorses it, it is unclear whether it’s enforceable or effective although on its face, it is important that this document exists, whether it is legally valid or not. It creates a social movement, a social conversation”<sup>256</sup>. Again in 2017, the *Canadian Jewish News* asked me to set the record straight on the potential validity and effectiveness of Whitman’s Canadian prenuptial agreement and I reiterated the arguments I make here; while an important step to raise social consciousness, we must be wary when claims are made that this remedy will protect women if faced with divorce refusal<sup>257</sup> (which is precisely the claim Whitman makes).<sup>258</sup>

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<sup>254</sup> Rabbi Michael Whitman quoted, *Ibid*.

<sup>255</sup> Rabbi Shochet, member of the Toronto *Beit Din* quoted, *Ibid*.

<sup>256</sup> Yael Machtinger quoted, *Ibid*.

<sup>257</sup> Yael Machtinger, “What a Halachic Prenup is Good For- and What It’s Not”, *Canadian Jewish News*, October 26, 2017. Page 11.

<sup>258</sup> Because this article faced some backlash from Whitman, it was a welcome surprise when I received a call from Rabbi Saul Emmanuel, Executive Director of the Jewish community Council of Montreal / *Rosh Va’ad Ha’ir* of

I must note that there are some mixed reviews about the effectiveness of prenuptial agreements in remedying *get* refusal even outside Toronto. At the most basic level, it only works if you use it and there are not enough people who are signing these contracts at the beginning of their marriages. Progress is slow and incremental, and cannot work in existing cases of *get* refusal (although postnups are available in some jurisdictions). Some see prenups as the best solution available, effective in the vast majority of cases and comparing it to inoculation. Just as inoculation is only effective when the majority of people do it, the more who do it, the more will be spared from the danger of the disease, so too, the more who sign *halakhic* prenups, the more will be safe from the abuse of *get* refusal. While most of the women who participated in this study had not signed prenups, most affirmed, “*I would insist that my children sign a prenuptial agreement*”; “*Will I get the prenuptial agreement if I ever get married again? Definitely! And I wouldn’t let my daughter get married without one!*”; “*My children will 100% sign a prenuptial agreement*”<sup>259</sup>. ORA and the BDA go so far as to say that the *halakhic* prenup is 100% effective when it is signed properly, and in such cases, a *get* is granted unconditionally and in a timely fashion (six months or less)<sup>260</sup>. On the converse, it certainly has its critics<sup>261</sup> claiming that some of the prenups do not empower or protect women enough, and indeed very often women end up forgoing their financial rewards in exchange for a *get*<sup>262</sup> when in fact they should be keeping the financial settlements which they often need to survive and accept the *get*. There is also a critique

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Montreal, the following week. Although beyond the scope of this project, I took the opportunity to ask Rabbi Emmanuel about the Montreal *Beit Din*’s view of Rabbi Whitman’s prenup. He stated, “Honestly, we don’t go with it at all. It’s disconnected from reality and it doesn’t work in real life. I’ve seen it fail on a number of occasions. It looks good, and it’s nice but it just doesn’t work in real life. Michael is a nice guy and we get along, but he still sends me all his hard cases”, November 22, 2017.

<sup>259</sup> D.E. November 5, 2013; E.R. May 23, 2014; P.B., May 28, 2014.

<sup>260</sup> Jeremy Stern, ORA and Rabbi Shlomo Weissmann, BDA, have said this publically and on record on numerous occasions.

<sup>261</sup> Susan Weiss, “Sign at Your Own Risk: The RCA Prenuptial May Prejudice The Fairness of Your Future Divorce Agreement,” *Cardozo Women’s Law Journal* 6, no. 49 (1999): 49-101; Esther Macner, “Jewish Prenuptial Agreements: The Promises and the Pitfalls” (presentation at Hadassah-Brandeis Institute’s Spring Seminar Series on New Approaches to the Agunah Problem, Brandeis University, Waltham MA, April 15, 2015).

<sup>262</sup> Much like Muslim women who will forgive their *Mahr* when it is owed to them in a *kuhl* divorce.

that prenups continue to empower men and rabbinic courts, among other claims. Indeed even Rabbi Shlomo Weissmann, director of the BDA acknowledges that he does not believe the “*halakhic* prenup solves all of our problems. There is still room for abuse, by women or men with a *halakhic* prenup, although instead of hundreds of *agunot* we would be down to dozens”<sup>263</sup>. Indeed the reliance on and shift toward prenups as *the* solution to *get* refusal is not foolproof. An abusive husband could perpetuate his wife’s suffering for \$150 a day without any consequence, should he have the desire and means to do so. And yet, despite the flaws with the shift toward prenups, my primary research comes down on the side of ‘it is better to embrace prenups than ignore or avoid them’. In fact, women echoed the sentiment throughout my interviews, saying things such as, “prenuptial agreements are a must- they have to be as natural as *ketuba*”<sup>264</sup>; “*prenuptial agreements have to be like genetic testing; it needs to be a safety requirement we all just have to do*”<sup>265</sup>.

The bottom line is, the prenup movement further illustrates the innovative willingness of some rabbis to embrace solutions, at times even legal pluralist ones, to attempt to help protect women from husbands who may abuse *halakha*. The use of prenups is a way to navigate the state legal system to empower religious communities to achieve results which balance a woman’s right to divorce and her right to religion without abuse. One woman explicitly noted that the “*prenuptial agreement was enormously helpful; it put beit din into action*”<sup>266</sup>. Indeed for prenuptial agreements to be a viable solution in Toronto, it is the *beit din* and the local rabbis who would have to change their stance and support this remedy. Individual rabbis would have to

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<sup>263</sup> Sharon Weiss- Greenberg, “Voting with Our Feet: Heeding the Call of ORA’s Rabbi Jeremy Stern,” January 28, 2016, <http://www.myjewishlearning.com/the-torch/voting-with-our-feet-heeding-the-call-of-oras-rabbi-jeremy-stern/>.

<sup>264</sup> A.A. June 6, 2014.

<sup>265</sup> C.S. August 17, 2014.

<sup>266</sup> S.H. October 29, 2013.

encourage couples to sign prenuptial agreements at each wedding over which they preside. This approach would include insisting the agreement be read or displayed at weddings – just like the *ketuba*, and most significantly, rabbis not officiating at weddings where couples refuse to sign a prenuptial agreement.

### **So What?**

I argue that changes to legal orders (state or religious), while in principle symbolizing positive steps toward pluralist remedies, in reality do not always elicit the intended result. In other words, despite the best efforts of activists and legal scholars- state legal and *halakhic* innovators alike- changes to the state and *halakhic* legal systems, including to some extent the adaptation of prenuptial agreements, has not resulted in the eradication of *get* refusal, although there are marked differences between New York and Toronto, which I began to highlight in this chapter and which I will further explore herein. On the contrary, the phenomenon continuously persists and recalcitrance has developed into a valid negotiating tactic to extract civil concessions from abused women. Neither the state civil amendments nor the proposed alternative remedies accepted in some Jewish communities have suppressed it. This classic socio-legal quandary, that is- a deep and persistent gap between legal regulation and social behaviour, as well as distinct resistance in Toronto- impacts *mesuravot get* in a myriad of previously unrecognized and silenced ways. As Sally Falk Moore notes:

Innovative legislation and other attempts to direct change often fail to achieve their intended purposes; and even when they succeed wholly or partially, they frequently carry with them unplanned or unexpected consequences. This is partly because new laws are thrust upon ongoing social arrangements in which there are complexes of binding obligations already in existence<sup>267</sup>.

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<sup>267</sup> Sally Falk Moore, “Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study” *Law and Society Review* 7, (1972-73): 719- 746, 744.

Indeed, there are unplanned, unexpected consequences that have emerged from the well-intentioned remedies proposed this far. To name a few: *batei din* and at times individual rabbis have appeared to be unjust by enabling individual men to take advantage of an oft banal legal asymmetry; *batei din* have had to struggle for autonomy in the face of foreign law bans, and individually and collectively Jewish women have been silenced. The suppressing has dovetailed into the concealment of significant domestic abuse, and *get* refusal's interdenominational impact has been overlooked. I maintain that the gaps between law reform and social behaviour persist and that the consequences, or socio-legal impacts, result in an undue onus on women, despite the distinctions between New York and Toronto, which I tease out throughout the progression of this analysis. In the course of my investigation of a range of entanglements, drawing heavily on the narratives of the women themselves, I conclude that a layered approach taking multiple discourses into account is ideal. Thus, there have to be multiple options available to women, a grab-bag of remedies at their disposal in order to ensure their right to religion without abuse and their right to divorce without abuse both remain intact. There cannot be just one approach, for that contributes only to sustained failures.

### **Chapter Three - Contextualizing: State Law and Socio-Legal Approaches**

*We were married just a few years when he started to go to a lot of appointments and never let me go along with him. We were desperately trying to have kids and I also kept going to doctor's appointments and for tests, but I kept checking out to be okay. Years later I found out he had testicular cancer, but he never told me. He led me to believe his doctors said he was also healthy and that it was not his fault we couldn't have kids.*

*The marriage deteriorated over the course of many years. And finally my friends intervened and told me I had to leave. It was an abusive marriage. I remember being petrified when I snuck into the house knowing it was the last time I would be there. I only wanted my candlesticks and I remember feeling like I barely got out with those.*

*I was refused a get for 10 years after a long, abusive marriage. But what finally broke him? I'll tell you. A few of my friends flew in some rabbis from New York and took my husband for a drive for a few days. They hiked up some mountains and on the high peaks he was finally convinced to write the get, which they did, right there on the mountain but only on condition that they would include in the standard text that the reason for the divorce was because I didn't bear him any children.*

*When the get was later delivered into my hand and when the beit din cut an 'X' into our ketuba I was hysterical, even though I wanted the get so badly. Some people say the procedure is demeaning, but that's totally contrary to my experience. I felt much more connected, and that the ceremony was much more meaningful than my chuppa, years earlier.*

*Do you know what it's like to live as an aguna?*

*I was young. I wanted children. I wanted a family.*

*I was married 18 years. I was an aguna for 10 years. It took me 7 years until I found somebody new.*

*Those were the best years of my life. He took the best years of my life. I took the blame.*

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*My husband, Naftali and I got married a little bit later in life, in our 30s and we couldn't have children. Nonetheless, we had a great life together. We loved each other, we travelled...*

*Then, one day, my husband, Naftali collapsed, on April 24<sup>th</sup>, 2010, for unknown reasons.*

*He quickly fell into a coma and I was completely beside myself at his bedside.*

*Eventually, my husband died. It was devastating. He was so young, and we were so in love. I still can't remove my wedding ring.*

*My brother in law is a real estate lawyer for province of Ontario. He is very well-connected and also well-known and well-liked in his community. He has a large family of his own.*

*However, when it was time to complete the chalitza ceremony, he refused. He wanted everything my husband left behind in exchange for going through with the ceremony. To his mind, because I didn't merit to have children with his brother, technically there were no heirs and he felt he deserved everything, and that I should be left with nothing. I have been in this limbo stage, a quasi-aguna, who loved her husband and is being held hostage by her brother-in-law for a few years now.*

*The rabbi from his shul in Toronto did give him an aliya although I think the rabbi was pushed to choose between his job and my brother-in-law and so the rabbi chose... It's a social thing, it's not a factual thing, everyone just cares about their reputation, everyone's pride matters more.*

*Another big Toronto rabbi recently told me, "oh this is still going on, I thought it was taken care of already".*

*I've already learned it's all about money. When a couple of friends arranged for flyers to be put in mailboxes in my brother-in-law's area in Toronto publicizing the cherem he was put in by my rabbis in New York, I got death threat saying, "a bullet is cheaper than chalitza" implying it would cost my brother-in-law less to have me killed than to simply go through the chalitza ceremony.*

*I was really my own advocate both in beit din and civil. But that said, I firmly believe, it's NOT the Torah that's the issue, it's the people.*

These narratives, by *mesuravot get* from Toronto and New York, are the results of the first interviews I conducted in each location. They are also exceptional in distinct ways, with one obtaining a *get* in unusual circumstances by an abusive spouse and one refused a *get* in unusual circumstances, while still in love with her spouse, qualifying as a *yevama*. Although the narratives demonstrate, similar to all the narratives that follow, that women are more than passive captives awaiting to be freed by their captors, to use the language of the prayer that opened this study, they nonetheless highlight the extent to which women may be tied down due to their legal, religious, and social obligations and their own personal desires for the *get*.

As well, each narrative illustrates the degree to which women take religion seriously, setting the stage for legal approaches to remedy *get* refusal which tend also to take religion seriously such as legal pluralism, described in the coming chapter. Perhaps most significantly, and although the narratives may not explicitly indicate women's strength or their roles as legal innovators or mobilizers, in reality each of these women, in fact affects and is affected by law. Their narratives reflect how law has treated them, and how they treat law, reflecting a critical legal pluralist approach which is introduced in this chapter and upon which I build throughout this study by respecting women's choices, values, and legal demands.

These narratives also signal a number of the emerging issues that arise and are elucidated throughout the analysis. For example, the diversity of women refused a *get*; one of the women is younger, one is older, one married a short time, without children, another married many years with a number of children. Furthermore, these narratives signal the complex roles of pride, shame, communal politics, and connections.

In this chapter I consider questions about the dynamic relationship between law and religion which will shape my analysis regarding the extent to which legal regulation impacts religious social norms and the extent to which religious social norms influence legal regulation in the case of Jewish divorce in Toronto and New York. Here I will divide my examination into two sections. First, I will review legal pluralism as an approach to religion in public life (and as opposed to a tension in the broader field of socio-legal studies which, at times, does not adequately account for religion as a legal, normative order and identity). I come to argue that in shifting the field's understanding of religion by considering legal pluralism- which does take religion seriously as a valid iteration of identity and parallel legal system- the tensions may be



abated, enriching our understanding of law and religion in socio-legal studies. In particular, I build on critical legal pluralism, emerging from the work of Roderick MacDonald and Pascale Fournier allowing space for consideration of gender and religion and understanding individual women, in this case, *mesuravot get*, as active legal agents shaping and influencing legal and social norms as part of a dynamic relationship between individuals and law. Subsequently, I will review the existing literature on *get* refusal, focusing on the most recent studies and debates and their (emerging) themes and contributions. Although not all the studies are expressly socio-legal, they each offer an analysis of a problem such as this at the nexus of law, religion and gender in noteworthy and diverse ways. For example, I include a review of John Syrtash's discussions of public policy in 1992, which served as the first analysis of the Canadian *get* laws. More contemporary studies such as those by Susan Weiss and Pascale Fournier introduce feminist and qualitative approaches that add depth and geographic breadth to studies in different geographic contexts. Examining these and other research contributions will elucidate my point of entry to the existing discourses and how I will bring together diverse literatures and approaches. I will argue for the importance of a culturally nuanced, socio-legal, religious-feminist approach which builds on and extends the existing debates.

### How I Come to Legal Pluralism

Tensions between religion and law persist in today's societies<sup>268</sup>. Consequently, understanding that *get* refusal stems from a complex set of factors, would help to challenge the notion that *get* refusal indicates an incompatibility between Judaism and civil law or the state

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<sup>268</sup> Ayelet Shachar, *Multicultural Jurisdictions: Cultural Differences and Women's Rights* (Cambridge, UK: Cambridge University Press, 2001); Ayelet Shachar, "Privatizing Diversity," *Theoretical Inquiries in Law* 9, no. 2 (2008): 573–607.

more broadly<sup>269</sup>. The set of factors which contribute to the persistence of *get* refusal may include religious norms, their interpretation by some rabbis, women's desire to have proper religious divorce, as well as individual abusive men manipulating religion and taking advantage of a particular (often banal) legal asymmetry and thus also factors that are external, or outside the religion. Unfortunately, these nuanced factors are not often taken into account when considering the state's role in attempting to manage *get* refusal and the phenomenon persists (despite approaches taken by the state to date as well as internal remedies). While I would be wary to label the *Divorce Act* solely as an example of the state's 'management' of religion, being that the *get* amendments stemmed from internal communal advocacy, I nonetheless argue that the persistence of *get* refusal must *not* enable the myth that religion itself and Judaism in particular, are barbaric or abusive to women and thus must be contained<sup>270</sup>. On the contrary, my position attempts not to demonize religion and religious communities while simultaneously respecting the choices of women<sup>271</sup> and I argue legal pluralist approaches support this view.

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<sup>269</sup> This contention is not often taken seriously in academic writing, or in the Canadian courts. However (perhaps ironically), this contention of incompatibility has been raised by audience members when I speak at academic conferences and mimics contentions made by Alexandra Leichter, Susan Aranoff, Susan Weiss (leading Jewish feminist *aguna* activists), and others, who have made the claim that *halakha* itself *is* indeed the problem. These women respectively argued that we ought to get rid of *halakhic* marriages altogether, by jettisoning *kinyan* and *kiddushin* and/or adopt state/civil marriage as an alternative. *The Agunah Summit*, (New York University Law School, New York, NY, June 24, 2013).

<sup>270</sup> Similar to Natasha Bakht's contentions in, Natasha Bakht, "Were Muslim Barbarians Really Knocking On the Gates of Ontario? The Religious Arbitration Controversy-Another Perspective," *Ottawa Law Review* 40<sup>th</sup> Anniversary, (2006): 67-82.

<sup>271</sup> Here we can look to such (Canadian) policies as 'reasonable accommodation' (as I discussed above) and removal or religious arbitration in Ontario (discussed earlier in chapter 2 and below), among other issues arising both in Canada, the United States and beyond (many states also have bans of 'foreign laws'). Marion Boyd, *Dispute Resolution in Family Law: Protecting Choice, Promoting Inclusion* (Toronto, ON: Ministry of the Attorney General, 2004), <https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/boyd/executivesummary.html>; Marion Boyd, "Religiously-Based Alternate Dispute resolution: A Challenge to Multiculturalism," *Canadian Diversity* 4, no. 3 (2005): 71-74; Anna C. Korteweg, "The Sharia Debate in Ontario," *Gender and Society* 22, no. 4 (2008): 434-54; Anna C. Korteweg and Jennifer A. Selby, *Debating Sharia* (Toronto, ON: University of Toronto Press, 2012); Anver E. Emon, "Islamic Law and the Canadian Mosaic," *The Canadian Bar Review* 87, no. 2 (2009): 391-425; Natasha Bakht, "Family Arbitration Using Sharia Law: Examining Ontario's Arbitration Act and its Impact on Women," *Muslim World Journal of Human Rights* 1, no.1 (2004): 1-27; Lisa Fishbayn-Joffe "The Impact of Foreign Law Bans on the Struggle for Women's Equality Under Jewish Law in the United States of America" in

Finding an approach which would echo the respect and legitimacy given to religious norms became imperative because the women in this study indicated in their narratives that they take religion seriously in their quest for a *get* even when they are not concerned about other (Orthodox) religious norms, practices or obligations. Moreover, forcing individuals (women quite often, being that issues such as *get* refusal or veiling are gendered and impact women to a greater extent,) to abandon religion should not be considered a viable solution<sup>272</sup>. This conflict goes to the core of my argument regarding women's right to choose when navigating between their right to religion and their right to divorce (which I elaborate on throughout this study). Essentially, the abandonment or the casting out of religion is not a realistic or practical remedy for many women experiencing *get* refusal nor one that respects religious rights but as I will illustrate below, a legal pluralist approach gives space for taking religion seriously as a normative framework, and thus also enables women to assert themselves. Shauna Van Praagh and Pascale Fournier both echo this sentiment, arguing that society ought to abandon the secularist conception of the 'religious community' as an association that members join and quit at will. They argue for the law's need to acknowledge "religious subjects' multiple webs of identity and belonging... across multiple spatial layers of identity"<sup>273</sup>, which is completely in-line with legal pluralist understandings of society being comprised of plural, layered or messy webs of normative orderings. To give but two examples, overlap occurs within legal systems as law of one system are invoked in the context of a different legal system's proceedings (such as the

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*Women's Rights and Religious Law: Domestic and International Perspectives*, eds. Fareda Banda and Lisa Fishbayn-Joffe (London, UK: Routledge, 2016), 179-201.

<sup>272</sup> This has some grounding in Supreme Court of Canada decisions. We can look to *Braker* for some of the debates about religious marriage and divorce in public life, and also to recent rulings on veiling and education. But, two classic cases about religious practices persisting in public life include: *Syndicat Northcrest v Amselem* [2004] 2 S.C.R. 551; *Multani v Commission Scolaire Marguerite-Bourgeoys*, [2006] 1 S.C.R. 256, SCC 6.

<sup>273</sup> Shauna Van Praagh, "The Chutzpah of Chasidism," *Canadian Journal of Law and Society* 11, (1996): 193-214; Pascale Fournier, Pascal McDougall, and Merissa Lichtsztral, "Secular Rights and Religious Wrongs? Family Law, Religion and Women in Israel," *William and Mary Journal of Women and the Law* 18, no. 2 (2012): 333-362.

requirement for the removal of religious barriers to remarriage in the NYGL and *Divorce Act*) and overlap also occurs within individuals' understandings and identities, as the laws of one legal system may be interpreted through the lens of another (such as rabbis' understandings of prenuptial agreements as a civil/ stare tool strengthening their authority and/or even juridical autonomy of *batei din*).

Nonetheless, the tension regarding how to manage religion and religious marriage/divorce in state/secular law and society<sup>274</sup>, which is compounded by the critique that some aspects of particular religions' laws may be viewed as human rights violations by Canadian law and by legal scholars and advocates<sup>275</sup>, has led to a variety of approaches to 'manage' difference (only some of which have been successful based on recurrence of tensions). Thus embracing legal pluralist solutions which might seek more holistic and integrative approaches and which would potentially give women both a voice and a remedy to *get* refusal have not been embraced to date. That said, in the tradition of legal pluralist approaches (contrary to common multicultural approaches,) there is acknowledgement of overlapping religious and secular/state normative systems and a plurality or multiplicity of legal orders is embraced. Although both multiculturalism and legal pluralism attempt to integrate the rich social sphere in which cultures and religions overlap, neither approach really demands any particular policy outcome. It is really up to scholars and policy makers to navigate and integrate laws and legal systems and choose between them. The *Divorce Act* reform and the *Bruker* case (both discussed in chapter two) were legally plural remedies to a problem and the *Arbitration Act* reform was another response<sup>276</sup>. To

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<sup>274</sup> Ayelet Shachar, *Multicultural Jurisdictions: Cultural Differences and Women's Rights* (Cambridge, UK: Cambridge University Press, 2001); Ayelet Shachar, "Privatizing Diversity," *Theoretical Inquiries in Law* 9, no. 2 (2008): 573–607.

<sup>275</sup> Homa Arjomand, Muslim Iranian feminist advocate against Sharia law is but one example.

<sup>276</sup> *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.) sec. 21.1; *Bruker v. Markowitz* [2007] SCC 54. Docket No. 31212. Of course, there are critics who would question if 21.1 is in fact a pluralist remedy or if it is actually state federal law coming down on religion. This could be read either way. For example the excerpts of the Hansard debates in the

be clear, in this study I am using legal pluralism as a socio-legal method, as a description of the reality in Toronto and New York “which points to a plurality of law –state and non-state- that actually exists within a unified domain such as civil state and religious law”<sup>277</sup>, and also as a policy approach which is an appropriate response to religion in the public sphere and which supports women’s choices. At a prescriptive level I thus contend, in-line with Suzanne Last Stone’s approach, that, “sovereignty can be located in non-state legal actors which the state defers to and recognizes, challenging the idea that ‘law is and should be the law of the state administered by a single set of institutions’<sup>278</sup>. In the following section I will delve deeper in to legal pluralism as one approach to religion.

### **Socio-Legal Literatures: Legal Pluralist Approaches to Religion in Public Life**

Partly due to the historical tradition of commensurability between Jewish and state law which I established in chapter two, but also due to legal pluralism’s utility in providing nuance and inclusiveness to analyses regarding religion (including religious legal systems, religious communities, and religious women), legal pluralism is a fitting method of inquiry that acts as an illuminating lens through which to view the issue of *iggun*. John Griffiths and Sally Engle Merry engage in a discourse about the definition(s) and understanding(s) of legal pluralism, and how it works as a field of study. Griffiths makes an important contention:

Lawyers, but also social scientists, have suffered from a chronic inability to see that the legal reality of the modern state is *not* at all that of the tidy, consistent, organized ideal so nicely captured in the common identification of law and the legal system, but that the

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previous chapter discuss aspects of respect for and regulation of religion. Here is one example: “...*Bill C-61 will enable Canada’s Jewish community to preserve its traditions...*” and “...*the government is moving where it can and where it is brought to the government’s attention to eliminate gender bias in the law. . .*”.

<sup>277</sup> Suzanne Last Stone, “The Intervention of American Law in Jewish Divorce: A Pluralist Analysis,” *Israel Law Review* 34, no. 2 (2000): 170-210, 187. Here Stone is citing Weisbrod, Galanter, Griffiths and others.

<sup>278</sup> *Ibid.*

legal reality *is* rather an unsystematic collage of inconsistent and overlapping parts, lending itself to no easy legal interpretation...<sup>279</sup> (Emphasis added)

In other words, Griffiths is arguing that in order to get an accurate and holistic depiction of legal pluralism as a field of study, it is essential to understand that legal realities are indeed a messy, overlapping, collage of legal systems and this is reaffirmed by Werner Menski and others<sup>280</sup>. In fact Menski contends that that whether we like it or not, unofficial law (such as religious law) will operate regardless of what civil law dictates and some individuals will always feel bound by that, and my research reflects this point<sup>281</sup>. Moreover, the contention that legal realities are messy and overlapping is reflected significantly in contemporary times and particularly, in the chaotic collages of inconsistencies that emerge around the intersections between law and religion, such as this case study about *get* refusal. While Griffiths imagines multiple legal realities or systems to be overlapping, Merry uses the term ‘ordering’ with the purpose of calling attention to the intricacies of legal pluralism. Merry contends, “viewing situations as legally plural leads to an examination of ... systems of normative ordering”<sup>282</sup>. This examination is vital to understanding how legal pluralism works as a field of study in that it highlights, “competing, contesting, and sometimes contradictory orders...”<sup>283</sup> or legal systems. At its core, its central claim is that state law is not the only form of law that orders and gives meaning to life and indeed there is a dynamic aspect to legal pluralism wherein “coexisting but distinct legal orders continually penetrate and redefine one another”<sup>284</sup>. Consequently, it becomes clear that to Merry, legal

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<sup>279</sup> John Griffiths, “What is Legal Pluralism?” *Journal of Legal Pluralism* 24, (1986):1-56, 4.

<sup>280</sup> Werner Menski, *Comparative Law in a Global Context: The Legal Systems of Asia and Africa* (Cambridge, UK: Cambridge University Press, 2006), 115.

<sup>281</sup> Werner Menski, “Ancient and Modern Boundary Crossings between Personal Laws and Civil Law in Composite India” in *Marriage and Divorce in a Multi-Cultural Context: Considering the Boundaries of Civil Law and Religion*, ed. Joel A. Nichols (Cambridge, UK: Cambridge University Press, 2011) 222.

<sup>282</sup> Sally Engle Merry, “Legal Pluralism,” *Law and Society Review* 22, (1988):869-896, 889.

<sup>283</sup> Sally Engle Merry, “Legal Pluralism”, 889.

<sup>284</sup> Sally Engle Merry, *Getting Justice and Getting Even: Legal Consciousness Among Working Class Americans* (Chicago, IL: University of Chicago Press, 1990), 35.

pluralism is where two or more legal systems coexist within the same social field<sup>285</sup> and their coexistence may have tensions rather than solely harmony, a characteristic descriptive of *get* refusal's persistence, particularly in 'secular' democracies (outside of Israel).

Both Griffiths and Merry note that legal pluralism has to do with multiplicity of legal systems within a social field - whether collaged and overlapping, or ordered, and whether religious/cultural, or secular/neutral. As a result, it is imperative to acknowledge the early work of Sally Falk Moore which preceded both Griffiths' and Merry's pieces on legal pluralism as a field of study by more than a dozen years. In her piece, Moore illustrates how the concept of the 'semi-autonomous social field' is a way of defining a research problem- namely, that of how to study legal pluralism<sup>286</sup>. Indeed Moore's work remains so pivotal that it is widely used and adapted. Thus it is also a useful tool in this context, examining the complexity of the *aguna* issue as one at the crossroads between internal, *halakha*/Jewish law and external, state law. Moore states, "it is in these spaces where state enforceable law becomes opposed to the binding rules and customs generated in a social field and where the complex social field is to a large extent self-regulating, self-enforcing, and self-propelling within a certain legal, political, economic environment"<sup>287</sup>. This opposition precisely reflects this case study, examining the persistence and effects of *get* refusal in legally plural contexts (including both the productive, such as the establishment of *get* laws, and the destructive, such as *batei din* preventing their utility).

In the ethnographic works of Jessica Fournoret and Susan Hirsch, both conduct a qualitative study using legal pluralism. The salient feature of these studies is the tug of war between religious and state/secular law, which ultimately highlights the negotiation and

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<sup>285</sup> Sally Engle Merry, "Legal Pluralism", 869-870.

<sup>286</sup> Sally Falk Moore, "Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study," *Law and Society Review* 7, (1973): 719- 750,742.

<sup>287</sup> Sally Falk Moore, "Law and Social Change", 726.

navigation of individual female agency within a legally plural framework<sup>288</sup>. Fourneret's piece discusses the school system in France at the time of Chirac's Elysee Palace speech that enacted a law prohibiting public school students from wearing clothing and insignia that 'openly manifest a religious affiliation', including foremost female Muslim students wearing the *hijab*<sup>289</sup>. In her piece, Fourneret mentions one girl who exemplifies the balancing act of agency and conformity, but also of secular and religious law. A girl "shaved her head in order to avoid making a decision about *which* law to obey. She said, 'I will respect both French law *and* Muslim law by taking off what I have on my head and not showing my hair"<sup>290</sup> thereby navigating her way through the plural legal field as a female agent. Likewise, although in a very different context, Hirsch's book highlights an almost parallel example in Kenya where "women's use of Khadi's Court constitutes an ambiguous form of (individual) resistance to male domination in Swahili society"<sup>291</sup>. Hirsch illustrates, that women actively forum shop and through this and the way they narrate their own stories told in *qadi* courts<sup>292</sup>, they thereby challenge misconceptions of Muslim women as powerless, silent victims upon whom husbands simply pronounce divorce. Adapting this type of pluralist analysis enables the stretching of existing literatures to treat religion seriously as a valid legal system, as a valid iteration of identity, and it incorporates the complexities and experiences of Jewish female *agunot* navigating their way through a tug of war between agency and conformity and between religious and state/secular law, as my own qualitative data illustrates. Thus these studies, in addition to the theoretical texts of earlier legal

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<sup>288</sup> These are two of many studies that achieve this important analytical nuance.

Jessica Fourneret, "France: Banning Legal Pluralism by Passing a Law," *Hastings International and Comparative Law Review* 29, no. 2 (2006):233-249, 242-244; Susan Hirsch, *Pronouncing and Persevering: Gender and the Discourses of Disputing in an African Islamic Court* (Chicago, IL: University of Chicago Press, 1998), 115, 109.

<sup>289</sup> Jessica Fourneret, "France: Banning Legal Pluralism by Passing a Law", 233- 234.

<sup>290</sup> *Ibid*, 244.

<sup>291</sup> Susan Hirsch, *Pronouncing and Persevering*, 115.

<sup>292</sup> Known as the 'judge's court' of Islamic/Sharia law, similar to rabbinic court.



pluralist scholars, also indicate the benefit of framing *get* refusal and this study within the legal pluralist field.

Thus, to reiterate, a legal pluralist approach is one where the method of inquiry and analysis are focused on overlapping normative orders in specific social fields<sup>293</sup>, and in the case of *siruv get* those would be the state and religious legal systems. In fact, when we embrace legal pluralism, we should not “automatically think in *hierarchical* ways about the outside law of the state as superior and sovereign to the inside law...rather, we think more in *horizontal* ways. We think about inside law being placed alongside outside law, and we then consider what kinds of relationships there should be between the two legal systems”<sup>294</sup>. This pluralism would result in mutually constitutive and reciprocal interactions<sup>295</sup> between law and religion, continuing the tradition elaborated in the previous chapter. Although in Canada “with the policy of accommodation, it seems religion is subservient to the outside law of the state rather than a legitimate legal system, making jurisdictional claims on its members”<sup>296</sup> pluralism ought to be embraced. Instead of clinging to failed multicultural techniques, framing *siruv get* from a legal pluralist perspective might enable a cross cultural encounter with a diversity of remedies at hand to alleviate abusive instances that take advantage of a *halakhic* asymmetry<sup>297</sup>. Indeed this (remedial) approach would allow space not only for legal pluralist approaches but for communal, grassroots approaches as well. In essence a legal pluralist approach would open the field to a

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<sup>293</sup> Though legal pluralist approaches do not all normatively embrace or prescribe a particular outcome. Some scholars describe and analyze but it is not normative. Harry W. Arthurs, ‘*Without the Law*’: *Administrative Justice and Legal Pluralism in Nineteenth Century England* (Toronto, ON: University of Toronto Press, 1985); John Griffiths, “What is Legal Pluralism?” *Journal of Legal Pluralism* 24, (1986): 1-56; Sally Engle Merry, “Legal Pluralism”, *Law and Society Review* 22, (1988): 869-896; Sally Falk Moore, “Law and Social Change,” *Law and Society Review* 7, (1973): 719-750; and others.

<sup>294</sup> Alvin Esau, “Living by Different Law: Legal Pluralism, Freedom of Religion, and Illiberal Religious Groups,” in *Law and Religious Pluralism in Canada*, ed. Richard J. Moon (Vancouver, BC: UBC Press, 2009), 110.

<sup>295</sup> Sally Engle Merry, *Getting Justice and Getting Even*, 18

<sup>296</sup> Alvin Esau, “Living by Different Law”, 111.

<sup>297</sup> See discussion in chapter two.

‘grab-bag’ of potential remedies so women can have options and make unrestricted choices appropriate for themselves and their families. That said, there is a strong critique of the pluralist approach from within Judaism with some stating that the best and lasting solution for *mesuravot get* must come internally, from within Jewish law/*halakha*<sup>298</sup>. The reason for this is simple. While *halakhic* solutions are international and available to all Jewish women across time and space, some believe that the pluralist approaches may only provide solutions for some Jewish women within particular geographic locales or instances in time. Indeed, Jewish women seeking a *get* are always within *halakhic* jurisdiction because the Jewish legal rights and obligations are not tied to a particular place but rather to identity. Thus the Jewish legal/*halakhic* obligation to get a *get* and potential Jewish legal/ *halakhic* remedies would be multi or cross-jurisdictional whereas state remedies are always only beneficial in a restricted capacity to those within a specific jurisdiction. Moreover, pluralist remedies alone do not solve the dispute when norms conflict, it acknowledges the conflicting norms’ values but does not in and of itself resolve the divergences.

However, as I illustrated in the previous chapter, as an historical legal tradition or framework, Jewish law has existed alongside and interacted with other legal systems across time and place. Thus legal pluralist approaches to *get* refusal can and would include space for

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<sup>298</sup> In addition to very conservative sects who would prefer to avoid interaction with the state, two of the leading Orthodox feminists both in Canada and in the United States share the view that *halakhic* solutions to *get* refusal are ideal. Dr. Norma Baumel Joseph, Associate Professor, Chair of the Department of Religion at Concordia University, and Director of the Women and Religion Specialization has been a strong *aguna* activist since the 1970’s when she founded the *Canadian Coalition of Jewish Women for the Get*. She also sat on the *Get* Committee that went to Parliament to change the Federal *Divorce Act* in 1990. Interestingly, she believes that “while civil laws help alleviate some of the problems...the problem is with *halakha* and must be corrected there. After almost 30 years of work on this issue, I truly believe that if modern Orthodoxy cannot or will not address the issue and solve it there will be no true solution...” –Audio documentary with Stephanie Bruker, Norma Baumel Joseph- *aguna* advocate, and others. <http://www.cbc.ca/thecurrent/2008/200803/20080331.html>. Baumel Joseph reaffirmed this stance recently at the JOFA Conference at Columbia University, New York, NY, January 15, 2017. Famously, Blu Greenberg, founder of JOFA and the Orthodox Feminism movement had repeatedly stated “where there is rabbinic will there is *halakhic* way” in light of the *get* refusal phenomenon, in Blu Greenberg, *On Women and Judaism: A View from Tradition* (Philadelphia, PA: Jewish Publication Society of America, 1981), 44.

‘internal’, *halakhic* (and therefore non-state) remedies to *get* refusal as well as ‘external’ state legal remedies and a dynamic interaction between them. It is vital to understand that legal pluralism, in its heterogeneity, is broad, holistic, and inclusive enough that it would embrace *halakhic* remedies as one of many alternative normative orders<sup>299</sup>. Individuals should not be forced to be locked in to one or another seemingly competitive or contradictory legal system. For example, women should be able to opt to secure a *get* in *beit din* with or without the aid of legal pluralist remedies such as the *Divorce Act* or the NYGLs, or a prenuptial agreement if necessary, and then they should be able to opt to settle all remaining matters in civil court or *beit din*, whatever they choose. Moreover, this type of plural approach is by no means revolutionary or rebellious; it is a deeply-rooted historical tradition, as I illustrated in the previous chapter. H. Patrick Glenn pushes the idea of reciprocity of legal systems even further stating, “rather than presuming a radical separation between laws we should look for a ‘logic of fuzziness’ because in the real world boundaries are never sharp”<sup>300</sup>. In other words, the tradition of strategically navigating seemingly separate legal systems should remain, and in particular is an important, empowering option for women refused a *get*.

I want to emphasize that I view legal pluralist remedies to *get* refusal as an option or remedy which would allow space for plural responses available to the fact of plural overlapping norms and indeed even to the phenomenon of *get* refusal. In other words, the reason legal pluralist approaches serve as a potential remedy is because they do not restrain religion in an effort to separate law and religion. On the contrary, pluralism is a mechanism or space through which to engage and accept religion in and with the state/secular law. The construct that law is

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<sup>299</sup> Marc Galanter, “Justice in Many Rooms: Courts, Private Ordering and Indigenous Law,” *Journal of Legal Pluralism* 19, (1981): 1-47; Martha-Marie Kleinhans and Roderick A. Macdonald, “What is a Critical Legal Pluralism?” *Canadian Journal of Law and Society* 12, (1997); 25-46.

<sup>300</sup> H. Patrick Glenn, “Com-paring,” in *Comparative Law: A Handbook*, ed. Esin Orucu and David Nelken (Portland, OR: Hart Publishing, 2007), 6, 94.

the supreme adjudicator is a narrative of the state centralist order, but does not accurately reflect the experiences of those subject to overlapping or plural legal orders (such as *mesuravot get* in this study). Indeed in the plurality, each may view the other as a minor player in decision-making at times<sup>301</sup>. As Martha Minow notes,

Decisions reached within formal governmental authorities do not end the matter for member subgroups who are themselves tolerating the secular political arrangement only as long as it remains compatible with their own sense of alternative authorities...The official authorities may themselves seem peripheral to those minority groups that seems periphery to the majority.<sup>302</sup>

In other words, and to contextualize Minow's important argument within this case study, I would contend that the 'Othering' that occurs is also reciprocal, just as the state views religious legal orders as 'Other' so too do religious orders view the state legal order as 'Other'. So from the perspective of *mesuravot get*, this tension illustrates the complexities with which they must navigate both systems in their quest of a *get*. Participants experienced messy webs of affiliation when state and religious norms conflict and claim authority. Thus legal pluralist approaches are perhaps the only ones within the broader field of socio-legal studies that allow space for religion to be taken seriously *both* as a valid iteration of identity *and* as a legal system- without casting it aside, tolerating it, or managing it in the way multicultural policies often do. Some scholars of legal pluralism, however, do not shy away from stating how law and religion can and should work together to enrich the field of socio-legal studies and our understandings of law and religion, even going so far as to make policy recommendations in some cases<sup>303</sup>. William

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<sup>301</sup> Howie Kislowicz, "Sacred Laws in Earthly Courts: Legal Pluralism in Canadian Religious Freedom Litigation," *Queen's Law Journal* 39, no.1 (2013): 175-222, 200-201.

<sup>302</sup> Martha Minow, "Pluralisms," *Connecticut Law Review* 21, no.4 (1989): 965-978, 971.

<sup>303</sup> Joel A. Nichols, ed., *Marriage and Divorce in a Multi-Cultural Context: Considering the Boundaries of Civil Law and Religion* (Cambridge, UK: Cambridge University Press, 2011); Richard J. Moon, ed., *Law and Religious Pluralism in Canada* (Vancouver, BC: UBC Press, 2009); Courtney Bender and Pamela E. Klassen Eds., *After Pluralism: Reimagining Religious Engagement (Religion, Culture, and Public Life)* (New York, NY: Columbia University Press, 2010); Pascale Fournier, "Halakha, the 'Jewish State' and the Canadian Agunah: Comparative

Connolly contends “deep pluralism” is the solution for religion in the secular sphere, enabling layered practices of connection to coexist in the public realm<sup>304</sup> as opposed to shallow, secular conceptions of diversity or pluralism and beyond ‘mere tolerance’<sup>305</sup>. Connolly defends pluralism which had been severed due to the rise of secularism and which he argues may now be reinstated with the embrace of deep pluralism<sup>306</sup>. Connolly critiques a secular orientation to society which regulates diverse faiths and prefers enabling faiths, and layered practices of connection coexisting in public, embracing deep pluralism as “the philosophy of a messy universe”<sup>307</sup>. Bender and Klassen contend that pluralism is about hybridity and encounter<sup>308</sup> which would also see religion as an integral part of modern public life in the 21<sup>st</sup> century. Moreover, Benjamin Berger notes that multiculturalist legal tools coming to manage diversity, distort the fact that law and religion meeting is not necessarily a crisis, or a culture clash (as might be implied by the language of scholars of multiculturalism such as Kymlicka, Brown, Benhabib and Eisenberg, such as ‘managing’ ‘tolerating’, which provoke tensions rather than solutions)<sup>309</sup>. Rather, law and religion meeting might be viewed alternatively, as a “cross-cultural encounter” which could alleviate emerging tensions, like *get* refusal and the inequalities women face as a result<sup>310</sup>. The most productive form of law’s pluralism is when “the nature of the cross cultural encounter between law and religion becomes transparent - an understanding cross

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Law at the Intersection of Religious and Secular Orders,” *Journal of Legal Pluralism and Unofficial Law* 65, (2012): 165-204.

<sup>304</sup> William E. Connolly, *Pluralism* (Durham, NC: Duke University Press, 2005), 30.

<sup>305</sup> *Ibid.*, 34. Like the approaches reviewed above, put forward by Kymlicka, Brown, Benhabib and Eisenberg, among others.

<sup>306</sup> *Ibid.*, 68.

<sup>307</sup> *Ibid.* 58-59, 70.

<sup>308</sup> Courtney Bender and Pamela E. Klassen, *After Pluralism: Reimagining Religious Engagement* (New York, NY: Columbia University Press, 2010), 15.

<sup>309</sup> Benjamin L. Berger, “The Cultural Limits of Legal Tolerance,” in *After Pluralism: Reimagining Religious Engagement*, eds. Courtney Bender and Pamela E. Klassen (New York, NY: Columbia University Press, 2010), 98-126, 99.

<sup>310</sup> *Ibid.*

cultural experience”<sup>311</sup>. Understanding the pluralist remedies available to *siruv get* in this way, may enable communities to embrace this as one option amongst a diversity of remedies available that are at times ignored or even resisted, particularly in Toronto<sup>312</sup>.

Recognizing and embracing legal pluralist solutions enables the existence of religion in the public sphere and sees both law and religion as cultural systems, allowing for the recognition of religions as complex networks of affiliations rather than an altogether narrow and simplistic view of religions (or religious leaders) as necessarily misogynist<sup>313</sup>. Moreover, embracing legal pluralist solutions allows plural legal systems to respectfully, mutually coexist even to the point of reciprocity and mutual constitution at times (as I illustrated in the previous chapter), with the ability for Jewish law in this case, to invoke the power of the state in instances where there is abuse of the internal religious order (*halakha*) or conflicting rights for women, in this case the right to religion and the right of equality in divorce<sup>314</sup>.

Shauna van Praagh claims that the phenomenon of overlapping normative orders, which is characteristic of legal pluralism is different, albeit connected to critical legal pluralism, whose definition is constantly evolving and developing and which would have individuals and

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<sup>311</sup> Bender and Klassen, *After Pluralism*, 20.

<sup>312</sup> The array of remedies available have not all been addressed in this chapter, which focuses heavily on legal pluralist remedies. There is discussion around *halakhic* alternatives in chapter two along with bottom-up or grassroots efforts which are also raised in chapter two and elaborated on in chapter six. Chapter seven as well reviews the plural responses or potential remedies to the fact of plural overlapping norms, particularly on the issue of *get* refusal.

<sup>313</sup> Despite my deep respect for Susan Weiss, and her work on behalf of *mesuravot get* in Israel, she seems to hold this belief when referring to rabbis of the *beit din* in Israel as “short-sighted, arbitrary, patriarchal and not concerned with justice” presented on the panel “Lessons from the Front,” (presentation at The Agunah Summit, New York University Law School, New York, NY, June 24, 2013).

<sup>314</sup> Of course, there are instances where the internal (religious) system does not respect the state or its legal system or values (and arguably the Toronto *Beit Din* may be read in this way). There are also instances where the state centralist/secular legal order, may step in to alleviate, what it perceives as human rights or other violations of law which are said to be in the name of religion or religious practices. Consequently, there is a complexity to the cross cultural exchange, when one of the cultures- law, is always superior to the other- religion, in the eyes of the state. Nonetheless, I would strongly encourage legal pluralist approaches, wherever possible.

individual subjectivities as lawmakers<sup>315</sup>. Van Praagh maintains that when legal pluralism comes to meet feminist theory and/or methodologies, that is when critical legal pluralism emerges. Critical legal pluralism explores patterns of interactions between legal and normative systems in particular social sites through individual perceptions and narratives, as this research seeks to illustrate. Using critical legal pluralism, I examine the ways power and legitimacy intersect with individual women's choices because it "allows the stories of women to be law-creating and law-defining"<sup>316</sup> exploring the ways in which a set of norms is relevant to them or governs their behaviours. It also illustrates that there is "heterogeneity, flux and dissonance"<sup>317</sup> which in turn informs my argument calling for a plurality of remedies due to the plurality of experiences options women described and support. Critical legal pluralism is also adapted in this study because it fittingly enables me to ask women to reflect not only on how law treats them, but also to reflect on how they treat law. Indeed they affect and are affected by the normative orders in which they live. As a result, the conclusions and policy outcomes I propose reflect the diversity and divergence that emerged throughout the women's narratives, especially regarding best solutions and in comparing civil remedies to *halakhic* ones.

Roderick MacDonald's development of critical legal pluralism and Pascale Fournier's adoption of it are other contributions that I build on in my analytical approach. Incorporating elements of critical legal pluralism, which "understand the law as encompassing how legal subjects understand themselves and the law" is very beneficial for the goals of this analysis which seek, among other goals, to place the voices and experiences of Jewish women at the

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<sup>315</sup> Shauna Van Praagh, "The Chutzpah of Chasidism," *Canadian Journal of Law and Society* 11, (1996): 193-214.

<sup>316</sup> Shauna Van Praagh, "The Chutzpah of Chasidism", 206.

<sup>317</sup> *Ibid*, 213.

centre of the analysis as active agents<sup>318</sup>. In other words, taking a critical legal pluralist approach sees individuals as those who have the power to shape and produce law as much as Parliament does through their “normative interpersonal interactions”<sup>319</sup>. Indeed law arises from, belongs to, and responds to everyone. Thus by adapting the approach taken in critical legal pluralism studies (and which I will elaborate below, in the context of Fournier’s contributions), I investigate the legal and social realities of *mesuravot get* through their first-person accounts which leads to the development of a fuller sense of law (or indeed the plurality of laws that are at play). This is not to say that the state has no role, rather, this type of approach emphasizes what individuals (*mesuravot get*) do with state law and how it influences their subjectivity and bargaining possibilities<sup>320</sup>. Critical legal pluralism allows my focus to be on the women refused a *get* as they navigate a complex and plural cite of legal and social tension<sup>321</sup> in which they may take on the role of law-makers, mobilizers or innovators, influencing state law, and in which the law may shape their subjectivities. Although there is reciprocity here, critical legal pluralism nonetheless highlights that individual legal subjects, in this case individual *mesuravot get*, do possess transformative capacity to produce legal knowledge and fashion law and I build on this extensively in the coming chapters along with the narratives themselves which illustrate this reality throughout these pages.

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<sup>318</sup> Martha-Marie Kleinhans and Roderick A. Macdonald, “What is a *Critical Legal Pluralism*?” *Canadian Journal of Law and Society* 12, (1997); 25-46; Roderick A. Macdonald and Thomas McMorrow, “Wedding a Critical Legal Pluralism to the Laws of Close Personal Adult Relationships,” *European Journal of Legal Studies* 11, no.1 (2007-2008): 319-356; Pascale Fournier, Pascal McDougall, and Merissa Lichtsztral, “Secular Rights and Religious Wrongs? Family Law, Religion and Women in Israel,” *William and Mary Journal of Women and the Law* 18, no. 2 (2012): 333-362, 338.

<sup>319</sup> Pascale Fournier, et. al, “Secular Rights and Religious Wrongs?”, 339; Martha-Marie Kleinhans and Roderick A. Macdonald, “What is a *Critical Legal Pluralism*?”.

<sup>320</sup> Ibid.

<sup>321</sup> Ibid.



## **Get-Refusal Literatures: Common Approaches to the Nexus of Religion, Law, and Gender**

The existing literature on *get* refusal includes both more traditional, rabbinic strands such as those by David J. Bleich, Irving A. Breitowitz, Shlomo Riskin, and others<sup>322</sup>, as well as the more contemporary, legal or socio-legal strands such as those by Michael J. Broyde, Lisa Fishbayn-Joffe, Pascale Fournier, Rachel Levmore, Susan Weiss, and others<sup>323</sup>. Their collective work is crucial to the body of literature, and to movements and solutions. Bringing both literatures into conversation with one another so that the narratives and voices of the *mesuravot get* and the real-life, socio-legal realities that exist within normative religious, non-state orders can come to the fore can only enrich the scholarship; and this is what this study seeks to achieve.

There are few contemporary, comprehensive studies examining the phenomenon of *get* refusal, and *agunot*. Though I will elaborate on each of the contributions in greater detail below, I will briefly describe them here in order to contextualize the existing literatures. In the Canadian

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<sup>322</sup> Rabbi David J. Bleich, "A Suggested Antenuptial Agreement: A Proposal in Wake of Avitzur," *Journal of Halakha and Contemporary Society* 7, (1984): 25-41; Rabbi David J. Bleich, "Jewish Divorce: Judicial Misconceptions and Possible Means of Civil Enforcement," *Connecticut Law Review* 16, no. 2 (1984): 201-290; Rabbi Irving A. Breitowitz, *Between Civil and Religious Law: The Plight of the Agunah in American Society* (Westport, CT: Greenwood Press, 1993); Rabbi Shlomo Riskin, *A Jewish Woman's Right to Divorce: A Halakhic History and a Solution for the Agunah* (Hoboken, NJ: Ktav Publishing, 2006).

<sup>323</sup> Rabbi Michael J. Broyde, *Marriage, Divorce and the Abandoned Wife in Jewish Law: A Conceptual Approach to the Agunah Problems in America* (Hoboken, NJ: Ktav, 2001); Lisa Fishbayn-Joffe and Sylvia Neil, eds., *Gender, Religion, and Family Law: Theorizing Conflicts between Women's Rights and Cultural Traditions* (Waltham, MA: Brandeis University Press, 2012); Lisa Fishbayn-Joffe, "Gender, Multiculturalism and Dialogue: The Case of Jewish Divorce," *Canadian Journal of Law and Jurisprudence* 21, (2008): 71-96; Pascale Fournier, "Halakha, the 'Jewish State' and the Canadian Agunah: Comparative Law at the Intersection of Religious and Secular Orders," *Journal of Legal Pluralism and Unofficial Law* 65, (2012): 165-204; Rachel Levmore, *Spare Your Eyes Tears-Min'ee Einyayich Me'Dimah: Complete Guide to Orthodox Jewish Pre-Nuptial Agreements-The Halakhic Prenuptial Agreement for Mutual Respect and Prenuptial Agreements for the Prevention of Get-Refusal* (Jerusalem, Israel: Millennium Publishing, 2009); Susan M. Weiss and Netty C. Gross-Horowitz, *Marriage and Divorce in the Jewish State: Israel's Civil War* (Waltham, MA: Brandeis University Press, 2012). I would like to acknowledge another book: Susan Aranoff and Rivka Haut, *The Wed-Locked Agunot: Orthodox Jewish Women Chained to Dead Marriages* (Jefferson, NC: McFarland and Co. Inc, 2015). This book tells the stories of its authors who have been *aguna* advocates for more than three decades and who are against religious marriage and Orthodox rabbinic courts and rabbis, as they expressed publicly at the JOFA conference in June 2013.

context, the field really begins with John Syrtash's work in 1992<sup>324</sup>. Since that time and indeed even since the more recent qualitative studies<sup>325</sup>, there have been shifts in the socio-legal realities within communities and legal systems<sup>326</sup>. The more contemporary studies I elaborate on below, give a rich introduction to the Canadian context with Syrtash and Norma Baumel Joseph both discussing their respective public policy contributions and their instrumental impacts on and the impacts of the legislative amendments. Fishbayn Joffe's study, written in conversation with Syrtash (and Baumel Joseph to a lesser degree), calls into question understandings of 'multicultural accommodation' and incorporates Ayelet Shachar's important contributions (elaborated below). Fournier's more recent work (2012) comparing Canadian and Israeli contexts makes significant contributions to the field and the ongoing debates both in terms of her methodological approach using qualitative interviews and her use of critical legal pluralism, adapted from Roderick Macdonald. Susan Weiss and Netty Gross-Horowitz's study (2012) which recounts Weiss' experiences in Israeli courts also merits review here, albeit from solely from the Israeli context and as such with divergent goals geared toward *agunot* in Israel and the Israeli legal and *beit din* systems. In particular, I will briefly review the contentions made by Syrtash, Fishbayn-Joffe, and Baumel Joseph, and I will more closely examine the two most recent studies, those by Fournier and Weiss and Gross-Horowitz. It is my hope that through the

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<sup>324</sup> John Tibor Syrtash, *Religion and Culture in Canadian Family Law* (Toronto, ON: Butterworths Canada Ltd., 1992).

<sup>325</sup> Lisa Fishbayn-Joffe, "Gender, Multiculturalism and Dialogue," *Canadian Journal of Law and Jurisprudence* 21, (2008): 71-96; Norma Baumel Joseph, "*Bruker v Marcovitz*: Awarding Damages to Agunot in Canada," *HBI: UNTYING THE KNOTS*, April 14, 2008.

<sup>326</sup> John Tibor Syrtash, *Religion and Culture in Canadian Family Law*. (Toronto, ON: Butterworths Canada Ltd., 1992); John Tibor Syrtash, "Celebrating the Success of Canada's "Get" Legislation and its Possible Impact on Israel" (presentation at *Resolving Get Refusal in Civil Laws and the Corresponding Halakhic Approach*, Bar-Ilan University, Ramat Gan, Israel, September 13, 2005). I obtained copy of presentation April 24th, 2009; Lisa Fishbayn-Joffe, "Gender, Multiculturalism and Dialogue," *Canadian Journal of Law and Jurisprudence* 21, (2008): 71-96; Norma Baumel Joseph, "*Bruker v Marcovitz*," *HBI: UNTYING THE KNOTS*, April 14, 2008.

analysis and reflection of the landscape we can move the research forward, building on the strengths of studies that preceded.

I must begin this review of the literature by first acknowledging the work of John Syrtash and Norma Baumel Joseph who were pioneer activists on the issue of *get* refusal in Canada. Syrtash, Baumel Joseph, and Lisa Fishbayn-Joffe produced important work on *get* refusal focused solely on Canada, helping to develop a small body of literature. Each also considers the Canadian *get* legislation to be a success.

John Syrtash's 1992 book, *Religion and Culture in Canadian Family Law*, is helpful in understanding the Canadian context and the intersection of religion and family law<sup>327</sup>. His more recent 2005 paper, presented at Bar-Ilan University, *Celebrating the Success of Canada's "Get" Legislation and its Possible Impact on Israel*, is a re-worked and abridged version of his main arguments regarding the *get* legislation - but geared toward a particular audience in a different socio-legal context<sup>328</sup>. Syrtash played a specialist role in the legislative reform which created what are now known as the Canadian 'get laws'. He, along with a team of academics, activists, and rabbis, drafted the legal amendments which would ultimately become the amendments to the *Family Law Act*, provincially in Ontario and to the *Divorce Act*, federally across Canada<sup>329</sup>. Syrtash, himself Orthodox and working as a family law attorney, saw first-hand the recurrence of *get* refusal in Toronto and thus took an active role in the movement to get the amendments passed. He was both aligned with the Toronto *Beit Din* and familiar with the laws and courts of the state.

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<sup>327</sup> John Tibor Syrtash, *Religion and Culture in Canadian Family Law* (Toronto, ON: Butterworths Canada Ltd., 1992).

<sup>328</sup> John Tibor Syrtash, "Celebrating the Success of Canada's "Get" Legislation" (presentation at *Resolving Get Refusal in Civil Laws and the Corresponding Halakhic Approach*, Bar-Ilan University, Ramat Gan, Israel, September 13, 2005). I obtained copy April 24th.

<sup>329</sup> *Family Law Act*, R.S.O. 1990, c. F.3 subsections 2(4) to 2(7); *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.) sec. 21.1.

In his study, he investigates the different spheres of authority represented by the normative systems of cultural and religious communities which coexist in Canada<sup>330</sup>. In particular, the book addresses the issue of how the *Canadian Charter of Right and Freedoms*<sup>331</sup> may affect family law dispute resolution regarding divorce and custody disputes in general, not necessarily focused (only) on Judaism. He also undertakes an in-depth analysis of the legal amendments/*get* laws, arguing for their constitutionality anticipating future challenges (which have yet to materialize)<sup>332</sup>. Syrtash also discusses the success of the amendments being that they were thought to be widely supported and to prevent *get* refusal at the time<sup>333</sup>. Indeed the success of amendments themselves being passed was and remains significant. To elaborate, the intersection of the legal systems and the debates at Parliament as a result of communal advocacy were all positive developments. Furthermore, there have been claims that for a period, there may have been a positive impact of the legal amendments<sup>334</sup>. Based on qualitative research between 2012-2016, however, I argue that this assessment may be too optimistic. Although, it is likely that in the early years immediately following the laws' enactment, there were dramatic successes. Nonetheless, as the women's narratives will illustrate in the coming chapters, the realities in Toronto seem to have shifted in the decade or so since Syrtash's last assessment.

Although these laws have not yet been challenged in the courts, already in 1993, Syrtash foresaw the potential legal challenge which may still rise through the courts one day. In his defense of the *get* laws, Syrtash interestingly makes similar arguments to those that had

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<sup>330</sup> Shauna Van Praagh, "Bringing the *Charter* Home," *McGill Law Journal* 38, (1993): 233-250.

<sup>331</sup> *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

<sup>332</sup> John Tibor Syrtash, *Religion and Culture in Canadian Family Law* (Toronto, ON: Butterworths Canada Ltd., 1992), chapter 3, sections IV, VII.

<sup>333</sup> Although Syrtash still makes these contentions today, he has claimed the laws have been so successful that they have all but eradicated the phenomena of *get* refusal. If only this were the case. John Tibor Syrtash, "Celebrating the Success of Canada's "Get" Legislation and its Possible Impact on Israel", 4.

<sup>334</sup> Syrtash, Baumel Joseph and others have made these claims in personal correspondence/ discussions.

previously been made in favour of the constitutionality of the New York *get* laws foreshadowing a study like this, which compares the effects of the New York and Toronto *get* laws. In his defense of the amendments, Syrtash argues that multicultural practices such as religious arbitration and the desire for a Jewish divorce or *get* must be respected on the basis of Freedom of Religion, a *Charter* right<sup>335</sup>. This contention, about retaining and respecting religious minorities' practices along with Syrtash's attempts to be gender neutral like the legal amendments themselves, are valuable contributions<sup>336</sup> of his scholarship. Moreover, Syrtash's legal and advocacy work to aid *agunot* in Canada are also significant.

Norma Baumel Joseph is a founding member of the Canadian Coalition of Jewish Women for the Get, which was established in the mid 1980s and served as an umbrella organization of six Jewish women's groups (all of which are now non-operational)<sup>337</sup>. She also helped form the International Coalition for Agunah Rights (ICAR) in October of 1992 and worked on the 'year of the agunah' in 1993 during which there was a global attempt to free *agunot*. Baumel Joseph, a well-known Montreal-based *aguna* activist who also played an important role on the 'Gett Committee' which petitioned Parliament for the civil amendments, has made similar contentions to Syrtash<sup>338</sup>. In fact, when asked about the benefits of the Canadian civil amendments and the need to circumvent the Canadian remedies in favour of New York courts and *batei din*, where possible, Baumel Joseph stated, "We are better off within our own (Canadian) system" and "there are clear advantages to Canadian system"<sup>339</sup>. While this may

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<sup>335</sup> John Tibor Syrtash, *Religion and Culture in Canadian Family Law*, 138-140.

<sup>336</sup> Critics (such as Shauna Van Praagh and others) have countered that while his gender-neutral approach may have some benefits, it also has the detrimental result of hiding the fact that *get* refusal is most often a gender-specific problem; most-often affecting women.

<sup>337</sup> Norma Baumel Joseph, "*Brucker v Marcovitz*," *HBI: UNTYING THE KNOTS* April, 14, 2008.

<sup>338</sup> Norma Baumel Joseph, "*Agunot and the Powers that Be*" (presentation at JOFA- Jewish Orthodox Feminist Alliance Conference, *Choosing Limits/Limiting Choices: Women's Status and Religious Life*, Brandeis University, Waltham, MA, March 13-14, 2005).

<sup>339</sup> Gettlink correspondence, July 29<sup>th</sup> and August 1<sup>st</sup>, 2014.

be Baumel Joseph's experience based on her early work in Montreal, my research over the last number of years has shown, women refused a *get* are *not* always better off in the Canadian system (compared both the New York legal system and to the *halakhic* systems enforced by *batei din*), despite the potential effectiveness the civil remedy<sup>340</sup>.

This optimistic assertion, that the civil legal amendments have prevented or solved *get* refusal in Toronto, exists in part because the Toronto *Beit Din* had initially supported, in the 1980s/90s, the amendments when they were first enacted, in 1985 and 1990. Unfortunately, I illustrate, they have subsequently reneged their support, viewing many of its uses as coercive (the significance of which I will examine in the coming chapters). Thus, Syrtash's confidence in the amendments and Baumel Joseph's "clear advantages" to section 21.1 may require shifting due to a significant period of change, at least in recent years<sup>341</sup>. Recently, Baumel Joseph's stance did seem to evolve and she acknowledged that civil remedies are not *the* solution. Though she persisted that they are working in certain areas, she noted that lawyers' lack of knowledge is one reason for its fallibility<sup>342</sup>. Baumel Joseph now believes that rather than prenuptial agreements, which are on the rise (outside Toronto, and in her city of Montreal, in particular), annulments (based on ancient Talmudic methods of *hafka 'ot*, addressed in the previous chapter) are the perfect solution<sup>343</sup>.

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"Getlink is an online forum for *agunah* activists, by invitation only, which enables participants to more effectively communicate and provide world-wide support to *agunot*. Getlink now serves 15 organizations in over 47 countries that seek to ease and resolve the plight of *agunot*. This internet connection enables *agunah* activists to exchange information regarding individual cases and civil legislation in their search for acceptable *halakhic* solutions in Israel and throughout the Diaspora". *JOFA Journal* v, no. 4 (Summer 2005):1-24, 11, [https://jofa.org/sites/default/files/uploaded\\_documents/jofa\\_journal\\_summer\\_2005.pdf](https://jofa.org/sites/default/files/uploaded_documents/jofa_journal_summer_2005.pdf).

<sup>340</sup> In fact, not one of the *mesuravot get* I interviewed in Toronto benefitted from the Canadian *get* legislation.

<sup>341</sup> Their disuse or ineffectiveness should not only be understood as being due to lawyers and civil judges being unfamiliar with the laws and how they work (a claim Baumel Joseph has made and most recently reaffirmed at the JOFA Conference at Columbia University, New York, January 15, 2017).

<sup>342</sup> Norma Baumel Joseph, "Northern Exposure: Agunah in Canada" (presentation at JOFA- Jewish Orthodox Feminist Alliance Conference, Columbia University, New York, NY, January 15, 2017).

<sup>343</sup> *Ibid.*

Lisa Fishbayn-Joffe directs the project on Gender Culture Religion and Law at the Hadassah-Brandeis Institute and Brandeis University. As a Canadian, she too has been interested in the effectiveness of the Canadian *get* laws. Fishbayn-Joffe's contribution, which she wrote in conversation with Syrtash and Baumel Joseph, echoes many of their arguments<sup>344</sup>. In fact, she stated that the *get* law has acted as a "catalyst to change minority practices that discriminate against women"<sup>345</sup>, citing the success of the *get* legislation<sup>346</sup> in its ability, not only to remedy the problem of *get* refusal, but indeed even its ability to "correct" inequalities and serve as a "tool which enforces transformative dialogue"<sup>347</sup>. Perhaps again, this was the hope and expectation when the amendments were first passed. In this 2007/8 piece Fishbayn-Joffe goes so far as to claim that the "legislation has fostered dialogue between the *beit din* and *get* refusers about how patriarchal prerogatives embedded in Jewish law are used", that the rates of refusal have decreased, and that "religious court has become a more congenial place for women"<sup>348</sup>.

Fishbayn-Joffe acknowledges<sup>349</sup> that her contentions were predominantly based on conversations with Syrtash and Baumel Joseph (rather than primary research with women refused a *get*). Thus, Fishbayn-Joffe relied on the expertise and optimism of Syrtash and Baumel Joseph, even asserting a decrease in *get* refusal in Toronto. Nonetheless, Fishbayn-Joffe is one of very few scholars to look at *get* refusal in Canada. She includes a thorough analysis of multicultural theory, outlining the limitations of the "interventionist and immunization

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<sup>344</sup> Lisa Fishbayn-Joffe, "Gender Multiculturalism and Dialogue: The Case of Jewish Divorce" (presentation at the Immigration and Multiculturalism in Democracies Conference, Montreal, QC, October 2007, and *Canadian Journal of Law and Jurisprudence* 21, no. 1 (2008): 71-98).

<sup>345</sup> Lisa Fishbayn-Joffe, "Gender Multiculturalism and Dialogue" (presentation at the Immigration and Multiculturalism in Democracies Conference, Montreal, QC, October 2007, and *Canadian Journal of Law and Jurisprudence* 21, no. 1 (2008): 71-98, 71).

<sup>346</sup> Elaborated earlier, in chapter two.

<sup>347</sup> Fishbayn-Joffe, "Gender Multiculturalism and Dialogue", 88-96.

<sup>348</sup> *Ibid*, 93.

<sup>349</sup> In conversation with author and at Spring Seminar Series on *New Approaches to the Agunah Problem*, Yael C.B. Machtiger, "Sounds of Silence: A Socio-Legal Exploration of Siruv Get and Iggun in Toronto - Reflections on Seven Years of Research" (presentation at Hadassah-Brandeis Institute's Spring Seminar Series on New Approaches to the Agunah Problem, Brandeis University, Waltham MA, March 25, 2015).

approaches” (some which I reviewed, above)<sup>350</sup> and adapts the notion of ‘dialogue’ from a host of multicultural theorists<sup>351</sup>. Thus, Fishbayn-Joffe’s work is an important addition to the scholarship on which future scholars can build.

As the narratives emerging from my interviews with *mesuravot get* demonstrate, there have been no significant advances or transformative discussions in Toronto about the latent patriarchy covertly embedded in Jewish divorce law within the Orthodox community generally, or between *beit din* and *get* refusers in particular. Neither the *beit din*, nor the *get* refusers would concede this point (nor would they likely believe it altogether), and the enactment of the civil amendments in Canada has not changed that fact, even all these years after Fishbayn-Joffe’s claim. The secular amendments have *not* acted as a catalyst to change (what Fishbayn-Joffe calls) discriminatory practices toward women- *get* refusal, and indeed the phenomenon persists despite the secular remedies in place. Additionally, and as women have themselves reported, the Toronto *Beit Din* is unfortunately not a “congenial” place as a result of the state-law remedies (as Fishbayn-Joffe claimed).

Syrtaash, Baumel Joseph and Fishbayn-Joffe have made noteworthy contributions to the literature on *agunot* in Canada. That said, regrettably some of their hopeful and positive assertions, particularly those regarding the Canadian *get* legislation have seemed not to come to pass and are not reflected in the socio-legal realities and lived experiences within the Toronto Jewish community described by my participants. As the *mesuravot get* themselves affirmed in my interviews, the legislation has not had the intended impacts as a legal amelioration to a husband’s intransigence, thus some women are simply unable to benefit from the *get* legislation

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<sup>350</sup> Approaches which seek simply to intervene in and correct a perceived wrong in ‘internal’ communal matters or which seek to immunize the ‘outside’ or non-religious from the problems arising within the ‘internal’ religious community.

<sup>351</sup> Including James Tully, Seyla Benhabib, Martha Minow and others.



which straddles the religious and civil realms. A full and rich discussion as to *why* this is the case will follow later in the analysis. Briefly, there is a multiplicity of complex and intersecting reasons the legislation has not had its intended effects.

What my research has demonstrated, based interviews both with women refused a *get* as well as with other stakeholders such as rabbis, lawyers, academics, activists and others, is that legal remedies have not changed the social norms and behaviours ‘on the ground’. Put simply, *get* refusal persists despite the hope that the amendments would thwart and resolve the phenomenon<sup>352</sup>. Compounding this unexpected and disappointing fact is the problematic misconception that *siruv get* has been ‘solved’ by these amendments. What has occurred here is aptly captured by Sally Falk Moore’s description of a centralized government interacting with a social field:

Innovative legislation and other attempts to direct change often fail to achieve their intended purposes; and even when they succeed wholly or partially, they frequently carry with them unplanned or unexpected consequences. This is partly because new laws are thrust upon ongoing social arrangements in which there are complexes of binding obligations already in existence<sup>353</sup>

thus leaving women to negotiate and bargain in the shadows of legal pluralism<sup>354</sup>.

In other words, although the state, civil amendments were intended to remedy to a *halakhic* problem, the Toronto *Beit Din* understands them to be invalid, rendering any *get* given as a result of the laws a *get meuseh*, a coerced *get* or one given under duress. Consequently, and as Moore described (though she was describing a different context), the attempt to direct social change

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<sup>352</sup> While the objectives of this research did not include conducting a census to find out the prevalence of *get* refusal before the *Divorce Act* amendments, recently after them, and in the 2000s, based on my primary data it seems there was support, awareness and some initial success immediately following the amendments and subsequently they fell into disuse for a variety of reasons (which I explore in chapter seven). All I contend here is that the phenomenon persists. I expand on debates around quantifying *mesuravot get* and the prevalence of the phenomenon and research methods in the next chapter.

<sup>353</sup> Sally Falk Moore, “Law and Social Change,” *Law and Society Review* 7, (1972-73): 719- 746, 723.

<sup>354</sup> Robert H. Mnookin and Lewis Kornhauser, “Bargaining in the Shadow of Law: The Case of Divorce,” *Yale Law Journal* 88, (1978-1979): 950-997. See chapter seven for further discussion.

through legal change is not (fully) successful and in this case study about divorce refusal, the result is that the phenomenon persists in Toronto today<sup>355</sup>. Compounding the fact that the *beit din* no longer supports the amendments are the troubling outcomes of the perceived success of the amendments. Primarily, there is widespread lack of acknowledgement that *get* refusal even exists in Toronto- both by community leaders and individual community members, and the idea persists that the *beit din* continues to support the amendments despite evidence to the contrary. Moreover, the early *beit din* support of the amendments lead to the dismantling of support groups and advocacy and now the lack of these groups serves as evidence to those who believe *get* refusal does not exist, who claim that if the problem would persist, the support would exist. Furthermore, the misconception that *get* refusal has been solved has also precluded and silenced other potential remedies from being embraced and adapted, such as prenuptial agreements and communal advocacy.

To be clear, it should not be surprising in and of itself that a law is not abided by 100%, there is always going to be some non-compliance and abuse of law. What is surprising, is that in Toronto silences persist about the non-compliance despite the fact that non-compliance other contexts has lead to public advocacy, ‘eshaming’, and other grassroots efforts (elaborated in chapters two and six). Furthermore, another surprising element is that the Toronto *Beit Din* is not seeking (religious) remedies to problems arising around *get* refusal’s persistence. Based on the primary data, I would argue that the *beit din* is contributing to the persistence of *get* refusal in this context (elaborated in chapters five and seven).

In concluding my analysis of the Canadian scholarship, it seems that Syrtash, Baumel Joseph, and Fishbayn-Joffe cling to an optimistic view of the state’s legal amendments (despite

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<sup>355</sup> Yael C.B. Machtinger, “Sounds of Silence: A Socio-Legal Exploration of Siruv Get and Iggun in Toronto” (Major Research Paper, York University, 2009).

data indicating its marginal success in recent years, at least in Toronto). Particularly for Syrtash and Baumel Joseph, their years in the trenches, as advocates for the *get* legislation, and in Baumel Joseph's case, as Canada's best Jewish feminist advocate for women refused a *get*, has tied them especially tightly to the achievements of the *get* legislation, and with good reason. Baumel-Joseph and Syrtash were trailblazers and their work for *agunot* in Canada is noteworthy. They, along with Fishbayn-Joffe, each contribute significantly to the small body of literature on *get* refusal in the Canadian context; their contributions all but constitute the existing body of literature. Nonetheless, their contributions leave room for developing the field further. In this study I seek not only to conduct a gendered, socio-legal examination placing women's voices and experiences at the centre of the analysis, I also seek to capture the complex normative socio-legal realities within communities navigating the messy plural legal systems as they attempt to cope with the phenomenon of *get refusal*. Perhaps since I was not personally involved with or invested so deeply in the legislative amendments, a more holistic understanding of the realities women face is able to emerge.

The two recent studies of *get* refusal that I will review are those by Pascale Fournier, Canada Research Chair on Legal Pluralism and Comparative Law at University of Ottawa, and by Susan Weiss, Founder of the Centre for Women's Justice, matrimonial lawyer and aguna advocate (in Israel) who writes with Netty Gross-Horowitz, journalist for *The Jerusalem Post*. Although these are very different studies, they are contemporary studies that share similar epistemologies and methodologies, indicating the beginnings of a shift in literatures and debates around *get* refusal.

Fournier, in her study, compares the solutions in Israel and Canada, examining a state law or civil remedy to a social problem, looking at 'official legal' and 'unofficial socio-legal

responses<sup>356</sup>. Although this statement is not her key argument, it resonates with me in light of my findings: “Canadian civil state remedies are influenced by a web of alternative community responses and recourses...that at times render ineffective the civil remedies”<sup>357</sup>. She further states, “No policy response can ignore non-State normative commitments and communal affiliations as the latter often explain the shortcomings of the State law...”<sup>358</sup>. These introductory statements would benefit from further exploration. However, Fournier focuses on how women strategically navigate between state and religious legal systems, a finding that is reaffirmed by my data. Her significant contribution is her claim that secular remedies will not always work, and thus do not act as remedy to the *aguna* phenomena. My research compliments this claim and I take the analysis to the next level by investigating some of the reasons for the gap Fournier highlights. I would argue that while she does give a couple of the ‘official’ legal explanations for the shortcomings, a more fulsome discussion about the ‘unofficial’, socio-legal explanations would contribute to a more holistic analysis. For example, Fournier contends that women do not find secular civil courts to be a meaningful solution because community members and institutions provide them with the assistance and support they require<sup>359</sup>. While the first part of this claim is reflected in my research, some women have indicated just the opposite regarding communal support in Toronto, as I illustrate in the coming chapters. Thus, Fournier’s primary research, the six interviews or “micro-level narratives”<sup>360</sup> with “underground voices”<sup>361</sup> (two

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<sup>356</sup> Pascale Fournier, “*Halakha*, the ‘Jewish State’ and the Canadian Agunah: Comparative Law at the Intersection of Religious and Secular Orders,” *Journal of Legal Pluralism and Unofficial Law* 65, (2012): 165-204, 167.

<sup>357</sup> *Ibid*, 167-168.

<sup>358</sup> *Ibid*, 168.

<sup>359</sup> *Ibid*.

<sup>360</sup> *Ibid* 174.

<sup>361</sup> *Ibid*, 167.

interviews in three cities, two provinces) conducted in Canada, are not a reflection of the socio-legal realities ‘on the ground’, at least not in Toronto<sup>362</sup>.

The ineffectiveness of the remedies is in part due to the reasons Fournier lays out, along with a multiplicity of other factors as well. I am including insights from my primary interviews and from existing studies to weave a more nuanced and complex picture in this study. Fournier states that contractual clauses like the example set in *Bruker* are seldomly used due to the existence of the *ketuba* contract which is a similar contract protecting the rights of women in matrimony and divorce. However, the *ketuba* has been held unenforceable in civil courts and some Jews do not see civil courts as offering a remedy<sup>363</sup>. Moreover, some women indicated that they do not employ contractual clauses because they are unaware of their potential effectiveness (indeed like in *Bruker*) and they are unaware for a number of reasons. Primarily, I illustrate<sup>364</sup> that the ineffectiveness of such remedies stems, more significantly from the deleterious perception by Toronto Jewish communities that the civil amendments of the 1980s and 1990s have solved the problem of *iggun* when in fact the rabbinate/rabbinic courts and individual rabbis have (at best) retracted their initial support of the civil amendments and (at worst) have even threatened women looking to employ the civil remedies with invalidating their *get* as coerced<sup>365</sup>.

Notwithstanding Fournier’s important commitment to “providing fragments of untold knowledge” and her “aim to go beyond the conventional feminist accounts of the *agunah* problem”<sup>366</sup>, her data is not reflected in the Toronto community. While she recognizes the

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<sup>362</sup> Fournier does acknowledge that her study is qualitative rather than quantitative and thus is not representative of all Canadian (or Israeli) *Agunot* and yet does make a number of broad claims throughout the article (in addition to calling it, a study about the “Canadian Agunah”, implying representativeness).

<sup>363</sup> *Ibid*, 168 and *Re Morris and Morris* [1973], 42 D.L.R. (3d) 550 (Man. C.A.).

<sup>364</sup> I illustrate this in the coming chapters as well as in my preliminary study which focused solely on Toronto. Machtinger, Yael C.B. “Sounds of Silence: A Socio-Legal Exploration of Siruv Get and Iggun in Toronto” (Major Research Paper, York University, 2009).

<sup>365</sup> Interviews with women refused a *get* and family law attorneys in Toronto have confirmed this.

<sup>366</sup> Pascale Fournier, “*Halakha*, the ‘Jewish State’ and the Canadian Agunah”, 170.

importance of communal intricacies and normative orderings, it seems odd to claim women avoid the civil remedies because they prefer to go to community members and institutions who can provide them with assistance and support<sup>367</sup>. Perhaps this was reflected in the responses of the women interviewed for her study. As I argue in this study, *some* women are forced (by threat of *beit din* or husband or both) *not* to take the civil route, *some* women then desperately attempt to get help elsewhere, within their communities and, only *some* (hardly any) women actually find the assistance and support they so desperately require. Because this reality is shameful and inexcusable, it is understandable that perhaps participants may not report it to an ‘outsider’ researcher, like Fournier. However, the dozens of women I interviewed in Toronto described having nowhere to turn for support. Contrary to Fournier’s understanding of women’s resistance to employing ‘external’ remedies<sup>368</sup>, there is simply nowhere for them to go. There is no social, rabbinic, or communal support for women refused a *get* in Toronto. Consequently, the failure of the civil remedies is unfortunately not due to the successes of the ‘internal’ religious remedies, communal affiliations, or normative orders. Or, to use Fournier’s terms, I would argue that the failure of the ‘official’ system is not due to the successes of the ‘unofficial’ system.

Fournier draws on critical legal pluralism, inspired by Roderick A. Macdonald and others, which in our case sees women refused a *get* as legal agents who simultaneously effect and are affected by the secular (and I would argue, plural) normative order in which they live. Like my study, which tracks changes to socio-legal realities in New York and Toronto based on first-hand accounts of women refused a *get*, Fournier seeks to investigate the “everyday life normativity” of women concurrently navigating the intertwined and reciprocal civil and religious

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<sup>367</sup> Ibid, 168.

<sup>368</sup> See discussion and women’s voices affirming this in the coming chapters; chapters five and six in particular.

legal systems<sup>369</sup>. Fournier uses Manderson's spatial analogy of legal pluralism to explore ways in which Jewish communal institutions might affect the state law's effectiveness (or I would argue, ineffectiveness)<sup>370</sup>. She casts Jewish communal institutions and the way Jewish women navigate them as spatial layers of legal pluralism in Jewish communities which are social processes that affects state law<sup>371</sup>. This useful analogy, similar to the layering and repetition of the patchwork quilt metaphor I use in chapter five, allows the complexity and messiness of the plural, intersecting legal orders to come through while giving some sense of the layered challenges the women themselves must navigate.

Fournier's discussion of the *Braker* decision and section 21.1 is interesting and constructively adds to the Canadian debates around *get* refusal. She speaks to the potential benefits and detriments of each 'official' approach, citing them as "mechanisms of integrative dialogue between the secular and religious"<sup>372</sup>. Indeed both *Braker*, along with section 21.1, do have significant potential to remedy *get* refusal in Canada and yet the realities within the normative communal orders tell a different story. This integrative dialogue Fournier adapts, stemming from Shachar's "joint-governance framework"<sup>373</sup>, is an idealistic notion at this time. The Canadian women I spoke with<sup>374</sup> were in large part either unaware of the section 21.1 amendment's existence altogether, or were unable to make use of the remedies for a variety of reasons, both social and legal. This is surprising because there is lack of education in communities and even for lawyers (according to Joseph) and for this the community is at fault.

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<sup>369</sup> Pascale Fournier, "*Halakha*, the 'Jewish State' and the Canadian Agunah", 170.

<sup>370</sup> *Ibid.*

<sup>371</sup> *Ibid.*

<sup>372</sup> *Ibid.*, 176.

<sup>373</sup> Ayelet Shachar, "State, Religion and the Family: The New Dilemmas of Multicultural Accommodation," in *Shari'a in the West*, eds. Rex Ahdar and Nicholas Aroney (Oxford, UK: Oxford University Press, 2010), 115-133, 127.

<sup>374</sup> I refer to debates around quantifying, sample size of participants, and representation elsewhere in this analysis (chapters four-six). Briefly, I favour bringing many experiences to the fore in order to avoid generalizing women's experiences), thus my participants comprised a more representative sample.

Schools, synagogues, rabbis, and even Act to End Violence Against Women (who run workshops on and give support to victims of domestic violence) all seem to avoid educating their students, members, constituents and audiences about *get* refusal. It is also surprising perhaps because it indicates the reach, influence, and power of the Toronto *Beit Din* (both of these surprising elements will be explored further in the coming chapters). That said, building and expanding on Fournier's work, my research has shown that the reasons are far more nuanced, messy and complex than the existence or "impact of non-state forms of power on the behaviour of religious subjects"<sup>375</sup>. I found, the failure, unintended consequence, or disuse of the 'official' legal remedies is not due to the successes or uses of the 'unofficial' remedies.

The non-state forms of power Fournier considers such as *kherem*, communal ostracism, or *seruvim* (orders of contempt of *beit din*) are examples of internal remedies<sup>376</sup> that are rarely if ever invoked in Toronto Jewish communities thus are not having the results Fournier perceives. Consequently they have remained only 'could-be' remedies to solve instances of *get* refusal, though they have the potential to do so (and there are numerous cases in New York which attest to these non-state mechanisms' successes). Indeed my research has confirmed that the Toronto *Beit Din* does not issue *seruvim* nor does the community invoke *kherem*<sup>377</sup>. Consequently Fournier's argument about the successes of these types of mechanisms in other contexts<sup>378</sup> is a hopeful overstatement if applied to the Canadian or at least Torontonion context and she does not

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<sup>375</sup> Pascale Fournier, "*Halakha*, the 'Jewish State' and the Canadian Agunah", 178.

<sup>376</sup> These remedies are elaborated earlier in this study, in chapter two.

<sup>377</sup> Interviews with Torontonion agunot C.S. August 17; D.R. June 16; J.D. August 22; B.F. June 14; P.L. August 13; among others; Interview with Torontonion legal experts/ aguna advocates S.S, July 8, 2009 and March 30, 2015 S. B. July 24, 2014. Even the secretary of the Toronto *Beit Din* himself admitted this on record at this panel in which I participated at my synagogue, the largest Orthodox synagogue in Canada. *The Plight of the Agunah in Our Community: Bridging Gaps Between Rabbinate, Academy, and Community*, (panel discussion with Rabbi Daniel Korobkin, Yael Machtinger, Sharon Shore and Rabbi Asher Vale, Beth Avraham Yoseph of Toronto Congregation, Thornhill, ON, April 29, 2012),

[http://koshertube.com/videos/index.php?option=com\\_seyretandtask=videodirectlinkandItemid=4andid=11072](http://koshertube.com/videos/index.php?option=com_seyretandtask=videodirectlinkandItemid=4andid=11072).

<sup>378</sup> Pascale Fournier, "*Halakha*, the 'Jewish State' and the Canadian Agunah", 179-180.



tease out these important nuances. She seems unaware of the complex dynamics and power struggles that exist between *beit din* and the secular/state legal sphere, particularly post the removal of religious arbitration, which has greatly impacted the willingness of *beit din* to engage in integrative dialogue, joint governance or indeed even offer women ‘non-official’ *halakhic* solutions from within their own legal tool-kit.

Fournier relies on secondary sources for sensitive information regarding religion, *halakhic* terms, and internal communal dynamics and also draws on them in her brief discussion around efforts made to quantify *agunot*<sup>379</sup>. In some instances these sources do not accurately or adequately reflect the normative realities within communities and/or Jewish, *halakhic* legal concepts. Fournier’s conclusions are also unsettling, stating that “the Canadian approach to the *agunah* problem brings positive results *when used* by Jewish women”<sup>380</sup>. It is overly optimistic to claim that “Canadian approaches” bring positive results and it is certainly not echoed in my own study, as the narratives of women refused a *get* will illustrate. Fournier acknowledges earlier in her analysis that there are women who do not often have experiences that reflect such a claim even when they do attempt make use of the Canadian approaches. To be clear- there may be some women who benefit from the amendments however this should not be taken as the normative experience. Different women will have different experiences and for a plurality of different reasons. Although they have great potential as legal pluralist ameliorations, and I would include them in my ‘grab-bag’ of remedies (discussed further in the final chapter of this study), the Canadian approaches do not always lead to positive results, even when women do know about them and when they are used. Regrettably, women demonstrate that this is the case both for the *official* (secular) approaches, and the *unofficial* (religious) approaches. In some cases

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<sup>379</sup> See Fournier’s discussion about quantifying *agunot* on page 182, in particular notes 3, 16.

<sup>380</sup> Emphasis added. *Ibid*, 188.

outside Toronto it is grassroots or non-legal approaches that are more effective, and in other cases neither top-down legal approaches nor bottom-up grassroots approaches produce a *get*. Fournier’s supposition in her conclusion that *beit din* or “community interaction can sometimes be more efficient than state law”<sup>381</sup> is a misstatement regarding the phenomenon of *get* refusal in Toronto, as my research shows. In fact, community interactions or *unofficial*, non-state normativities have *not* been more efficient than state law in the Toronto context, though I agree with Fournier that they have the great potential to be and ought to be embraced and invoked.

Fournier’s approach using critical legal pluralism, storytelling, and qualitative methods has many benefits and promotes a rich and inclusive approach to the issue of *get* refusal. However, Fournier’s study has some limitations. Although she acknowledges that her study cannot be representative of all Canadian and Israeli women, she seems to suggest that the study can be indicative of the normative trends and realities beyond the cities in which she had her interviews conducted, in religious communities and in the lives of legal agents navigating between the secular and religious spheres. Despite her disclaimer, the experiences of the six women interviewed, along with her analytical review of a variety of socio-legal literature, becomes the basis of her study and upon which Fournier makes broad policy recommendations for the “Canadian Agunah”<sup>382</sup> which as my data and analysis illustrate, do not seem to reflect the distinct issues emerging in the Toronto Jewish community and in relation to the Toronto *Beit Din*. While she suggests that Israeli women look to “Western Jewish women’s navigation of Jewish communal institutions”, my research illustrates that these institutions continue to fail Torontonians women, particularly by not issuing *seruvim* and *kherems* as the women indicate in the coming chapters. Western women are thus stuck between an official system and unofficial

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<sup>381</sup> Ibid, 189.

<sup>382</sup> Ibid. See title of Fournier’s contribution.

system, which while attempting to navigate strategically, as Fournier notes (and as my research reaffirms), are often simply trapping them in dead marriages. Furthermore, Fournier's suggestions that the Toronto *Beit Din* develop their own *Sanctions Law* illustrates that there remains a disconnect between the policy suggestions she makes and the communities' normative realities and affiliations. This policy recommendation implies an unawareness that the Toronto *Beit Din* is resisting issuing *seruvim*, the traditional and most widely-accepted mechanisms of pressure<sup>383</sup>, and an unawareness that the Toronto *Beit Din* has come to forbid the use of the civil mechanisms that already exist (such as *Bruker* and section 21.1), all of which will be further explored in the coming chapters. Given that this is the case, I question the policy recommendation and wonder how and why the Toronto *Beit Din* would suddenly become willing to incorporate a *Sanctions Law* modelled on Israel's law. Moreover, I wonder, would the women themselves actually embrace and feel comfortable with that type of remedy in a close-knit community like Toronto?

Fournier meaningfully engages with literature on law and religion, such as Ayelet Shachar, as well as legal pluralism and critical legal pluralism inspired by Roderick Macdonald. Additionally, Fournier's study, as well as that of Weiss and Gross-Horowitz, as we will see below, offer innovative methodological approaches inspired by feminist legal storytelling which are contributions I am inspired by and further develop in this study. Both studies also begin to weave together pointed analyses of law, gender, religion, and storytelling which I build on here as well. Consequently, the contributions of Fournier and Weiss and Gross-Horowitz are significant additions to the modest, existing body of literature on *get* refusal, which enable me to further advance and develop the field, expanding the boundaries of research on *get* refusal.

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<sup>383</sup> Discussed briefly in the previous chapter and in chapter six.

I must begin by introducing Weiss and her significant accomplishments on behalf of *agunot* in Israel. Susan Weiss is the founder and Executive Director of the Center for Women's Justice, a non-governmental organization in Israel and previously worked with Yad La'Isha, both important, non-denominational organizations helping *agunot* in Israel. As an attorney and *aguna* activist, in 2001 she "initiated the innovative tactic of securing compensatory damages awards for women whose husband withheld a *get* by filing damages cases in Israel civil courts"<sup>384</sup> (although all Jewish marriages in Israel fall within the domain of the Rabbinic Courts, despite one's level of observance). This revolutionary approach reframed *get* refusal as a secular or state recognized emotional damage, even turning it into a human rights violation to measure monetarily in civil courts. According to Weiss, if one does not honour their wife as per their *ketuba* commitment it violates heritage and therefore deserves damages. The civil courts in Israel tend to agree, being that Weiss has won close to 50 cases since she began this work, often getting both a judgment for hundreds of thousands of shekels, as well as the *get* from the husband"<sup>385</sup>. This approach has had such a far-reaching impact that Supreme Court Justice Rosalie Abella in *Bruker* cites Susan Weiss' success in suing for damages in tort cases having to do with harms caused by *get* refusal in Israel, stating, "An agreement to provide a Jewish divorce is consistent with public policy values shared by other democracies"<sup>386</sup>. Weiss personally feels that winning damages awards is only a partial victory because women often forgo the damages won in civil court in exchange for the *get* which still allows for a price to be put on a *get*, sending the message that a *get* is not unconditional. That said, Weiss prefers this case by case approach rather than sweeping legislation but ultimately, according to her, the 'problem' will be solved once *halakhic* authority,

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<sup>384</sup> Center for Women's Justice website: <http://www.cwj.org.il/en/team/susan-weiss> .

<sup>385</sup> Batya Ungar-Sargon, "Israel has a Marriage Problem. One American-Born Lawyer is Trying to Solve It," *Tablet Magazine*, October 9, 2013, <http://www.tabletmag.com/jewish-news-and-politics/148148/susan-weiss-american-agunah-warrior>.

<sup>386</sup> *Bruker v. Marcovitz*, [2007] 3 S.C.R. 607, 2007 SCC 54, paras 89-90.

which “has its sources in a patriarchal system that is no longer relevant”<sup>387</sup> is restricted. Indeed she is extremely critical of Jewish law, those who practice it and those who uphold it, including rabbis and *dayyanim*. Thus, although Weiss has helped many women, her harsh resistance to *halakha* also impacts the potential of her approaches to lead to widespread change and acceptance.

While Susan Weiss and Netty Gross-Horowitz’s book unfolds around the personal stories told about six *agunot* which had never been done before in the existing literature on *get* refusal, their approach is not about the empowerment of women. In fact they state, “The halls of the religious courts are full of powerless women”<sup>388</sup>. Thus, although the cases of *agunot* are the focus of the book, the opportunities to empower women and to challenge stigmas *agunot* face about being only powerless, passive, victims<sup>389</sup> were missed. Weiss and Gross-Horowitz focus on describing six extreme experiences with the Israeli *batei din* and the complex lay-of-the land regarding *agunot* in Israel, making arguments about religious marriage in Israel more broadly. The women around whom the author’s weave their analysis do not come across as positive, active agents, particularly since Weiss and Gross-Horowitz label them, “Clueless, Scarlet, Ping-Pong, Accidental, Pawn and Reluctant”<sup>390</sup>. This study is more about the authors’ provoking the reader to react to the state of marriage and divorce in Israel than about focusing on the unsilencing of women refused a *get* or voicing *their* void, *their* agency. However, the women I interviewed would not have wanted to be labelled by any of the names used by Weiss and Gross. In fact, the *mesuravot get* who participated in this study would find it a derogatory betrayal of the

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<sup>387</sup> Susan M. Weiss and Netty C. Gross-Horowitz, *Marriage and Divorce in the Jewish State: Israel's Civil War* (Waltham, MA: Brandeis University Press, 2012).

<sup>388</sup> Susan M. Weiss and Netty C. Gross-Horowitz, *Marriage and Divorce in the Jewish State* (Waltham, MA: Brandeis University Press, 2012), 40.

<sup>389</sup> Thus the goal of Weiss and Gross-Horowitz’s contribution is different than my own.

<sup>390</sup> Susan M. Weiss and Netty C. Gross-Horowitz, *Marriage and Divorce in the Jewish State*, Table of Contents. These are also the titles of each of their chapters.

trusting relationships we had built. Moreover, even in the most helpless or abusive of situations, the women who participated in my study were so much more than the clueless victims or pawns, that the authors' portray, but rather, were most-often active and astute agents in attempting to attain their *get* and navigate the complex, overlapping realities between civil and religious realms.

Nonetheless, the book is an evocative, feminist study that enriches the existing literature and enlightens the reader to the plight of *agunot* in Israel. Its chief goal is to engage with the question: "is Israel a democracy or theocracy?"<sup>391</sup> using *agunot* as their case study. Weiss and Gross-Horowitz go on to argue that by the rabbinate's treatment of *agunot*, Israel is more of a theocracy and less of a democracy than some might like to admit. While they are driven to investigate this broad question, Weiss' experience advocating for *mesuravot get* in Israel as an attorney in the trenches has marked her perceptions of Jewish law and those who observe it, which in turn, impacted the thrust of this study. When referring, at a conference, to rabbis of the *beit din* in Israel she called them "short-sighted, arbitrary, patriarchal and not concerned with justice"<sup>392</sup>. The narrow arguments the authors make about *halakhic* marriage, divorce and religious leaders as necessarily patriarchal and misogynist seems both to undercut the beliefs of many women, thereby marginalizing them to Weiss' significant contributions and perhaps even minimizing the potential far-reaching impact Weiss and Gross-Horowitz's important work might have<sup>393</sup>.

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<sup>391</sup> Ibid.

<sup>392</sup> Susan, M. Weiss, "Lessons from the Front" (presentation at The Agunah Summit, New York University Law School, New York, NY, June 24, 2013).

Let me be clear that I do think rabbinic bodies in Israel may well be critiqued as governmental entities concerned, in some measure, with retaining and even increasing their own power, authority, and influence- and that this critique does not necessarily entail a rejection or denigration of *halakha* per se, yet that is not the critique Weiss and Gross-Horowitz engage in their study because they do reject *halakhic* marriage.

<sup>393</sup>Weiss and Gross-Horowitz. *Marriage and Divorce in the Jewish State*, 38.

The authors' derogatory and condescending view of Orthodoxy, coupled with the names created for the women refused a *get*, comes across as disrespectful to the feminist principle of allowing women to choose<sup>394</sup>. Women must not be made to feel that to choose religious marriage or divorce is to choose misogyny or theocracy, yet these are the contentions Weiss and Gross-Horowitz are making. In fact, women must have their right to religion without being made to feel belittled about their choice<sup>395</sup>. For example, the authors, accepting a liberal secular feminist approach, ask themselves why women still choose to marry in Orthodox ceremonies, and conclude that even when women do make these conformist choices, civil remedies ought to be available (hearkening to Shachar's joint governance model)<sup>396</sup>. The authors never argue, however, that women can choose and even should choose to be Orthodox or ultra Orthodox because they might want to be. Moreover, the authors never concede that women can choose to marry in accordance with those customs and rituals, they can choose to remain in their communities, and they can even choose to seek advice of rabbis, *but*, in making those choices, they should not be seen to be conceding their right to divorce. In fact, the authors imply the contrary, suggesting Orthodox women should be penalized for such choices.

The right to religion and the right to divorce are not mutually exclusive and consequently giving up the one to avoid problems with the other is not a solution, despite the claims of Weiss and Gross-Horowitz. Choosing religion does not mean giving up democracy, human rights, or

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<sup>394</sup> Angela Campbell, "Bountiful's Plural Marriages," *International Journal of Law in Context* 6, no. 4 (2010): 343-361; Ayelet Shachar, *Multicultural Jurisdictions: Cultural Differences and Women's Rights* (Cambridge, UK: Cambridge University Press, 2001); Sumi Madhok, Anne Phillips and Kalpana Wilson, eds., *Gender Agency, and Coercion* (London, UK: Palgrave Macmillan Press: 2013); Rebecca Johnson, *Taxing Choices: The Intersection of Class, Gender, Parenthood, and Law* (Vancouver, BC: UBC Press: 2013).

<sup>395</sup> Weiss and Gross-Horowitz. *Marriage and Divorce in the Jewish*, 198.

<sup>396</sup> Citing Canada, among other places, the authors argue women should still have abilities to use civil remedies, like section 21.1, in order to void contracts, etcetera. However, they are problematically citing remedies not knowing that they are not in fact being used in Toronto but that is a separate matter.

Shachar states, "Joint governance opens up the possibility that our agency as members of a culture and our agency as citizens of a state maybe mutually reinforcing and that cultural accommodation may actually enable this mutual reinforcement to occur". Ayelet Shachar, *Multicultural Jurisdictions* (Cambridge, UK: Cambridge University Press, 2001), 90.

inevitably becoming an *aguna*. This nuanced, feminist, argument is made most effectively by Baumel Joseph<sup>397</sup>. Indeed she argues, that if women cannot get a *get* and the law is too patriarchal, it is not a solution to suggest they leave, for that

misses the point- both of Orthodoxy and of feminism. Orthodox Jews are Orthodox because they believe in the integrity of the system and 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, 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 want to renovate from within.<sup>398</sup>

Thus the contention that the solution is to abandon *halakhic marriage* detracts much of the book's successes in terms of its feminist agenda, empowerment of women, enabling women's freedom of choice, and female storytelling.

Weiss and Gross-Horowitz's astute discussion about the ambiguous role of domestic violence in the rabbinic courts is so brief that it leaves me with a desire for further and deeper analysis<sup>399</sup>. Their sharp analysis of *get* refusal as a form of domestic violence which is not yet a taken-for-granted- fact in many communities (especially Toronto) would benefit from further exploration, particularly since domestic violence is at the core of the *aguna* phenomenon. In fact, each woman I interviewed described some form of domestic violence in marriage. That said, and building off of Weiss and Gross-Horowitz's contributions, I maintain it is *not* the entire system of Orthodox marriage or *halakha* that we need to get rid of, the baby with bathwater, if you will. Rather, *get refusal* is a socio-legal phenomenon which has somehow developed, and which some individual abusive men exploit with the support of some corrupt rabbis and rabbinic courts. The

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<sup>397</sup> Norma Baumel Joseph, "Agunot and the Powers that Be" (presentation at JOFA- Jewish Orthodox Feminist Alliance Conference, *Choosing Limits/Limiting Choices: Women's Status and Religious Life*, Brandeis University, Waltham, MA, March 13-14, 2005).

<sup>398</sup> Weiss and Gross-Horowitz. *Marriage and Divorce in the Jewish*, 198.

<sup>399</sup> *Ibid*, 175-179.



solution cannot and will not ever be to get rid of religion (or religious marriage) altogether despite the authors' assertion that the system of Jewish marriages in Israel makes Israel a theocracy<sup>400</sup>. Again, that would not allow for multiple forms of expression and choice embraced by feminism and indeed, there will always be Jewish women who consciously choose Orthodoxy simply because they want to (and despite the risk of being called "clueless" by the authors) and these women ought to have a plurality of solutions available in their arsenal.

Weiss and Gross-Horowitz acknowledge that the six stories they chose to include, out of the dozens and dozens Weiss has helped over the course of her important work, are about exceptional cases of *mesuravot get* "in extreme situations"<sup>401</sup>. While there are lessons to be learned by looking at the exceptional yet egregious cases, readers must also be cautious not to allow the six test cases to reflect the broad and nuanced, multifaceted set of experiences of most women who are refused a *get*, experiences which are no less egregious, but far more banal, and silent. Were the cases intended to compel the authors' goals about Israel being a theocracy? What do the cases tell us about, or what can they demonstrate more broadly, about the 'normative' experiences of women refused a *get*? These exceptional cases should be treated as such- exceptional. I do not wish to diminish the women's experiences in any way, nor do I want these experiences to represent or stand for the experiences of all *mesuravot get*, who most often suffer in much more subtle ways (though often no less egregious)<sup>402</sup>. Particularly, reading from a North American context, it is important to acknowledge that there will not be a uniformity of

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<sup>400</sup> One could argue that the system of marriage in Israel, not in the Diaspora, denies women (and men) the element of choice. Short of marrying outside of Israel, or gaming the system through deceit, the only way for a Jewish couple to marry is to do so *halakhically*, and moreover, largely through the ultra Orthodox understanding of *halakha* which is propagated through most *batei din* in Israel. That said, contending that the way marriage and divorce is dealt with alone makes a country a theocracy (when the country is also a democracy with a state/secular supreme court) is questionable, but beyond the scope of my review here.

<sup>401</sup> Ibid, 199.

<sup>402</sup> Nor would I want the experiences of the women who contributed to this study to stand for all women's experiences of *get* refusal.

experience and that these six exceptional cases are not necessarily generalizable or representative but do give readers tremendous insight to the experiences of women refused a *get*.

## **Conclusion**

This chapter has examined some relevant literatures discussing law and religion in Socio-Legal Studies as well as the existing literature on *get* refusal, focusing on the most recent studies and debates and their emerging themes and goals with particular focus on those examining Toronto and/or those including women's narratives. Together, the authors have developed a relatively small, but noteworthy body of literature, engaging with the nexus of law, religion, gender, and storytelling in significant and diverse ways. This is a significant accomplishment in terms of awareness of religion's persistence in the public sphere and in the field of Socio-Legal Studies, and in terms of moving closer to viable remedies for *get refusal*. Collectively, the literature offers a strong and significant foundation and springboard from which to begin a new, nuanced analysis of *iggun* in Toronto and New York, building on and extending the debates. It is my hope that through critical analysis and reflection of the gaps in the landscape I can move the research slowly forward, expanding the strengths and improving on the limitations, with the ultimate goal of supporting the complex realities of women refused a *get*. While their collective stories are crucial to the body of literature, and to movements and solutions, the narratives of the *mesuravot get* and the real-life, socio-legal realities that exist within normative, religious, non-state orders have at times been left out of debates in the literature.

In the next chapter which focuses on the methodologies and methods used in conducting this study, I will explore how this study will build on the contributions of the noteworthy scholars and activists. I will further elucidate my methodological approach as well as my point of

entry to the existing discourses as an 'insider' and my incorporating a socio-legal, gendered analysis and a religious-feminist approach. Such an approach has not yet been taken and will enable both an in-depth, textured and complex but still culturally nuanced enquiry by incorporating insights from my interviews and from existing studies to weave a more multifaceted picture and as such will expand the field and stretch the existing body of literature.

## **Chapter Four - Musings on Methodologies & Methods**

*We got married in 1970; I was 17 he was 20; we were in love.*

*During the 25 years we were generally quite happy. He had a thriving dental practice. We had 6 kids. We gave charity in community, and we made name for ourselves.*

*At times there were red flags; a couple of uncontrolled rages...*

*In 1995 the breakdown really started...He had entered in to a partnership in hotel, leveraging-\$4 million...he became obsessed with this investment and began to slack at his dental practice, spending more and more time in Israel, He wanted to move the family there. Eventually he closed the practice and things started falling apart...He wouldn't accept his responsibilities anymore.*

*The abuse continued and in 1997 there was a choking incident. Shortly after, I started working, after years of staying at home because I knew then I would have to leave but I didn't know how and who do you ask? I had nowhere to turn for help.*

*In 2000, I went to get the get. He had the pen in his hand to sign it and said "I changed my mind" he felt I was his property. For 10 years, until 2007, the abuse increased. I lived with him knowing I had to get out and for the last 1 ½ years I lived in fear for my life. I didn't sleep at night.*

*In February 2007, I left with a wheelie suitcase after my children where privy to an incident and insisted I leave. I left not thinking I'd never go back, but I never went back. From that point I was without a get for another 5 years.*

*He stalked me for a while until he moved to Israel.*

*At that time, my machatunim connected me to ORA who connected me to a lawyer who connected me to Yad L'Isha who gave me a toenet. She arranged for 2 hazmanot there, which the Toronto Beit Din didn't do for years here, and when I went to Israel for my granddaughter's bat mitzvah, she arranged for me to go to the Beit Din for him to give me get in person. He was so defiant of Beit Din and treated them terribly despite the fact that it came out he was living with Phillipino girl...*

*As one of the dayyanim said, "I was now good for any man", my husband ripped up the get and threw it at the rabbi. So my 2<sup>nd</sup> get attempt was ruined.*

*Eventually he was thrown in jail and after three weeks inside, he agreed to give me a get. If he hadn't moved to Israel, I'd still be waiting. All the stars lined up just at that moment, it was all yad Hashem. If I was depending on or waiting for the actions of the Toronto Beit Din, I still would not have my get today.*

*When I was going through it, I had nowhere to turn; I suffered in silence. There is more awareness nowadays than even a few years ago. We need support systems in place especially so women don't lose their legal rights by their desperate actions – signing away rights in agreements in exchange for a get. I was advised “just be happy you got out”.*

*The only way the solutions will work or even just start to happen is if you engage the frumer parts of the community, it's gotta be within halacha otherwise, what's the point if those more frum women are abandoned by a fringe solution? We need to work WITH them, the Beit Din and appease them to create a unified path.*

*I believe there can be a solution because if they could find it in the beit din in Jerusalem, they could find it here, in Toronto.*

*The amendments DID NOT HELP in my case. “I know I couldn't have gotten the get if he hadn't moved to Israel” They had never even issued any hazmanot, and no seruvim here in Toronto.*

*There is no support here in Toronto, not legal, not rabbinical and so there is nothing to give hope. I understand halacha and I don't challenge it, I don't want to, but I hope there could be unity to find halachic solutions, especially for the child-baring aged women.*

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*On April 14<sup>th</sup> of this year, I will be an Aguna for 5 years. I have no get, and no civil divorce and I have been married for 27 years.*

*I am in an abusive marriage- all types of abuse, physical, emotional, sexual he controls the computers and other devices, for example. He is accidentally brilliant, but he never actually worked; he earned no parnasa. While I've always juggled jobs. He says he's a “non-conformist” and thus can't have a boss or rules if you know what I mean. I think he can't stand others being in control of him. He's also chronically late and often unreachable.*

*The beginning of the end was when a dear friend of mine came to visit from Israel and I invited her to stay with us. Well it turns out, as I would find out later, they began an affair. I remember that I couldn't believe my friend did that, but I was not surprised about my husband's behaviour at all.*

*He became more and more abusive to me and the kids and I was so scared and subservient. I second guessed myself all the time. He undermined my parental abilities with all the kids, some of whom are high needs. He would throw insults at me all the time, calling me passive aggressive, fat, ugly, making comments about our sex life.*

*Shortly after this 'friend's' visit, but before I knew of the affair my husband decides he wants to go to Israel. But of course, we have no money for that. We have kids to feed, some with challenges that need extra therapies. But sure enough, he withdraws all our money- close to \$10,000 and leaves to Israel without a note and makes no contact for 10 days.*

*Basically, he abandoned the children, he abandoned me, and went to continue the affair with her in Israel.*

*Turns out, I would find out later he secretly got married in Israel. I eventually found this out from his best friend. I went to see his parents in Connecticut for Shabbat and his mom denied everything and did nothing.*

*I don't know where to turn to next.*

In conducting interviews with the women whose narratives are included above, I was faced with some of the benefits and challenges of interviewing. The first narrative was shared by a woman from the Toronto area who goes far back with my family. She met my mother when they were away at sleepover camp, at the age of sixteen. She even attended my Bat Mitzvah. This presented me with both a benefit and challenge of being an 'insider' researcher. Having access to a *mesurevet get* whom I knew personally was invaluable in terms of data collection, establishing trust and rapport with the participant, and expanding a network of contacts via respondent-driven methodology. However, challenges also arose. Knowing my participant potentially also inhibited what she felt comfortable sharing, perhaps censoring her narrative because there was not enough distance between us.

The second narrative, with a woman from the New York area, presented some of the converse challenges and benefits. The participant shared very personal details including those

about child abuse and rape, perhaps because she felt comfortable with me being an insider to the Jewish community at large, but an outsider to her particular community in the Greater New York Area. That said, despite the participant's openness, the interviews I conducted with her were exceedingly challenging. The participant at times began to cry, took calls from lawyers as well as from her children's teachers, and her children. The participant twice had to leave the interview mid-way and we rescheduled, making the interview three parts. Twice, she brought at least one child with her. Each of these elements posed challenges to the interview process. However, although challenges arose, for which I was not well-trained (I am not a social worker or a therapist), the benefits of socio-legal storytelling in line with feminist research methods and methodologies and as opposed to more positivist methods such as quantifying, nonetheless outweighed the detriments. The results yielded rich, primary accounts of experiences by women refused a *get* as they navigate between plural legal orders.

In line with this project's objectives of analyzing to what degree state legal remedies impact religious social norms, and incorporating and highlighting the lived realities of women refused a *get*, in this chapter, I will examine the methodological and epistemological considerations arising from the research design to conduct this nuanced study that builds on and expands the existing body of literature. Consequently, I will explain the deliberate choices concerning the research methods and design including the importance and effectiveness of socio-legal, gendered storytelling, the 'religious feminist approach' I take, and the question of quantifying *mesuravot get*. This chapter is a precursor to chapter five where I analyze the primary data, the women's narratives. This chapter, its antecedent, addresses why I chose to

centre this study around *mesuravot get*, placing their narratives and experiences at the centre of my analysis by addressing the questions: ‘what is a qualitative socio-legal gendered storytelling and a religious-feminist approach and why are they the ideal methodological and epistemological perspectives applied to this analytical socio-legal study of *get* refusal? I also consider how and why I am well-positioned to conduct this sensitive but vital research, bringing disparate literatures and perspectives into conversation with one another. The bulk of this chapter will highlight the decisions made in the process of conducting the research, beginning with a discussion/disclosure of my positionality and the religious-feminist approach I implement throughout the study. Moving toward chapter five, the end of this chapter will conclude with a discussion of methods and the practical considerations and questions that emerge addressing the particularities of who I interviewed, how I found the participants, as well as where and when the interviews were conducted.

### **Perspective, Posture, Positionality- My Religious Feminist Approach**

I find it challenging to situate my positionality explicitly and neatly because I am positioned at the edges of several categories, fitting comfortably neither entirely inside nor outside of them. Trinh H. Minh-Ha captures this sensation eloquently, stating:

Working right at the limits of several categories and approaches to knowledge means that one is neither entirely inside or outside. One has to push one’s work as far as one can go: to the borderlines, where one never stops, walking on the edges, incurring constantly the risk of falling off one side or the other side of the limit while undoing, redoing, or modifying this limit.<sup>403</sup>

Indeed, a religious feminist approach, like the one I employ in this study, does not have a single orientation and thus I work in between and on the edges of a few of my identities or networks of

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<sup>403</sup> Minh-ha quoted by Sharlene Nagy Hesse-Biber, “Introduction: Emergent Methods in Social Research Within and Across Disciplines,” in *Emergent Methods in Social Research*, eds. Sharlene Nagy Hesse-Biber and Patricia Lina Leavy (Thousand Oaks, CA: Sage, 2007), xii.



affiliation, attempting to do a multifaceted critical socio-legal analysis while doing justice to the religion and to feminist principles, and thus, I am always ‘walking on the edges’ of each. It is messy and inherently political as well<sup>404</sup>. Moreover, my perspective impacts the research I choose to do, the questions I choose to ask, the access I am granted or denied, as well as the stories disclosed. In other words, I employ an analytical approach that weaves diverse literatures and debates together with first-hand narratives and I have come to these, at least in part, due to my upbringing- both in the academic and private realms. The positionality of researchers impacts the way we produce knowledge. In this vein I disclose that I am a religious Jewish, woman, feminist, socio-legal researcher, insider<sup>405</sup>. These intersecting identities impact the nature and conscience of the research, enabling and complicating this religious feminist approach<sup>406</sup>.

As I indicated earlier, to date, the analyses of *get* refusal have consisted mostly of two dichotomous streams: 1) male-authored, often conservative analyses, often by rabbis, who offer numerous suggestions for solutions from within Jewish Law<sup>407</sup>, such as those by Bleich, Breitowitz; and others, and 2) female-authored, often liberal analyses, often by non-Orthodox women, using feminist scrutiny and often abandoning concern for Jewish Law, such as those by Aranoff, Haut, Weiss, Halperin-Kaddari and others<sup>408</sup>. I bring the two streams into conversation,

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<sup>404</sup> Yasmin Gunaratnam, “Chapter 4: Messy Work Qualitative Interviewing Across Difference,” in *Researching ‘Race’ and Ethnicity: Methods, Knowledge, Power*, ed. Yasmin Gunaratnam (London, UK: Sage, 2003), 79-108.

<sup>405</sup> I should also acknowledge that I have never been married and thus have never experienced *get* refusal myself, nor has anyone in my family. While this might be a point for criticism, it is nonetheless widely acknowledged in academic circles that one need not themselves be the object of the study nor ought the author to have personally experienced the phenomenon being studied in order to conduct sound and strong research.

<sup>406</sup> An approach which has not been utilized in studies of *get* refusal to date.

<sup>407</sup> Rabbi David J. Bleich, “A Suggested Antenuptial Agreement: A Proposal in Wake of Avitzur,” *Journal of Halakha and Contemporary Society* 7, (1984): 25-41; Rabbi David J. Bleich, “Jewish Divorce: Judicial Misconceptions and Possible Means of Civil Enforcement,” *Connecticut Law Review* 16, no. 2 (1984): 201-290; Rabbi Irving A. Breitowitz, *Between Civil and Religious Law: The Plight of the Agunah in American Society* (Westport, CT: Greenwood Press, 1993).

<sup>408</sup> Susan Aranoff and Rivka Haut, *The Wed-Locked Agunot: Orthodox Jewish Women Chained to Dead Marriages* (Jefferson, NC: McFarland and Co. Inc, 2015); Rivka Haut, “A Factor in Preventing Cases of Agunah,” *JOFA Journal* 1, no. 3 (1999); Susan M. Weiss, and Netty C. Gross-Horowitz. *Marriage and Divorce in the Jewish State: Israel's Civil War* (Waltham, MA: Brandeis University Press, 2012); Rivka Haut, Susan Aranoff, Susan Weiss, Ruth

embracing an analytical approach which is fresh and yet layered, wherein I refuse to abandon concern for Jewish law, yet I embrace a plurality of legal orders and remedies along with feminist methodological and epistemological approaches to research. Moreover, the historic and current landscape of scholars, activists and documentarians working on the issue of *iggun* is not only quite polarized but in addition, it has often been abstractly theoretical, writing *about agunot* rather than writing practically, *for agunot*<sup>409</sup> or even *with agunot*, reflecting on their experiences and analyzing the remedies they might feel comfortable utilizing. Whereas the religious feminist paradigm I suggest enables increased accuracy, intimacy, and access to communal and legal nuances by including women's voices and placing women's experiences at the centre of this study.

I argue that mainstream voices and nuanced critical approaches that fall somewhere between the two extremes I described, and which place *mesuravot get* at the centre, are necessary in the growth of scholarship on *get* refusal. I am such a voice and I take such an approach. Being observant of *halakha*<sup>410</sup>, the Orthodoxy I was raised with was one which empowered women and in which I was permitted to question and which had answers<sup>411</sup>. I have also been 'brought up' by a socio-legal studies program which has fostered an understanding and analytic approach of complex sites of legal pluralism, law and religion, multiculturalism and the schisms that emerge. In other words, I respect and take religion seriously and I benefit from a deep sense of cultural understanding whilst taking seriously the tensions between the state and religion, particularly

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Halperin-Kaddari, *The Agunah Summit* (New York University Law School, New York, NY, June 24, 2013); Blu Greenberg, "The International Beit Din: Resolving the Agunah Crisis" and Norma Joseph "Northern Exposure: Agunah in Canada" (presentations at JOFA- Jewish Orthodox Feminist Alliance Conference, Columbia University, New York, NY, January 15, 2017).

<sup>409</sup> Faye Lisa Rosenberg, "Jewish Women Praying for Divorce: The Plight of Agunot in Contemporary Judaism" (Dissertation, York University, 1999).

<sup>410</sup> "*Frum* from birth" or 'ffb'- born and raised Orthodox. This is a common classifying acronym in the Jewish world. I was also educated in religious (all girls) schools.

<sup>411</sup> And wherein I had wonderful female role models who inspired me academically.

those that emerge around a woman's right to marriage and divorce as well as her right to religion. The study also benefits from my deep communal ties (as this research demonstrates) and yet, I can nonetheless identify flaws and question injustices that persist within the Jewish community (*get* refusal being but one). That said, I am writing against those who view religion in general and Judaism in particular as a patriarchal system that subordinates women<sup>412</sup>. In fact, as I elaborate throughout the study, dismissing *halakha* is detrimental to *mesuravot get*, particularly the most vulnerable among them, who are ultra Orthodox. Women often choose to remain members of their communities and do not ascribe to solutions some suggest which dismiss *halakha*<sup>413</sup>. The religious feminist approach I espouse is more balanced than such an extreme approach.

My view of a feminist approach acknowledges recursivity<sup>414</sup>, the positionality of the researcher, and also recognizes that even as researchers or 'experts', we are constantly uncovering, discovering, learning from and with the *real* experts- in this case, the *mesuravot get*

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<sup>412</sup> I am engaging implicitly with the threads of three scholarly discourses:

a) Wherein some feminist theologians say that any patriarchy in Christianity or Western culture is a legacy of Judaism. Judith Plaskow and Susannah Heschel have written on the anti-Judaic thrust. Judith Plaskow, "Blaming the Jews for the Birth of Patriarchy," in *Nice Jewish Girls*, ed., Evelyn T. Beck (Watertown, MA: Persephone, 1982), 250-254; Susannah Heschel, "Anti-Judaism in Christian Feminist Theology," *Tikkun* 5, no. 3 (1990): 25-28, 95-97.

b) Wherein some Jewish feminists argue that Jewish marriage (and hence divorce) is inherently anti-woman, relegating women to the position of chattel, for example Rachel Adler. Rachel Adler, *Engendering Judaism: An Inclusive Theology and Ethics* (Boston, MA: Beacon Press, 1999).

c) Wherein some argue that Judaism or Jewish marriage is *not* systematically anti-woman. Among others, Judith Hauptman and Avraham Grossman have written on this. Judith Hauptman, *Rereading the Rabbis: A Woman's Voice* (Boulder, CO: Westview Press, 1998); Avraham Grossman, *Pious and Rebellious: Jewish Women in Medieval Europe* (Waltham, MA: Brandeis University Press, 2004).

In the context of our particular case study, on *get* refusal, these critiques have been made to some degree by Jewish feminist *aguna* advocates Susan Weiss, Susan Aranoff, Ruth Halperin-Kaddari, among others.

<sup>413</sup> This was addressed at length in chapter 3. There I also drew attention to scholars who discuss the importance of respecting women's choices.

<sup>414</sup> Frankenberg discusses 'recursivity' (as more appropriate than reflexivity), implying that what was in the past - both the research itself, and the positionality of the researcher - are not necessarily fixed, but rather always with the potential for, "re-examination and revision" as well as re-use in future work (107). Frankenberg further notes that the tool of recursivity allows the researcher, "to make visible that which was taken as *a priori* at an earlier stage", effectively allowing for the 'underbelly' of assumed or proscribed knowledge to be uncovered (107). Ruth Frankenberg, "On Unsteady Ground: Crafting and Engaging in the Critical Study of Whiteness," in *Researching Race and Racism*, eds. Martin Blumer and John Solomos (London, UK: Routledge, 2004), 104-118.

themselves<sup>415</sup>. I am simultaneously working with and through my positionality as a woman *inside* the Orthodox Jewish community, and yet as a woman *outside* the ‘knowers and experiencers of *iggun*’, a ‘hidden population’<sup>416</sup>. It is a delicate balance to acknowledge my own positionality<sup>417</sup>, while still placing the women refused a *get* at the centre of the analysis; thus reflexivity of positionality must not come at the cost of re-silencing those to whom we are often attempting to give voice<sup>418</sup>. In fact, acknowledging my positionality, compounded by the lived experience of participants, allows for a deeper, more meaningful, and thus also more acute and accurate awareness not only of the individual researcher, and *mesuravot get*, but also, how that researcher, interacts with, connects to, and focuses on participants without encroaching upon them<sup>419</sup> thereby enabling voices and experiences of women to become known<sup>420</sup>. Furthermore, a feminist approach, “is an innovative approach to knowledge building that breaks down barriers between academia and activism and between theory and practice...scholars of this method seek to give voice...and to uncover hidden knowledge...”<sup>421</sup> and these are precisely my intentions. I hope I have achieved here an in-depth analytical socio-legal study, weaving diverse sets of literatures and debates together, and taking seriously legal, religious, and social considerations

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<sup>415</sup> I should note that I have never been married and thus have never been refused a *get* myself, as some out in the field have assumed as I am conducting this study (in talks and book shops among other instances).

<sup>416</sup> A population for which no sampling frame already exists - so that the population's actual size and boundaries are unknown.

Douglas D. Heckathorn, “Respondent-Drive Sampling: A New Approach to the Study of Hidden Populations,” *Social Problems* 44, (1997): 174-199; Douglas D. Heckathorn, “Respondent-Drive Sampling II: Deriving Valid Population Estimates from Chain Referral Samples of Hidden Populations,” *Social Problems* 49, (2002):11-34.

<sup>417</sup> Ruth Frankenberg, “On Unsteady Ground”, 106.

<sup>418</sup> M. Fonow and J. Cook, “Feminist Methodology: New Applications in the Academy and Public Policy,” *Signs: Journal of Women in Culture and Society* 30, (2005): 2211-2236, 2221.

And indeed I have witness this phenomenon first hand at *The Agunah Summit* (Conference by The NYU Tikvah Center for Law and Jewish Civilization and JOFA-Jewish Orthodox Feminist Alliance Lecture, New York University School of Law, New York, June 24, 2013) where not one *agunah* was invited to participate in a full-day conference on *get* refusal.

<sup>419</sup> More than is inherent in the researcher-researched dynamic at face value.

Yasmin Gunaratnam, “Chapter 4: Messy Work Qualitative Interviewing Across Difference”, 87, 88.

<sup>420</sup> Marjorie DeVault, “Talking and Listening from Women’s Standpoint: Feminist Strategies for Listening and Analysis,” in *Liberating Method: Feminism and Social Research*, ed. Marjorie DeVault (Philadelphia, PA: Temple University Press, 1999), 59-83, 60-61, 69, 71.

<sup>421</sup> *Ibid*, 77.

which might make an impact both in the academic and activist realms by revealing the previously unseen and unknown realities around *get* refusal (like the batting of a quilt).

In the remainder of this section I probe further the consequences of my own membership in the Orthodox Jewish community on the research, my positionality as an ‘insider’<sup>422</sup>. This status possesses some potential advantages and challenges. I will consider both and elaborate on the ways in which I mediate or navigate the potential drawbacks. Perhaps the primary benefit is that my ‘insider’ status allows me accessibility to knowledge that would otherwise be inaccessible (particularly, I was able to access Ultra Orthodox or Hasidic participants, segments of the Jewish population that are often insular, and likely to resist outsiders, and often have). The research illustrates that I enjoyed access to all facets of the Jewish community, across all levels of (non)observance. Thus, this study benefits from ‘ethnographic privilege’<sup>423</sup>. The fact that I am an Orthodox Jewish woman, a community member, and that the participants know this, underscores our mutual respect. They also recognize that I have an understanding of the culture, knowledge and values we share as well as the laws we follow, the language we speak and turns of phrase used<sup>424</sup>, and in fact, even that which goes unspoken such as the modest dress, the

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<sup>422</sup> An academic insider is defined as a, “researcher who studies a group to whom they belong”. B. Mullings, “Insider, Outsider, Both or Neither: Some Dilemmas of Interviewing in a Cross-Cultural Setting,” *Geoforum* 30, no. 4 (1999): 337-350, 340.

<sup>423</sup> Patricia Zavella, “Feminist Insider Dilemmas: Constructing Ethnic Identity with ‘Chicana’ Informants,” *Frontiers* 13, no. 3 (1999): 53-76, 54.

Other scholars who have examined the phenomenon of *get* refusal and attempted to conduct qualitative interviews have perhaps not benefitted from this degree of ethnographic privilege. Here I am thinking about scholars such as: Pascale Fournier, Lisa Fishbayn, Anat Livshits, Lisa Rosenberg, among others. These are women who are not ‘insiders’ to the communities they have researched and yet they have conducted research on *agunot* nonetheless. Rosenberg acknowledged her ‘outsider’ status as a methodological detriment which complicated her research while Livshits described to me that she deceptively poses as an insider by strategically attending synagogues and altering her dress so that *agunot* might confide in her despite her own personal non-affiliation and resistance to *halakha* (this type of research much be questioned ethically and rigorously).

<sup>424</sup> Depending on the participant, I might have dropped Hebrew or Yiddish phrases into our conversations, wished them a “*Shabbat Shalom* or Good *Shabbos*” and a “*Shana Tova*”-wishes for a nice weekend or new year. Or answered “*Barukh Hashem*” - thank G-d when asked ‘how are you’? These often diminutive and routine expressions were significant bridges to building trust and rapport with participants and signaled my insider status.

blessings recited over food or drink, the kosher venue chosen etcetera<sup>425</sup>. From this understanding emerges equality, reciprocity, and trust between the participants and myself; and, it serves to breakdown the harmful power dynamics most often inherent in interviews of the knower and the known, the object, and the subject<sup>426</sup>. Consequently, because we share a belief system, community, and gender that connects us, rapport builds and a trusting relationship forms<sup>427</sup>. I also benefit from insider knowledge and understanding of institutions, hierarchies (both formal and informal), power structures, taboos and internal politics. For example, I know much about particular rabbis or *batei din* simply from having grown up in a particular community. This insider knowledge may at times be transformed into valuable research data informing context or arguments made by participants or myself throughout this study. Awareness of taboos existing within insular communities was also constructive in conducting this research and particularly in comparing New York and Toronto. On a broader level, as an insider, I benefited greatly from the fact that data collection does not just occur during the finite time of the interview or meeting. It may continue well past that, in community, at events, in synagogue, during Sabbath or holiday meals, at lectures, among other places. This is both a privilege and responsibility not afforded to outsiders whose access is far more limited and detached. However, with this access comes challenges and great responsibility.

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<sup>425</sup> Regardless of the level of observance of the participant, because in fact, even when the participant was non-observant, they were at ease and open being that I was an insider, even if they themselves were or had shifted 'outside'. There is plenty of shame and protectiveness of community even in cases where women became disenchanted and not affiliated or where they were not affiliated in the first place.

<sup>426</sup> Verta Taylor, "Feminist Methodology in Social Movements Research," *Qualitative Sociology* 21, no. 4 (1998): 357-379, 371; and Joan Acker, Kate Barry, and Joke Esseveld, "Objectivity and Truth: Problems in Doing Feminist Research," in *Feminism and Social Change: Bridging Theory and Practice*, ed. Heidi Gottfried (Urbana, IL: University of Illinois Press, 1996), 60-87, 80, 84.

Consider the complex and dependent power dynamic that Susan Weiss had with her participants being that she was their attorney and presumably also charged them a fee for her legal work on their behalf.

<sup>427</sup> Joan Acker, Kate Barry, and Joke Esseveld, "Objectivity and Truth" in *Feminism and Social Change: Bridging Theory and Practice*, ed. Heidi Gottfried (Urbana, IL: University of Illinois Press, 1996), 68.

Due to the potential challenges that might arise, some might interrogate my positionality as an insider. There may be the approach that I am exploiting my positionality in order to conduct sensitive research and I also may be critiqued due to my positionality with the claim that I am ‘too close’. This claim may manifest in a variety of ways. For example, I might have a loss of objectivity due to my personal connection with the communities being explored (although feminists and others have long argued that there is no such a thing as true objectivity) and this lack of objectivity might be perceived as detrimental to the research. Perhaps I may unconsciously make assumptions and/or overlook aspects or routine behaviours of participants or communities which might stand out to a researcher with more distance. There is also the possibility that participants may make assumptions about what I know as an insider, and so they do not tell me. That said, feminist scholars have long made the claim that there will always be ‘untold’ knowledge and never will there be ‘full Truth’. There is also the risk that perhaps my closeness might cloud the ‘bigger picture’ and/or that I might focus too heavily on groups in which I am an insider. For example, I have been faced with the question in my community and at academic conferences ‘if it is possible that my research is too Orthodox-focused?’. There is also the possibility that some participants might feel more comfortable with outsider, and because I am an insider, may feel there is not enough distance to ‘really open up’. They may feel uncomfortable sharing with someone on the inside because of the shame and taboos associated with ‘airing dirty laundry’ (on which I elaborate in chapter six) and because they may continue to see me in the community we will continue to share after the interview or indeed even after the entire project is complete. (Of course, the converse may also be true. That is some participants may only feel comfortable sharing with me because I am a familiar. Participants may feel that

their stories are not really ‘airing dirty laundry’ or giving religion or community a ‘bad name’ because I am an insider to it).

I tried to overcome and anticipate some of the potential challenges of my insider status by proactively anticipating them. For example, I kept some distance with *agunot* I interviewed by not sharing my personal thoughts or feelings, beliefs or opinions. I told participants, ‘assume I know nothing’ and asked them to share their stories ‘from the beginning’. Only after they relayed what they wanted to share in their own words would I try to fill in any gaps or direct the conversation by asking questions off my prepared questionnaire (which can be found in the appendices). I also had to compartmentalize my identity as a researcher and activist and not interfere in participant’s cases. For example, when attending rallies against recalcitrant men in New York, I only attended rallies against recalcitrant husbands when I did not interview their wives. I also once had to decline an offer posed by a participant to attempt to trap her husband by ‘picking him up or allowing him to pick me up’ at a Jewish singles event she knew he was attending.

I also confronted my own blind spots with help from my committee, recognizing that I would be naturally protective of Orthodoxy, rabbis and *batei din* and resistant to some of the claims made by ‘feminist’ *aguna* experts about ‘best solutions’ who place the blame for *get refusal* solely with the Orthodox *halakha*, rabbis and *batei din*. As a result, I focused on following the data presented by my heterogeneous stakeholders and cross-referenced as much as possible with multiple other data sources, thus making arguments based on a plurality and inclusivity of data sources, including but not limited to primary and ‘insider’. As a result, I have come to relay facts about rabbis and *batei din*, for example which may have been challenging for me as an insider had I not focused on following the data expressed by participants. This approach



was also a useful technique to abate the concern that I might be too Ortho-focused. The research itself demonstrates the egalitarian approach taken so that the study is reflective of diverse women's experiences of *get* refusal. That said, there is a tremendous weight of accountability, responsibility, and even guilt throughout the research process being that I am a part of the community. I do still attempt to be careful with my portrayal of Jewish law, Jewish men or the religion more broadly as the sole cause of *get* refusal, and I am cautious in my writing regarding the words I choose and where and/whether I choose to publish<sup>428</sup>. As this study illustrates, I take a more nuanced approach attempting to walk on the edges of different groups, a broad community of stakeholders, and weave their various interests into a complex tapestry.

There are another set of challenges I face as an insider that are 'read on' to me based on my identity. For example, and as I have noted earlier in this study, being a young woman working on *get* refusal I would often be read as a feminist, a negative thing for many rabbis, lawyers, *dayyanim* and at times even viewed as a negative attribute by women I interviewed. Likewise, my identity as female, Orthodox, single (never married) were all similarly interpreted by participants- sometimes as a benefit, and sometimes as a detriment thus sometimes enabling access and sometimes hindering it.

Now that we have explored the consequences of my insider status and the religious-feminist approach that emerged consequently, I will elucidate my deliberate decision to embrace gendered, socio-legal storytelling methodologically and epistemologically.

### **Socio-Legal Storytelling**

A socio-legal approach acknowledges that the law is not always what it claims to be- not always equal, accessible, just, fair, or pure and untainted by the social realm, other legal systems,

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<sup>428</sup> Patricia Zavella, "Feminist Insider Dilemmas," *Frontiers* 13, no. 3 (1999): 54.

and the messy coexistence of alternative normative orderings, beliefs and mores<sup>429</sup>. In fact, a socio-legal approach understands that law is inseparable from social life and social life is inseparable from law. Inevitably law is affected by “how and what people inside *and* outside the official legal system think about law”<sup>430</sup>. The converse is also true; that is, social orders are affected by the normative legal frameworks that are at play both inside and outside of that particular social order. Law and society are in a dynamic relationship, constantly and reflexively impacting one another. In the context of this study then, a socio-legal approach would embrace the understanding that the social normativities that prevail regarding *get* refusal have been influenced by the (secular) legal amendments and the (Jewish legal) *halakhic* approaches and decisions, while conversely, the legal amendments and the *halakhic* decisions have been impacted by prevailing social normativities. Additionally, individual narratives will show women strategically straddling both, intersecting legal systems and tactically choosing in which realm they might fare better. This contention aligns with that of Fournier, who also reaches this conclusion in her important study<sup>431</sup>.

Stretching the principles of a socio-legal analysis further, a gendered analysis is one that “overtly attempts to take account of women’s social experiences, as expressed through a deconstruction of falsely universalized knowledge”, contrary to traditional scholarship which “conforms to norms of objectivity, rationality”<sup>432</sup>. In embracing a gendered socio-legal analysis here, I am giving a platform to women’s voices so that their realities may deconstruct the “falsely universalized knowledge” that surrounds the phenomenon of *get* refusal (such as the

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<sup>429</sup>Brian Z. Tamanaha, “A Holistic Vision of the Socio-Legal Terrain,” *Law and Contemporary Problems* 71, (2008): 89-97, 66, 92-93.

<sup>430</sup> Marc Galanter as discussed by Tamanaha, *Ibid*, 89-90.

<sup>431</sup> Pascale Fournier, “*Halakha*, the ‘Jewish State’ and the Canadian Agunah: Comparative Law at the Intersection of Religious and Secular Orders,” *Journal of Legal Pluralism and Unofficial Law* 65, (2012): 165-204.

<sup>432</sup> Kathy Lahey, “Until Women Themselves Have Told All There Is To Tell,” *Osgoode Hall Law Journal* 23, (1985): 519- 541, 525.

notion that the ‘problem is solved’, the insistence that there are ‘just a few’ *agunot*, or the denial of *get* extortion as a tactic to exact civil concessions, to name but three of many).

This study employs a gendered socio-legal approach in that it embraces a multiplicity of perspectives, rather than a single, hierarchical authoritative state-legal, rabbinic or activist voice. Hence, storytelling, and particularly storytelling from the margins, or from alternative perspectives is embraced in this analysis, adding depth, complexity, and a more holistic, inclusive picture of lived realities and experiences, building on some of the studies discussed in the previous chapter. Brooks and Gewirtz in, *Law’s Stories: Narrative and Rhetoric in the Law* contend, “storytelling disrupts rational social science, invites both the teller and the listener to confront messy and complex realities”<sup>433</sup>, and that is precisely my goal- to disrupt normative ideas surrounding *get* refusal and open up a space for us to confront the realities regarding *get* refusal, by listening to the stories despite the widespread misconceptions and repudiation of the phenomenon.

According to Robert Kagan, a socio-legal approach, and particularly one that embraces storytelling, is concerned with the effects of law on individuals and groups, especially those who are most often on the limits of society and frequently left out of law and legal discourse altogether<sup>434</sup>. Consequently, and contrary to the literature in the previous chapter, the analysis in this study includes the narratives of women refused a *get* who are most frequently left out of law and legal discourse, with the explicit goal of empowerment, voicing voids, and revealing a more accurate picture of the realities and experiences of *get* refusal. For example, women shared their realities:

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<sup>433</sup> Citing Hannah Arendt; Peter Brooks and Paul Gewirtz, eds., *Law’s Stories: Narrative and Rhetoric in the Law*, (New Haven, CT: Yale University Press, 1998), 33.

<sup>434</sup> Robert A. Kagan, “What Socio-Legal Scholars Should Do When There is Too Much Law to Study,” *Journal of Law and Society* 22, no. 1 (1995): 140-148, 145.

“If we are going to be real about it the bigger picture, it is that rabbinic leaders refuse to acknowledge that there is abuse within their communities”<sup>435</sup>

“In reality, he had no action taken against him by or within the community”<sup>436</sup>

“It’s not really about money or extortion, rather it’s really ALL about control”<sup>437</sup>

Gendered storytelling has traditionally not been considered a legitimate scholarly approach to data collection and this perhaps explains to some degree the absence of gendered analyses within the existing literature on *get* refusal, (and indeed even in those texts/studies completed by women). The male point of view, characterized as and embodied through the traditional methods and goals of ‘objectivity’ and ‘truth’, have historically been preferred (especially in academia) given that they were considered neutral and scientific (see discussion of attempts to quantify *agunot*, to follow). However, according to Ann Oakley, a qualitative method paradigm is an alternative, albeit inherently better way of knowing<sup>438</sup>. That is to say that though we are still constricted by the broader methodological tendency (which is male), Oakley argues that qualitative methods are better- not more neutral, truthful, or objective, but rather more complete and complex - and in that, they enable a more accurate and ethical way of researching. In doing a gendered socio-legal analysis then, I am embracing qualitative methods, ‘feminine narratives’<sup>439</sup> and simultaneously deconstructing the dualism or the fictive, rigid binary that (still to some degree) exists between scholarly ‘male’ and low-brow ‘female’ methods in academic

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<sup>435</sup> P.L. August 13, 2014.

<sup>436</sup> D.R. June, 16, 2014.

<sup>437</sup> D.D. October 24, 2013.

<sup>438</sup> Ann Oakley, *Experiments in Knowing: Gender and Method in the Social Sciences* (Malden, MA: New Press, 2000), 15.

<sup>439</sup> As per Cixous’ term, and rather than the language of ‘female or women’s narrative’ in Helene Cixous, *Writing the Feminine* (Lincoln, NE: University of Nebraska Press, 1991).

analyses. This methodological approach welcomes a multiplicity of knowledges and experiences, one of the drawbacks of some of the existing literature<sup>440</sup>.

A goal of using a gendered, *socio-legal* analysis is to decenter law, and thus too, traditional legal methods which are often exclusionary and reproduce law as true, by adding women's stories, narratives, and experiences so that we may grasp the significance of what had been previously left out<sup>441</sup>. And this is reflected in the existing literature on *get* refusal to some extent. Thus my inclusion of feminine methods and feminine stories highlights all the more so the gaps that previously existed<sup>442</sup>. Indeed one woman I interviewed expressed her thanks to me for our meeting with, "*now I have a voice*"<sup>443</sup>. A gendered analysis using women's stories then gives fuller, richer accounts of events and experiences and according to Carol Weisbrod may even be considered another "version of (Geertz's) 'thick description' giving us a fuller sense of what is real"<sup>444</sup>.

I am interested in a female-centred, revolutionary writing practice which would subvert the dominant patriarchal use of women's stories<sup>445</sup>, inspired by feminist philosopher, Helene Cixous. In fact, Oakley coined the phrase "mutual listening"<sup>446</sup>, which implies that we hear and

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<sup>440</sup> Kathy Lahey, "Until Women Themselves Have Told All There Is To Tell", 535.

<sup>441</sup> Lori Beaman, "Legal Ethnography: Exploring the Gendered Nature of Legal Method," *Critical Criminology* 7, no. 1 (1996): 53-74, 68.

<sup>442</sup> By using the term(s), 'feminine narrative' or 'feminine storytelling' as opposed to 'women's' or 'female storytelling' I am referencing Helene Cixous, and her understanding that language is not neutral. Cixous believed that language is a patriarchal instrument that represents males and their interests. This conception, based on 'logocentrism' (western beginnings and idealism) is morphed by Cixous into 'phallogentrism', or that which privileges masculinity. Cixous then is critical of this gender distinction and binary opposition and embraces the concept of 'feminine narrative/writing' as the freedom *not* to belong to the binary of phallogentrism. She stated, "feminine writing (narrative) liberates women and language; it's linguistic liberation" (137-138). And as such, her goal is to read and write texts in order to displace the operating concepts of femininity and masculinity in major discourses governing society, and it is in this spirit which I adapt her term here.

<sup>443</sup> J.S. January 19, 2014.

<sup>444</sup> Carol Weisbrod, *Butterfly, The Bride: Essays on Law, Narrative, and the Family* (Ann Arbor, MI: University of Michigan Press, 1999), 13.

<sup>445</sup> Weiss and Gross-Horowitz have expropriated women's stories in a patriarchal and derogatory manner, even despite their own self-identification as feminists.

<sup>446</sup> Ann Oakley, *Experiments in Knowing* (Malden, MA: New Press, 2000), 47.

give voice to those who had previously been silent and silenced. It is in that vein that I conduct gendered analyses in this study and that feminine narratives not only anchor my analysis of *get* refusal, but are given a platform throughout this study.

Jane Baron contends that storytelling, in its multiplicity of forms must be viewed as a power. Understanding that stories may empower the narrator by giving them a voice is imperative. In fact, we must have a “commitment to the POWER of language and to the reclaiming of that language which has been made to work against us; in the transformation of silence into language and action...”, according to Audre Lorde<sup>447</sup>. In this vein, the socio-legal storytelling utilized here challenges those who get to speak in law most often, in the context of *get* refusal. The goal is to question, which voices are heard and which stories are told? By whom? Who has been silenced<sup>448</sup>? Women said things like: “*Women should at least be heard but also have control over bodies and futures*”<sup>449</sup> and “*I felt that anything I would have to say would not be heard*”<sup>450</sup>. Thus, it is the women refused a *get* who have been silenced and it is the men’s stories, both the recalcitrant husbands’ and *batei din*’s, that have been at the centre of approaches most often (although I note emphatically that it is not only men who silence the women, rather many ‘expert advocates’ who work on behalf of *agunot* also silence the women, as I explore a points throughout this study). The choice to embrace this type of storytelling methodology and epistemology reverses these imbalances and serves as a corrective.

Baron further argues, that stories have a “transformative potential” yet the law and dominant patriarchal normative orders are “highly resistant to stories which may challenge its

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<sup>447</sup> Audre Lorde, *Sister/ Outsider: Essays and Speeches* (Trumansburg, NY: Crossing Press, 1984), 43.

<sup>448</sup> Jane B. Baron, “The Many Promises of Storytelling in Law,” *Rutgers Law Journal* 23, (1991-1992): 79-105, 91.

<sup>449</sup> L.I., May 23, 2014.

<sup>450</sup> R.W. May 26, 2014.

own conventions and ideological narratives”<sup>451</sup>. And indeed, throughout the course of conducting this research, I experienced resistance from some who viewed this project and its goals and narratives as threatening to their normative conventions and ideological narratives. Thus, in using the method of storytelling, this gendered socio-legal research is trying to unearth often disregarded transformative narratives and subjugated knowledges with the intent that they do challenge norms, stretch minds and ruffle brains (rather than feathers). The goal is about awareness and visibility, not tunnel vision of dominant lenses. I can only hope that this project may have additional benefits and that Farber and Sherry were correct in their observation that, “stories from the bottom”<sup>452</sup> or the margins are particularly valuable to research as they ‘cure problems in law, including at times, gender discrimination’<sup>453</sup>. Thus, it is my hope that my deliberate choice to include “counter-stories” as a powerful tool for “outgroups” may in fact lead to changes in social and legal realities<sup>454</sup>.

I will include here a brief discussion of a few studies that embrace qualitative, gendered, socio-legal storytelling<sup>455</sup> with similar methodological and epistemological intentions in order to demonstrate the effectiveness of such approaches. Each example illustrates how individual women use storytelling as a powerful tool to engage with and potentially transform their social and/or legal realities, to challenge the status quo<sup>456</sup> in line with the principles of critical legal pluralism (though the authors may not frame it as such) and each example is at the nexus of law,

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<sup>451</sup> Jane B. Baron, “The Many Promises of Storytelling in Law”, 105.

<sup>452</sup> Daniel A. Farber and Suzanna Sherry, “Telling Stories Out of School: An Essay on Legal Narratives,” Symposium on Legal Narrative, *Stanford Law Review* 87, (1992-1993): 807-855, 808.

<sup>453</sup> Kim Lane Scheppele, “Forward: Telling Stories,” Symposium on Legal Narrative, *Michigan Law Review* 87, (1988-1989): 2073-2098, 2075.

<sup>454</sup> Richard Delgado, “Storytelling for Oppositionists and Others: A Plea for Narrative,” Symposium on Legal Narrative, *Michigan Law Review* 87, (1988-1989): 2411-2441, 2416.

<sup>455</sup> Although they are not expressly socio-legal studies/texts.

<sup>456</sup> Carol Weisbrod, *Butterfly, The Bride* (Ann Arbor, MI: University of Michigan Press, 2004), 17.

gender, and storytelling. It is from these examples that I draw inspiration for this study exploring *get* refusal, adapting key insights to the *get* refusal context.

Kay Schaffer and Sidonie Smith, in *Human Rights and Narrated Lives: The Ethics of Recognition*, make clear that “storytelling constitutes social action” in their analysis of the “belated narrating”<sup>457</sup> of grandmothers’ forced into sexual slavery during WWII. Stories are emotive and are thus effective in eliciting socio-legal transformations; “Stories can interfere in the public sphere, contest social norms, expose the fictions of ‘official history’, and prompt resistance beyond the provenance of the story within and beyond the borders of the nation and community- these are known as “disruptions of storytelling”<sup>458</sup>. I argue that the feminine narratives included throughout this study be viewed as examples of ‘disruptive storytelling’<sup>459</sup> which examine whether particular laws or norms are relevant to them and will determine their behaviours. For example:

“*Religious community should be embarrassed that this is going on*”<sup>460</sup>

“*How the women feel is how men should be meant to feel- trapped and alone*”<sup>461</sup>

“*It should be possible for secular remedy to solve iggun*”<sup>462</sup>

“*Beit din should have power to issue a get*”<sup>463</sup>

“*We shouldn’t have to explain to anyone why we want a get*”<sup>464</sup>

In these excerpts women illustrate that they are law-creating and norm-creating, indicating what ‘should’ be done in particular socio-legal moments and contexts. This disruptive storytelling thus

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<sup>457</sup> Sidonie Smith and Kay Schaffer. *Human Rights and Narrated Lives: The Ethics of Recognition* (New York, NY: Palgrave Macmillan, 2004), 4.

<sup>458</sup> Sidonie Smith and Kay Schaffer. *Human Rights and Narrated Lives* (New York, NY: Palgrave Macmillan, 2004), 127.

<sup>459</sup> Ibid, 4.

<sup>460</sup> P.L. August 13, 2014.

<sup>461</sup> J.D. August 22, 2014.

<sup>462</sup> D.D. October 23, 2014.

<sup>463</sup> D.E. November 5, 2013.

<sup>464</sup> E.R. May 23, 2014.



has powerful transformative capacity and framed in this way, also builds on critical legal pluralist approaches. The stories told throughout the study disrupt normative ideas about Jewish marriage, divorce, and Jewish women's (and men's) experiences, and their uniformity. The narratives 'set the record straight' so to speak, by expressing their realities which are in fact contrary to mass perception. For example, stories and feminine narrative disrupt the perception that women are passive in their legal (or other) identities and while navigating through their experiences of being refused a *get* in plural legal orders.

Sara Horowitz's goal in sharing her own narrative about receiving a *get* in, *Jewish Women Speak Out*, was to "bring the personal into the realm of the scholarly by blurring the line that separates the 'objective outsider' who watches and analyzes; from the 'insider' who experiences and has the ability to recount, but often does not get the last, authoritative word"<sup>465</sup>. Horowitz (though writing from a position of privilege as a Professor) takes on the 'malestream' and writes against it knowingly. "While the traditional *get* ritual can work to silence and humiliate women, our own capacities enable us to choose how we experience it...the telling itself becomes incorporated into the ritual" and empowers the silenced<sup>466</sup>. Horowitz draws a more holistic picture of law's complexities and the transformative impact of feminine narratives when they are used to enable and empower women (in contrast to the studies discussed in the previous chapter).

Susan Hirsch's, *Pronouncing and Persevering*, challenges the dominant stereotypes of the silent, veiled Muslim woman using examples of Swahili women's storytelling in Kadhi courts. In reality, as the stories show, and similar to Jewish women, "Swahili women actively

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<sup>465</sup> Sara Horowitz "Opening a Gate at the Closing of a Gate: Towards a New Ritual at the Getting of a *Get*," in *Jewish Women Speak Out: Expanding the Boundaries of Psychology*, eds. Kayla Weiner and Arianna Moon (Seattle, WA: Canopy Press, 1995), 100.

<sup>466</sup> Sara Horowitz, "Opening a Gate at the Closing of a Gate," in *Jewish Women Speak Out*, eds. Kayla Weiner and Arianna Moon (Seattle, WA: Canopy Press, 1995), 108.

pursue claims in court, telling eloquent stories that challenge the circumstances of their lives and their gendered, legal and linguistic positions”<sup>467</sup>. Hirsch notes, “Narrative is a form of countermajoritarian argument, a genre for oppositionists intent of showing up the exclusions that occur in law- a way of saying, you cannot understand until you have listened to our story”<sup>468</sup> and as in our Kenyan example, this is particularly true for *get* refusal. *Mesuravot get* are often excluded in law and society and from legal and social inquiries, and especially in Toronto, where there’s formidable denial of *get* refusal’s mere existence.

These three examples challenge normative, hegemonic legal scholarship and illustrate that it must stretch to include feminine narrative or rather, it must stretch its (mis)understanding that feminine narratives are not equal to law because in reality, “‘excluded voices narrative’ can effect legal change by correcting partial representations”<sup>469</sup>. Feminine narratives, like those of the Japanese comfort women, Sara Horowitz, and the Swahili women in the Kadhi Court, are not only a means of “talking back”- where marginalized women move from the margins to the main stage, they also allow women to transform their silence, where there had previously been void, into language and then potentially into action<sup>470</sup>. The examples illustrate that female narrating or storytelling in law is a powerful tool (and at times resistance) that does elicit legal and social transformation<sup>471</sup> (which also reflects critical legal pluralism). Women act as legal innovators and mobilizers through their storytelling which illustrates that law both arises from, belongs to, and responds to everyone; influencing their legal and social environments, just as they are

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<sup>467</sup> Susan F. Hirsch, *Pronouncing and Persevering: Gender and the Discourses of Disputing in an African Islamic Court* (Chicago, IL: University Of Chicago Press, 1998), 10-11.

<sup>468</sup> Peter Brooks and Paul Gewirtz, eds. *Law's Stories* (New Haven, CT: Yale University Press, 1998), 13.

<sup>469</sup> Judy Scales Trent in Susan Sage Heinzelman and Zipporah Batshaw Wiseman, *Representing Women: Law, Literature, and Feminism* (Durham, NC: Duke University Press, 1994), 5.

<sup>470</sup> Susan F. Hirsch, *Pronouncing and Persevering* (Chicago, IL: University Of Chicago Press, 1998), 219, 239, 243.

<sup>471</sup> Helene Cixous called for feminine experience to be included in law and called on women to “write themselves”. Close to Derrida (both in real life and in ideology) and Bourdieu, Cixous was opposed to rigid, sharp dualities, and essentializing of concepts (6). Thus, feminine writing, and gendered storytelling in law was seen by all three scholars as a deconstructive step, the beginning of legal and social transformation in and of itself.

influenced by them. “Women use language and story in public and their voices may begin to sound less out-of-place or threatening. Their stories reshape hegemonic approaches to law and gender opening possibilities while still reflecting relations of power...”<sup>472</sup>, and this is a goal in including women’s stories here- that hegemonic approaches to *get* refusal and *mesuravot get* might be challenged in light of the complex narratives coming to the fore.

Each example illustrates marginalized stories as a transformative socio-legal method to unsettle the socio-legal status quo, giving unique representation to particular voices, perspectives and experiences of victimization, subjugation, and discrimination traditionally left out of legal scholarship and ignored when shaping law<sup>473</sup>. This approach can acknowledge experiences of the East and Southeast Asian comfort women which had been previously ‘taboo’, or can allow Swahili women to strategically tell stories to change their social and legal realities and challenge widespread misconceptions about Muslim women, or can allow space for the stories of *mesuravot get* who have been repeatedly silenced and sidelined yet actively navigate the multiple legal systems to which they ascribe.

Thus, the significance of *mesuravot get* storytelling is substantial. They may reconfigure power relations socially and they may reconfigure power relations legally by challenging individuals’, communities’, and *batei din*’s normative, hegemonic understandings through the act of sounding their silences. Their storytelling also empowers women, themselves and others by ‘trickling down’, and shows it is “possible for women to narrate their lives against the strictures in which they live”<sup>474</sup>. Moreover the significance of *mesuravot get* telling their stories has transformative power despite the limits set by culture, law and language<sup>475</sup>. Though I note, that

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<sup>472</sup> Susan F. Hirsch, *Pronouncing and Persevering*, 243.

<sup>473</sup> Peter Brooks and Paul Gewirtz, eds. *Law’s Stories*, 5

<sup>474</sup> Susan F. Hirsch, *Pronouncing and Persevering*, 61

<sup>475</sup> *Ibid*, 10-11.

there are most definitely challenges to my methodological and epistemological contentions about women's storytelling<sup>476</sup>, the benefits outweigh the drawbacks, shattering the constructed normative ideologies about women, about storytelling, and about women's storytelling in socio-legal contexts, in this case, Jewish women navigating plural legal systems to secure a *get*<sup>477</sup>. Simply put, getting in between and amongst the lines through narrative transports the reader *and* the writer to a deeper place of understanding from an academic or scholarly perspective, but *also* (not instead of) from a human, empathetic, and open perspective; resulting *not* in a simpler understanding because of the telling of a story, but in a deeper, multi-tiered, multi-faceted and complex understanding<sup>478</sup>.

### **To Count or not to Count?**

In addition to my deliberate choices to utilize gendered socio-legal storytelling and to develop a complex religious-feminist approach mixing feminist precepts, socio-legal methods, and respect for *halakha* and its observers, another deliberate choice was made in the research design. I am consciously eschewing quantifying in this study as a result of frequently being asked to quantify *agunot* and as a result of the unsuccessful attempts to quantify *agunot* in the past<sup>479</sup>. I argue that attempts to quantify *agunot*<sup>480</sup> are doomed to fail, and furthermore, that they

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<sup>476</sup> Challenges such as: 1) storytellers take risks, 2) women's internalization of judgement of others, 3) the paradox of acquiring yet ceding agency through the telling 4) social act that is culturally discouraged, especially for women; it is similar to the 'airing out of laundry'. Furthermore, and as Bourdieu contends, discourses are legitimized based on a particular speaker's positionality (class, gender, etc.)(5, 8-9, 116) and we must also understand and challenge the socially constructed limits of that power (31).

<sup>477</sup> Susan F. Hirsch, *Pronouncing and Persevering*, 84.

<sup>478</sup> Deborah A. Engelen-Eigles, "Difficult Questions: Understanding How Jewish Women Construct their Identities," *Jewish Women Speak Out: Expanding the Boundaries of Psychology*, eds. Kayla Weiner and Arianna Moon (Seattle, WA: Canopy Press, 1995), 37.

<sup>479</sup> Most recently, Barbara Zakheim and The Mellman Group Inc., *A Study of Agunot*, October 10, 2011. Spearheaded by Barbara Zakheim, Founder of the Washington Jewish Coalition Against Domestic Abuse, and conducted by a D.C.-based national polling research firm, the study polled over seventy community-based, social-service organizations across the United States and Canada, known to deal with these issues. Research began with the distribution of an *aguna* survey in 2010 to organizations that had dealt with *agunot* or other victims of domestic

are misguided attempts in the first place. The existing studies are flawed<sup>481</sup> because getting an accurate number is impossible due to a definitional issue, an assumption of self-identification, and because a statistic usurps attention from the issue of *get* refusal and extortion, anchoring wives to broken down marriages and overshadows the significant concerns that emerge from a more nuanced study such as the pervasiveness of domestic abuse.

Arriving at an agreed upon definition of ‘*aguna/mesurevet get*’ is a prerequisite for establishing an accurate and accepted statistic, and being that agreeing to this universal definition is impossible, a reliable statistic on this issue is, by default, also impossible. There is no uniformity or consensus among and across Jewish communities about the definitions, and the terms have shifted for various reasons historically and geographically sensitive. Who is an *aguna* versus a *mesurevet get* and who decides this in each jurisdiction? Moreover, inactive cases and new cases are most often not counted in surveys as there is frequently a minimum length requirement imposed by *batei din* in order to earn the legal designation of ‘*aguna*’ and which may vary court by court. Different rabbinical courts and support organizations from city to city have diverging views on definitions - some seeking narrower definitions resulting in a smaller

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abuse in the past five years. The survey gathered information on the characteristics of *agunot*. However, *agunot* themselves were not personally surveyed. In fact, it turned out that in designing this research, they set out *not* to sample *agunot* themselves but rather to conduct a census by polling support organizations offering services to women refused a *get* in order to study of exactly *how many* cases of *get* refusal existed at the time of the survey (released in October 2011) and had existed for the last two years, and five years on these groups’ books. Responses were voluntary, and while over seventy organizations were surveyed, only twenty responded.

Based on those responses, the census identified 462 *agunot* over a period of five years, suggesting that there was an increase in cases of Jewish women being refused a Jewish divorce by their husbands during which time the rate of case resolution had been declining. The census also found that *agunot* were younger women, more than half under the age of forty, 86% of whom had children and were trying to leave their first marriages; they had little money; and were unaware of the resources that were available to them. In concluding the study, the claim made was that the results provided evidence that *agunot* were a growing segment of Jewry (at least in North America).

<sup>480</sup>“First Census of Agunot Released,” *Jewish Press*, October 28, 2011, 15; “Agunot: 462 Too Many,” and “Religious Courts Are Treating Agunot Unfairly,” *Jewish Week*, October 28, 2011, 6, 26-27; Joanne Hill, “Agunot Study Turns Up Unexpected Results,” *Jewish Tribune*, November 10, 2011, 8.

<sup>481</sup> B'nai Brith Women of Canada, *Get and the Agunah: Facts about Jewish Divorce* (Toronto, ON, 1993), Ruth Halperin-Kaddari and Rackman Center for the Advancement of the Status of Women, the Israeli Rabbinical Court, and others, all do surveys periodically and release the statistics.

statistic, and some seeking a broader definitions resulting in a larger statistic. Consequently, there is a significant definitional issue preventing a legitimate and widely agreed upon statistic.

The presumption of and need for the self- identification of *agunot* to a support group or *beit din* in order to be counted in quantifying studies is also flawed. As with other forms of domestic abuse, many women are too frightened, too ashamed, too proud, or too concerned with their children's well-being and privacy to turn to support organizations or they may be too disenchanted to go to *beit din*, and yet they do not exist (statistically) from a census' point of view because they have not self identified to one of the organizations being polled. Attempts to quantify *agunot* are not concerned with counting women refused a *get* who have *not* (yet) sought support or opened case files. Polling support organizations or courts about their *aguna* cases- the women that presented themselves *to* the organizations- rather than attempting to track or account for the women themselves, undercuts the magnitude of the issue and women's experiences actively navigating through the phenomenon of *get* refusal.

Aside from both the definitional issue as well as the presupposition of self-identification, the third reason that attempts to quantify *agunot* is an undependable methodological approach is because seeking a number clouds the issues and prevents meaningful and constructive engagement with and usurps attention from the issue of *get* refusal itself. It is for this reason primarily that I eschew quantifying in method and in principle in this project. In her important article, "The *Aguna*- A Statistic or a Real Problem?", Rachel Levmore a rabbinic court advocate in Israel on behalf of women and one of very few sitting members of the State of Israel's

Commission for the Appointment of Rabbinical Court Judges<sup>482</sup>, brilliantly captures my argument.

*Get* refusal is the ultimate form of domestic abuse...It is an untenable situation that Jewish women can be held captive in a marriage from which they have exited emotionally as well as in a practical manner, but are not able to exit in a formal manner; ...that the husband, is more powerful not only than his wife, not only than her family, not only than the entire community, but perhaps most troubling, that an individual man is far more powerful than the *beit din* which cannot dissolve the marriage against his will. These principles must be spoken about...<sup>483</sup>.

The outcry should be against the very possibility of such instances occurring and the untold suffering of the modern-day *aguna*. Those who relate to the *aguna* problem would do well to turn focus from numbers to the voices, and narratives of those who actually are encountering the phenomena. A local Toronto Rabbi, with training in guidance and counselling, of the Aish Thornhill Community Shul, recently stated that it really doesn't matter if the synagogue down the street (the BAYT, the largest Orthodox synagogue in Canada) had "*only one or two agunot out of their 800 members because it is such a small and insignificant number.*"<sup>484</sup>. Besides, he said, it isn't his congregation, where he said there are no *agunot*. He went on to say that even when there are *agunot* in the community on occasion, there is nothing rabbis can do because the men leave Toronto<sup>485</sup>. The well-regarded pulpit rabbi whose mission it is to engage in community outreach, sent the opposite message regarding *agunot* indicating that when communities focus on the numbers, women fall through the cracks.

In principle, do fifty *agunot* matter less than five hundred? I argue, the mantra ought to be, 'one *aguna* is too many' rather than how many *agunot* are there?<sup>486</sup> It does not matter how

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<sup>482</sup> Levmore also has a PhD in Talmud and Jewish law, is one of the authors for the Prenuptial Agreement for Mutual Respect, a widely used prenup in Israel and is the Director of the Agunot and Get-Refusal Prevention Project, of the International Young Israel Movement in Israel and the Jewish Agency.

<sup>483</sup> Dr. Rachel Levmore, "The *Aguna*- a Statistic or a 'Real' Problem?" *Jerusalem Post*, November 16, 2009.

<sup>484</sup> Rabbi Avraham Rothman, AEVAW Talk, "Behind Closed Doors", November 14, 2017, Toronto.

<sup>485</sup> Ibid.

<sup>486</sup> As I said to the *Canadian Jewish News* in 2009.

many *agunot* there are, it matters only that the phenomenon persists<sup>487</sup>. Staying fixated on quantifying *agunot* bestows meaning on to the number and implies that one statistic might invoke anger, shock, action, while another number is negligible, eliciting only tacit acceptance and passivity and these reactions are subjective and potentially dangerous<sup>488</sup>. We can argue endlessly about the critiques of scientific method more broadly as an appropriate (socio-legal or social science) research method, but in fact people would do well to turn their focus from the question of numbers to the plurality of experiences, voices, and narratives of those encountering the phenomena as per Rae Anderson's piece in *Ethnographic Feminisms: Essay in Anthropology*, titled "Three Voices" which all tell the same story but with three different voices: one poetic and evocative, one through images, and one from training in the academy. In "Three Voices", no voice can be more authoritative than the others because "all contribute to knowledge...the voices complement, contradict and hence enrich each other. It is only Convention who stills the Polyphony, who privileges one sort of discourse over another"<sup>489</sup> and I argue that quantifying ought not to be privileged at the expense of losing first-hand knowledge, experience, and narratives.

As a result, (and as opposed to quantifying,) I argue in favour of an alternate method of inquiry and analysis for feminist socio-legal research which more accurately illustrates the significance of the particular issue at hand - Jewish divorce refusal. As discussed earlier in this chapter, the use of narratives and "thick description" rather than quantifying, using scientific

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<sup>487</sup>Paul Lungen, "Despite Changes in Law, *Agunah* Problem Persists," *Canadian Jewish News*, March 25, 2010. <http://www.cjnews.com/news/despite-changes-law-agunah-problem-persists>.

<sup>488</sup>For example, the number 462, that was most recent statistic that was released for *agunot* in North America, was covered as being both large and significant, worthy of attention and resources and simultaneously as negligible and insignificant, unworthy of attention and resources.

<sup>489</sup>Rae Anderson, "Engendering the Mask: Three Voices," in *Ethnographic Feminisms*, eds. Sally Cole and Lynne Phillips (Ottawa, ON: Carleton University Press, 1995), 207-231.



method, produces more meaningful research<sup>490</sup> by “exploring the meaning of events in the eyes of women”, rather than others reading meaning onto events that certain women have experienced<sup>491</sup>, in keeping with the deliberate objectives of this project. No one can claim the privilege of authoritative knowledge of social reality other than those experiencing it. In this vein, rather than attempting to quantify *agunot*, it would be more constructive to use the voices of *agunot* to tell the story rather than relying only on questionable numbers. This method, rather than quantifying, accurately portrays Jewish women as active agents navigating and negotiating their way through *get* refusal, rather than silencing them and cutting out large portions of them due to definitional shortfalls and presumptions of self-identification to particular support organizations. Moreover, as Shulamit Reinharz articulates in her chapter *Feminist Oral History* from her book with Lynn Davidman, *Feminist Methods in Social Research*, “oral history also corrects the biased view that had previously not included the voices of those at the centre... injustices can be righted when people tell their stories”<sup>492</sup> and this is a goal of this study- to be more inclusive than the studies that preceded by giving space to women refused a *get* to speak on their own terms. Thus, not only is gendered socio-legal storytelling an appropriate research method for my research on Jewish divorce refusal and extortion, it also aligns with the critical legal pluralism approach I am developing herein, and additionally it would be inappropriate *not* to employ the method. I argue that the research benefits more from narratives than numbers.

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<sup>490</sup>Clifford Geertz, *The Interpretation of Cultures: Selected Essays* (New York, NY: Basic Books, 1973); David M. Engel and Frank W. Munger, *Rights of Inclusion* (Chicago, IL: University Of Chicago Press, 2003); Susan F. Hirsch *Pronouncing and Preserving* (Chicago: University Of Chicago Press, 1998), among many others.

<sup>491</sup>Shulamit Reinharz, “Feminist Oral History,” in *Feminist Methods in Social Research*, ed. Shulamit Reinharz with Lynn Davidman (London, UK: Oxford University Press, 1992), 134.

<sup>492</sup>*Ibid*, 136.

### **How: Seek and You Shall Find:**

This remainder of the chapter will reflect on the research methods themselves rather than the methodological and epistemological description of the research design, discussed in the preceding sections of this chapter. In other words, I will describe *how* I was able to locate participants for the research. The significance of this discussion is three-fold. Complexities conducting primary, qualitative, empirical research will be illuminated, the importance of being an ‘insider’ researcher will be further elucidated, and above all, this discussion will support the contention of Toronto’s resistance to acknowledging and improving *siruv get* with greater openness in New York.

Participants in New York and Toronto were located in multiple ways, namely, through respondent-driven samplings, through pre-existing field contacts with experts and leading support organizations, and with a couple of strategically placed ‘calls for participants’. The goal was that participants would partake as willingly and organically as possible despite the predetermined target number of interviews. Respondent-driven sampling, is a more accurate variation of the snowball technique<sup>493</sup>. In his paper on respondent-driven sampling, Douglas Heckathorn explains that the respondent-driven sampling is particularly useful when dealing with a ‘hidden population’. According to Heckathorn, this may include a population for which no sampling frame already exists - so that the population’s actual size and boundaries are unknown. Because there is no accurate sampling frame already in existence for *mesuravot get*, employing this methodology is more precise than the snowball technique which does not include this nuanced acknowledgement of ‘hidden populations’.

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<sup>493</sup> Douglas D. Heckathorn’s papers, Douglas D. Heckathorn “Respondent-Drive Sampling: A New Approach to the Study of Hidden Populations,” *Social Problems* 44, (1997): 174-199; Douglas D. Heckathorn, “Respondent-Drive Sampling II: Deriving Valid Population Estimates from Chain Referral Samples of Hidden Populations,” *Social Problems* 49, (2002): 11-34.

Respondent-driven sampling also has the benefit of limiting potential biases of the researcher recruiting particular participants (only those they may already be acquainted with), and it provides a means for speeding the recruitment process while simultaneously ensuring that different sectors of the target population are adequately represented among the participants. Within the 'hidden population' there is diversity across the traditional identity markers yet women unite because of their shared, anchored/limbo status, as *mesuravot get*, developing a (concealed) network (often meeting one another through lawyers, social workers, rabbis, etcetera). Thus, it is because the sampling is respondent-driven that diversity among participants is more likely because members of the 'hidden population' know each other, while the researcher, is unfamiliar, and outsider to the particularities of the hidden population. Perhaps most importantly, the respondent-driven method seems to empower the participants, which is an explicit goal of this project, as previously discussed.

Aside from the respondent driven sampling method, I also have the benefit of working closely with Organization for the Resolution of Agunot (ORA) since 2009. ORA and their executive director, Rabbi Jeremy Stern, have helped well over 280 women get their *get* since the organization's inception in 2002. They are a New York- based non-profit organization that is international in scope, with a lengthy waiting list in addition to approximately seventy active cases at any given time. Stern sent out my call for participants to his entire database of *mesuravot get* and I was overwhelmed by the significant response from a broad cross section of women. He understands the potential benefits of both empowering individual women, and more broadly, stimulating greater awareness and education stemming from this research, hence he shared my call for participants without being proprietary.

----- Original Message -----  
**From:** Rabbi Jeremy Stern  
**To:** "Yael CB Machtinger"

**Sent:** Tue, Oct 22, 2013, 3:14 PM

**Subject:** Re: hi

Yael,

It's great to hear from you. I just sent out a mass email to all current and former agunot in our files. I hope you receive many responses!

Best of luck with your research, and please keep me posted.

All the best,  
Jeremy

On Oct 22, 2013, at 3:12 PM, "Rabbi Jeremy Stern" wrote:

Dear Current and Former Agunot,

I hope this email finds you well. A PhD student at York University, Yael Machtinger, who is a friend of mine, is writing her doctoral dissertation on *agunot* in New York and Toronto. She is looking to interview current and former *agunot* and asked me to reach out to you to see if you would be interested in speaking with her. Your participation could greatly advance her research, which will hopefully assist in advancing our advocacy on behalf of *agunot*.

If you are interested in speaking with Yael, please email her at [REDACTED] or call her at [REDACTED]. I do not have any more information about her research than what I've shared with you, so please be in touch with her if you have any questions.

Thank you so much,  
Jeremy

Rabbi Jeremy Stern, Executive Director, Organization for the Resolution of Agunot (ORA)  
ORA is the only non-profit organization addressing the *agunah* crisis on a case-by-case basis worldwide.

Perhaps not surprisingly, though noteworthy, I had a contrary experience within my own community. In Toronto, when I reached out to three distinct groups I was faced with reticence and reluctance. These groups are: TorontoGrapevine, Act to End Violence Against Women (AEVAW- previously, Jewish Women International Canada), and TASC (Toronto Aguna Support Coalition). The three groups are in different levels of development- one is decades old while one is fledgling- and each caters to a different, but at times overlapping demographic. While TorontoGrapevine is a list serve for mostly religious women and requires references in order to be added, AEVAW is a non-denominational organization that changed its name to make clear that its mandate included serving also non-Jewish women, whom it found it was helping

more than the observant community at times<sup>494</sup>. TASC is a coalition of ‘Modern Orthodox’ community members- a lawyer, community activists, and some current and former *mesuravot get*, among others, who have yet to get off the ground. It is virtually unheard of, has no media/internet presence, and its mission is still ambiguous. In all three cases, these groups responded that were unable to support this project. They did, however help to prove the thesis- that there is a deep and persistent gap between legal regulation and social behaviour, as well as distinct resistance to manage and acknowledge *get* refusal in Toronto (compared to New York), with these impacting the *mesuravot get* in a myriad of previously unrecognized and silenced ways. Support groups do not support *mesuravot get* and there is a clear distinction on this point between Toronto and New York, with Toronto being markedly silent on this matter.

Being already an ‘insider’ to the Jewish (and Orthodox) community, I was a member of the TorontoGrapevine, run by women and for women, for the purposes of connecting, building community, and general networking among (religious) women. I had already been vetted and approved after sending in references, about two years prior to my request below (the same request sent out by ORA). I want to make explicit that the way I used specific phrases in other languages -Hebrew and Yiddish- situated me as an insider. My use of particular terminology, I hoped, would help the moderators to see that I was ‘one of them’ and make them comfortable to post my request.

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**From:** Yael Machtinger  
**To:** Group Moderator  
**Subject:** Looking to interview women who currently are/have been 'mesuravot get'.

Dear women of the grapevine,

My name is Yael Machtinger. I'm a **frum**, PhD Candidate in Socio-Legal Studies at York University.

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<sup>494</sup> In person meeting with Penny Krowitz, Executive Director AEVAW, March 2014.

My Dissertation focuses on *agunot* who are *mesuravot get* and as such **I am looking to interview women** who currently are, or who were *mesuravot get* in each of three Jewish epicenters: Toronto, Montreal, and New York. I have already interviewed a number of women in New York (with the help of ORA - Organization for the Resolution of Agunot).

Approval of my Dissertation Proposal by the Office of Research Ethics at York University will assure/guarantee confidentiality and anonymity. The purpose of the research is empowerment of women, and enabling them to be at the centre of scholarly socio-legal research, in **line with halakha**. Participants will be asked to share their stories and to answer some semi-structured questions. Participants can choose not to answer or withdraw at any time.

The research may give you and/or the community a voice; it may allow you to narrate your own remembered past and in that way it may be affirming and beneficial. Your participation may also elicit positive change to you personally, and/or to our communities.

"Great community depends on great conversation". Please feel free to call my confidential #: [REDACTED] or email: [REDACTED]. Thanks in advance.

This request, however, was never sent out to the women of the Grapevine list serve. I inquired with the moderators, after a few days went by without seeing my post.

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**From:** Yael Machtinger  
**To:** Group Moderator  
**Subject:** Following up

Dear Group Moderator,  
I sent an email a couple of days ago and I am following up. I'm a doctoral candidate at York University and I am seeking to interview women who are *agunos*.  
I have not yet seen the post going out to the group and I am wondering when we can expect to see it, as it is time sensitive.  
Thanks in advance, tizku l'mitzvot,  
Yael Machtinger

I got this response:

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**From:** Group Moderator  
**To:** Yael Machtinger  
**Subject:** Re: Following up

thanks, we got it and are discussing posting it. we will get back to you soon.

A day or two later, I tried to ease their concerns:

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**From:** Yael Machtinger  
**To:** Group Moderator  
**Subject:** Re(2): Following up

Dear Moderators,  
I am Yael Machtinger, the doctoral candidate who would like to send out the email that is under discussion. I would like to assure you that I have no agenda. I've been working on this project for the past four years (first for my MA, and now for my PhD).

This has nothing what-so-ever to do with the events going on in New York in recent weeks. (Such as Rabbi Mendel Epstein's arrest or Gital Dodelson's story in the NY Post)

Please let me know if I can be a part of your discussion or address any questions or concerns that you might have. I would be happy to speak with you on the phone or come meet you in person.

These women want to tell their story, and need a safe and trustworthy place to do so. You would be doing a great *chesed*! I can guarantee them confidentiality, and anonymity. I've had a lot of experience doing this, and have just returned from a trip to New York where (unfortunately), I interviewed dozens of *agunos*. Rabbi Jeremy Stern from ORA has supported me, and sent this very email to his entire database of *agunos* - over 200.

I believe that the mission statement of the Grapevine is to allow for exactly this type of thing. It's a safe, *tznius* place where women can share, and help one another.

Respectfully,  
Yael Machtlinger<sup>495</sup>

I never heard back from them, and my request was never posted. This anecdote, illustrates how complex it was to garner participation with this research in Toronto, and particularly, that women impacted by, interested in, or who are themselves *mesuravot get*, are denied a voice in Toronto. The issue of *get* refusal is so taboo and riddled with many misconceptions that even in a 'safe', women-only, vetted forum, this conversation was too difficult to have openly (at least in the eyes of the moderators, through perhaps not the women members themselves). Collectively, as women refused a *get* and women working on their behalf, our mere existence is denied through silencing and consequently, so is our access to communal services whether it be a women's list serve, a *beit din*, or communal support organizations; and this is in contrast to reports by New York participants.

In my meeting with AEVAW, in 2014, I was shown a small pamphlet which was the main effort the organization had made on behalf of *mesuravot get* since its inception in the 1980s. When I suggested a more inclusive approach to their domestic violence workshops, with some focusing directly on the persistent scrooge of *iggun*, or other concerted efforts on the issue of *get* refusal as a form of domestic abuse, I was deflected and told their efforts "focus now on women of all religious and ethnic communities"<sup>496</sup> and thus there is no room to focus on *get*

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<sup>495</sup> *Frum* is Yiddish for being observant, devout or being committed to the observance of Jewish law; *Chesed* is Hebrew for act of lovingkindness; and *tznius* or *tzniut* is Hebrew for modest, implying appropriateness.

<sup>496</sup> In person meeting with Penny Krowitz, Executive Director AEVAW, March 2014.

refusal as a distinct form of domestic abuse. Subsequent to our meeting, AEVAW did run a series of articles in *The Canadian Jewish News* during the winter of 2015 about domestic abuse in religious circles, but there was no mention made of *get* refusal. In June 2016 AEVAW took a small advertisement out in *The Community Link*, a catalogue that is delivered to (mostly) Orthodox Jews throughout the greater Toronto area. In conjunction with Project S.A.R.A.H. (Stop Abusive Relationships at Home), based in New Jersey and New York, they held three community leader workshops: one for Rabbis and *khasson* (groom) teachers, one for Rebbitzins (rabbis' wives), and one for *kallah* (bride) teachers and *shadchanim* (matchmakers)<sup>497</sup>. The ad read: "Domestic Abuse in *Our Community*" and the workshops were aimed at "recognizing the difference between *shalom bayis* problems and abuse, enabling the leaders to respond to suspicions of abuse, and supplying references for referral in cases of abuse"<sup>498</sup>. The ad prominently highlighted that the workshops were endorsed by Rabbi Mordechai Lowy, a well respected Orthodox, local rabbi. I was permitted to attend the workshop for *kallah* teachers and *shadchanim*. While I was (pleasantly) surprised to see a crowded room with chairs out-the-door and with at least forty Orthodox women in attendance, a testament to the prevalence of domestic violence even in Orthodox marriages, something that was denied vehemently until recent years, I was silenced when I attempted to make the link between domestic abuse and *get* refusal. In fact, when we were asked to pass our questions forward at the beginning of the presentation to be addressed at the end of the workshop, my question, which read: "can we discuss that refusing a *get* is also a form of domestic abuse and that women who are refused a *get* have also experienced

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<sup>497</sup> Some brides and grooms, particularly the Ultra Orthodox, attend a series of classes once they are engaged and before marriage to prepare them. A variety of subjects are covered including the Laws of Family Purity, and spousal obligations and responsibilities, amongst other topics.

<sup>498</sup> "Domestic Abuse in Our Community", *The Community Link*, June 2016. Shalom Bayis (or Bayit) is a "marital home characterized by peaceful and happy relationship between a wife and husband" Rabbi Yonah Reiss, "Shalom Bayit: The Paradigm of the Peaceful Jewish Marriage," <http://www.bethdin.org/forms-publications.asp>.



other types of domestic abuse?” was not shared. The question was not read to the group during the question period at the end, and although I handed it in within the first few minutes of the workshop, but rather, it was stifled by a moderator who kept it until the very end and then dismissed it for lack of relevance and lack of time. After the event, when I pressed one of the organizers on their silencing of the issue of *get* refusal she said that they had to be careful with what they speak about because the rabbis will not refer women to them or endorse them if they disapprove of their content in helping religious women; “we have to be careful not to ruffle their feathers”, she said. This claim needs corroboration but is potentially significant because it implies the power of the local rabbinate/*beit din* has a far reach. The one Jewish support organization is now not (solely) helping Jewish women, and is not (visibly) helping *agunot*. This should not be the case because this means *mesuravot get* have nowhere to turn for help, as my primary research illustrates (below).

As for TASC, while I was invited to attend early meetings in 2012, the organization has yet to get off the ground. They were to focus on encouraging transparency and streamlining of procedures at Toronto *Beit Din* and to establish committees on directed efforts, including website, and education. To date and to the best of my knowledge most of the traction TASC enjoyed early on has faded and not much has been done to get them off the ground. I have also heard that although TASC solicited volunteers, when TASC is called or emailed the organization does not respond<sup>499</sup>. I have also heard during interviews that TASC will only formally help women who sign a legal retainer<sup>500</sup>.

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<sup>499</sup> In person meetings with various women from within the community. One woman even said she had emailed them once a month for a year to no response.

<sup>500</sup> This was alluded to by two different Toronto participants, though not confirmed by others or members of the group.

The difficulties I describe regarding ‘how’ I located participants are indicative of a larger problem, beyond typical complexities regarding ‘data-collection’. Although enlisting participants to this type of research, dealing with sensitive and often hidden groups, may often be a challenge for any researcher, the challenge here was compounded. There is simply an unwillingness to acknowledge that *siruv get* exists and persists in Toronto following the legal amendments of the 1980s and 1990s. Even among supporters of *mesuravot get* there seems to be reticence and reluctance to take a stand openly within the Toronto community. Each woman I interviewed in Toronto cited her isolation, having no organization to turn to for support. This must not be understated. Not one woman felt she had support from any existing organization. This is not to say that these women do not exist, or that the issue is not prevalent, but rather that there is no place for them to go for support, and so to, no place for me to go as a researcher looking for participants.

Consequently, my being an ‘insider’ to the challenging Toronto community has been imperative both to getting to the underbelly of knowledge around *siruv get* in Toronto and to finding participants despite the challenges posed by the Toronto organizations. Without my well-established, communal ties to various synagogues and friends across and from deep within the Toronto Jewish community, and having built rapport and trust all the while, this research would have been both unfeasible, and impossible to conduct in good conscience<sup>501</sup>. It was my own membership in the community coupled with my initial contacts which allowed me to then benefit from respondent-driven sampling and achieve a more natural, participant pool independent from an organization. The Toronto participants ‘snow-balled’ from friends of family, friends of

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<sup>501</sup> Humbly, I believe this might call into question research done by Pascale Fournier. While she has made some significant contributions and there are elements of her analysis that are important, there are inconsistencies with the lived realities of women and the community, which she asserts. A review of her work on *iggun* can be found in chapter three.

friends, and then most significantly- from each other. Furthermore, my Toronto ‘expert’ contacts such as rabbis, lawyers, and Canadian ‘*aguna* activists’ participated in large part because I was considered a trustworthy insider, born and raised in the community with a well-known family and traditional upbringing. And yet, despite this, some rabbis still resisted conversation (indeed, until this day).

Simultaneously, I benefitted from the openness and kindness of ORA in New York for my participant pool there, which then also expanded with a respondent-driven sampling, taking me both in to Conservative communities and deep into Hasidic communities despite my having no ties there. Consequently, I arguably benefitted from a more holistic participant pool in New York, than in my native Toronto (ironically).

In discussing ‘how’ I was able to locate participants for the research, I hope that some of the complexities in conducting primary research have become clear, that the importance of being an ‘insider’ researcher has been underscored, and that above all, the contention about greater openness in New York compared to distinct silences and resistance in Toronto has been furthered.<sup>502</sup>

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<sup>502</sup> The question of ‘how to find the women’ is complex, but it is imperative that in the interest of academic integrity, scholars must not act as though they are a part of a community to simply ‘access’ or ‘extract’ data or ‘find’ women. This type of feminist research, dealing with ‘hidden populations’, is more ethically achieved when the researcher is already a part of communities with trusting relationships and contacts. This is contrary to scholars who compel graduate students to do interviews on their behalf, or who pose as insiders to gain trust, re-victimizing women by using them as an extraction resource for researcher’s own academic, scholarly pursuits. I am resting here on feminist scholars and the body of feminist research methods and methodologies including: Marjorie L. DeVault and Glenda Gross, “Feminist Interviewing: Experience, Talk and Knowledge,” in *Handbook of Feminist Research: Theory and Praxis*, ed. Sharlene Nagy Hesse-Biber (Thousand Oaks, CA: Sage Publications Inc., 2007), 173-198; Clifford Geertz, *The Interpretation of Cultures: Selected Essays* (New York, NY: Basic Books, 1973); Sharlene Nagy Hesse-Biber, and Patricia Lina Leavy, *Qualitative Research* (New York, NY: Oxford University Press, 2004); Ann Oakley, “Interviewing Women: A Contradiction in Terms?” in *Doing Feminist Research*, ed. Helen Roberts and Paul Kegan (London, UK: Routledge, 1988), 30-61.

### **Who: Profiling Participants:**

This section will reflect on the identities of the participants themselves. In other words, I will describe *who* participated in the research, focusing on the demographics of the women refused a *get*. This discussion has important implications and noteworthy findings that have not been made in other studies regarding *who* the women actually are. Namely, I will demonstrate in this section that *siruv get* is indiscriminate, cutting across typical identity barriers and affecting all types of women, not just the religious, which is a common and detrimental misconception. This revelation about *siruv get's* inter-denominational impact notably leads us to consider *get* refusal as a distinct form of Jewish domestic abuse whereby refusal of a *get* is used as any other abuse tactic, cutting across forms of identity, time, and place, and impacting all types of women.

I am often faced with the fallacy that only Ultra-Orthodox or Hasidic women are victims of *get* refusal and moreover, that if they would not be so willing to ‘submit to patriarchal religious structures they would not find themselves in such predicament, as to be refused a *get*’<sup>503</sup>. These are similar to fallacies associated with other types of gendered abuse, like ‘she was asking for it because she was dressed promiscuously’. Just like this fiction, the fallacy claiming that the phenomenon of *get* refusal is one that impacts only the Ultra-Orthodox or Hasidic women due to their choice to be religious is grievous. Furthermore, by framing their *get* refusal a result of their choice of religious practice- that places the blame on the individual woman herself, simply because of her choices or identity. I argue, women have a right to religion *and* a right to divorce, not one or the other, but *both*. Furthermore, just as it is understood that sexual assault impacts all types of women, this is true with the abuse of *siruv get* as well. All types of women are impacted, not only the Ultra Orthodox. Blaming a woman’s religious observance for her being the target of abuse makes religion the cause or ‘problem’ and absolves

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<sup>503</sup> Comments I have received after delivering papers at academic conferences from time to time.

the aggressor, implying that women who are more stringent in their observance should always foresee the potential abuse of *get* refusal (similar to the troubling fallacy that a woman wearing a mini skirt should always foresee the potential rape). In these scenarios, it is not only imperative that the onus be placed on the aggressor, but also that the very premise upon which the fallacy stands be itself exposed as false. My research illustrates, it is not just one category of woman more likely to be refused a *get*. The phenomenon, just like other abuses, is indiscriminate<sup>504</sup>. The *mesuravot get* ranged in age, class, ethnicity, level of religious observance, time spent as a *measurevet get*, current marital status, and number of children.

Indeed, my research demonstrates that *siruv get* cuts across observance levels and other identity markers as well. I interviewed women of diverse ethnic and national origins, at various socio-economic levels, at varied ages, women who were married for different lengths of time, women who married at different ages, women who were refused a *get* for different lengths of time, women with children and women without children, and women with varied current marital status. To clarify, the phenomenon of *get refusal* is *not* one that targets a small and distinguishable group of *only* Ultra-Orthodox women. Any Jewish woman might be impacted at any time; there is no formula or prototype to avoid. I interviewed women who self-defined as ‘not-affiliated’, ‘not observant’, ‘Traditional’, Conservative, Modern-Orthodox, Ultra-Orthodox, and Hasidic. Included in this group were both women who were “*frum* from birth”, that is born into observant homes and were observant from birth, and “*baalot teshuva*”, that is women who became religious later in life. Women who were Ashkenazi, Sephardi, Bukhari, Lubavitch and Russian Jews (groups whose rituals and observance varies greatly) were also interviewed. I also spoke with women who lived in Upper East Side Manhattan condos and women who needed

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<sup>504</sup> Although there are certainly ways in which *get* refusal is not equivalent to other abuses such as sexual assault, they are equivalent in that they may impact anyone. The differences or particularities of *get* refusal as a form of abuse will be elaborated and analyzed at length in the coming chapter.

food stamps to feed their children and asked for clothing hand-me-downs during our interviews. The women I met with were in their 20s, 30s, 40s, 50s, 60s, and even 70s, including women married in their teens or 20s and in their 30s or 40s. I interviewed women married only a year or two before becoming anchored to a dead marriage by being refused a *get*, and women married 20 or 30 years before becoming anchored. I interviewed women anchored for ‘only’ a year, and women anchored for 20 years. I interviewed some women who were happily remarried, some happily single, and some still in a state of limbo either refused a *get* and with a civil divorce, or without either. There is no unifying or homogenous factor about the demographics of the women themselves who wind up as *mesuravot get*. Consequently, the premise that only Ultra-Orthodox women are in danger of becoming *mesuravot get* and that the danger stems from their religious observance (and so women should be less observant) is erroneous and myopic<sup>505</sup>. A brief note about the commonalities or ‘constants’ of the participants: each participant was a woman who, though not necessarily religious, was nonetheless concerned with the *get* or the ramifications, either social, legal, or both, of not having a *get*. As well, not one woman ever anticipated she would find herself in the position of being refused a *get*. Finally, each participant was also willing and often eager to share her story and had expressed gratitude for being given the opportunity to articulate and share.

The other participants, including experts with ties to *siruv get* in the Greater Toronto or New York area, comprised a diverse demographic as well. I spoke with social workers/marriage counsellors, rabbis, legal professionals such as attorneys or judges (both state and rabbinic) who specialize in complex Jewish divorce cases such as refusals and extortion, advocates working with and supporting women trapped in their marriages, other experts such as professors, authors,

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<sup>505</sup> Despite the fact that for some women, the consequences of *get* refusal may differ based on different levels of observance. For example, the reform movement officially voted to accept civil divorce as equivalent to religious divorce in 1869, bypassing the need for a *get* altogether.

researchers, and film producers. My contacts with this diverse group of experts also emerged and developed over time, building trust and rapport through my own involvement in the academic and activist communities since 2009. I have both attended and presented at numerous conferences, growing my participants all the while. ‘The Aguna Summit’ at New York University’s Tikvah Center for Jewish Law and Civilization in conjunction with the Jewish Orthodox Feminist Alliance (JOFA), in particular, allowed me to build relationships and nurture contacts that I would later revisit for these interviews, almost a year after the landmark event which brought together over 200 international aguna experts. Celebrated Orthodox feminist, Blu Greenberg, and Rabbi Jeremy Stern extended me a sought-after invitation to the closed-door summit (where Alan Dershowitz, Tzipi Livni, and Dorit Beinisch were the keynote speakers, and where no *mesuravot get* were themselves asked to speak). There too, I was exposed to a varied demographic; experts ranged from liberal, anti-religion feminists to Orthodox rabbis, as well as a variety of lawyers, social activists, academics, and world-renowned *aguna* specialists along with international media.

Initially, the goal set out in the research proposal was a total of approximately twenty interviews in each location (40 total), with at least half (20) of the interviews being with women who experienced *siruv get* themselves and half (20) of the interviews being with individuals comprising all the other stakeholders combined. Contrary to my initial concern of conducting more interviews in Toronto than New York, I actually found many more participants in New York from across all cohorts than I was able to find in Toronto, despite my own residence and familiarity with the Toronto community. This goes to the broader argument of the research claiming Toronto is distinct from other legally plural jewish communities, such as New York,

which, contrary to Toronto, is more proactive, willing, and open to discussing and questioning the persistence of *siruv get*<sup>506</sup>.

The exact number of *mesuravot get* interviewed is thirty, twelve from Toronto and eighteen from New York (and ten more than anticipated). These are by no means all the *agunot* that exist in Toronto and New York; again, quantifying is not the goal, nor are all these cases currently ongoing. I stress that this research must not be considered exhaustive. There are more *agunot* out there with more stories and experiences. However, these thirty interviews were in-depth, lengthy interviews including the women's own self-narration and working through a semi-structured questionnaire. There were additional participants who contacted me through ORA's call for participants and I wanted each woman to feel as though her voice was heard rather than resiled, and so rather than turn women away, I conducted preliminary interviews (here I included all women who answered the call- not only New York participants). I spoke to women from Houston, Cleveland, Los Angeles, Miami, Israel, and Montreal, confirming what one professor once told me, that "wherever there are Jews in the world, there are *agunot*"<sup>507</sup> and proving again that all types of Jewish women may find themselves refused a *get*. Additionally, I conducted about another twenty interviews with 'aguna experts' of all types; rabbis, attorneys, activists, abuse professionals, academics and others.

Reflecting on *who* were the participants in this research, focusing particularly on the demographics of the women refused a *get* has lead me to an important supposition. Further to ORA's well-established platform, that *get* refusal is a type of domestic abuse, I would like to

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<sup>506</sup> Some might suggest that the greater challenges in finding participants in Toronto is a indicative of a lack of *get* refusal in Toronto. In fact, there are critics who claim in reference to *aguna* support organizations, 'if support doesn't exist the phenomenon doesn't persist'. However, as this research shows, that is certainly not the case and despite greater reticence in Toronto, the phenomenon endures.

<sup>507</sup> Tirzah Meacham, Professor of Talmud and expert in legal/religious status, University of Toronto, meeting January 28, 2009. She was also a member of the *Get Committee* advocating for the legal amendments to the *DA* and *FLA* in Parliament.



posit one step further and suggest that *get* refusal is a distinct type of *Jewish* domestic abuse. That is to say, *get* refusal is not a problem with Judaism writ large, but rather individual recalcitrant men take advantage of an asymmetry in one aspect of Jewish law and use religion as a weapon or tool of abuse. For example, it is a twisted interpretation of *halakha* used to control, influence, restrict the actions of women, and often to extort money or other matrimonial concessions, keeping them chained or anchored to dead marriages at the will and whim of the recalcitrant husband. Women also described other instances of their husbands distorting religion as a means to abuse by throwing slurs about wives' lack of piety or even *mikvah* attendance. Though I delve further into this contention in the coming chapters, it is important to note here, in the context of the inter-denominational and intersectional impact of *siruv get*, that this phenomenon of divorce refusal is a form of domestic abuse that, just like other forms of domestic abuse, is indiscriminate, impacting any and all types of Jewish women, not only the Ultra Orthodox.<sup>508</sup>

### **When and Where: Surroundings, Sites and Settings:**

I interviewed participants for just under a year, from roughly early fall 2013 through late summer 2014, beginning with well-known, 'expert' interviews for the first few months, followed by interviews with *mesuravot get* past and present. The in-depth interviews themselves ranged in length, typically lasting about an hour and a half to two hours. Very often, particularly in the New York context, I would have to schedule entire days for interviews allowing time for my travel to accommodate women at their convenience. I travelled extensively in the greater New York area, on the North Shore and South Shore of Long Island (Great Neck, Rosalyn, Five Towns), Staten Island, Brooklyn, Flatbush, all over Manhattan and New Jersey (including

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<sup>508</sup> It is likely that *get* refusal as a form of domestic abuse is a part of a trend in religious communities, whereby abusers use religion as abuse tactic (particularly in Muslim marriage/divorce).

interviews in Lakewood, with a large Hasidic population). In Toronto, I also travelled all over the Greater Toronto Area. Often, interviews were conducted early in the morning, before women went to work, or later in the evening or night, after they got home.

Most often the interviews were conducted over coffee (and sometimes muffins) in local coffee shops, but at times, I visited women's places of work to do extended lunch interviews, and I also visited their homes for greater privacy and/or convenience, if they preferred. There were also occasions where I met women outside of their own neighbourhoods for their greater privacy and comfort. I conducted two interviews via Skype with cameras and was surprised at the level of intimacy and comfort that was maintained.

It is important to note that interviews were conducted at the convenience of the participants, to maintain a principle of the project- enabling the women to give sounds to their silent voices that had been previously left out of both academic and activist work on *siruv get* and putting their stories at the centre of scholarly analysis. Because I was particularly focused on making the women feel safe and comfortable to self-narrate, tell their story, and share their remembered past or present experiences in ways they never were able to before, I was intent on each interview being done at times and places that were most preferred by the women themselves.

## **Conclusion**

This chapter has illuminated how this study fills gaps in the existing body of literature, considered in the previous chapter, by examining the methodological and epistemological considerations arising from the research design. This study builds and expands on the previous studies by embracing a gendered socio-legal analysis and the goals of female empowerment and

respecting women choices by adopting a religious feminist approach and gendered socio-legal storytelling. Eschewing quantifying in favour of qualitative research and storytelling is also in line with the precepts of the approaches I employ. My religious-feminist approach, implemented in part as a result of my positionality as an insider, is methodologically and epistemologically in accordance with socio-legal gendered storytelling. Consequently, I made the decision in the research design to respect religion/religious identities *and* feminist precepts such as respect for the choices women make, while simultaneously critiquing *get* refusal and incorporating the textured stories about *mesuravot get*'s lived realities into my analysis. This chapter, addressed the question: 'why are qualitative socio-legal gendered storytelling and a religious-feminist approach the ideal methodological and epistemological perspectives applied to this nuanced socio-legal study of *get* refusal?', and it sets the stage for chapter five, which examines and analyzes the primary data, the women's narratives.

## **Chapter Five - Mesuravot Get Move From the Margins to the Main Stage**

*The men in his family did not believe in giving the get he has three uncles who all didn't give gets.*

*He was violent; he had a chemical imbalance. We went to psychiatrists, marriage counsellors, rabbis, mekubalim, and they all said he needs to be and remain medicated.*

*He was extremely controlling; his opinion is always right.*

*We got married in 1990. We were married 1 week and knew it was bad. I had a baby girl after 10 months and he left three months after that. He left multiple times.*

*Then we had a boy, a year later...but he was never happy. We bought house, we moved to the Five Towns area of Long Island, we had two more kids, but he was still never happy.*

*I wanted to leave- but he always threatened me with the same three threats: 1) I'll take kids 2) I'll take everything 3) I'll burn the house down with you in it.*

*Needles to say, the kids were much affected. He was crazy about money- charged our teenage daughter for gas, deducted money from things...*

*He blamed his family, his sisters, his lawyers, and even his interveners... he was convinced that everyone had brainwashed me into wanting a divorce*

*Rabbi K, a very well-known, renowned rabbi got involved in 2005 because I showed up to his house at 11pm with sunglasses on because I had a black eye. I lived on egg shells, in terror when I decided it was enough (though I had a great support system, job etc. and it was time to leave)*

*My oldest son has the most issues because he was the most tortured...I told my husband, 'don't mess with the kids' but when I could no longer be the buffer, I filed papers. I was scared and went to court for an order of protection after he came in at night with a knife... in January 2009.*

*He beat up his own brother, who is chareidi with long beard, and he came to warn me about his brother/my husband, that he may be coming with his car to drive it into our house...*

*The Rabbinical Council of America had issued 3 hazmanot and 4 warning letters had been sent about an upcoming seruv. ORA offered to picket and another beit din in Boro Park also sent 2 hazmanot but I was still my own advocate pressuring them to do seruvim.*

*The get refuser/my husband called kids to say goodbye, that he was off to Mexico. He knew he was at his rope's end and so he wanted a deal. He had list of demands- no support, no alimony and on and on. He also wanted me to read an entire script he wrote and film it for him to watch stating he's a good husband, father and that I made up that he had given me battered woman syndrome...*

*When I finally got the get, it took 8 hours in June 2010. The sofer, at the writing of the get asked me how I lived with him for 18 years... Since September 2005, I had not been in same room as him. I paid him \$300,000 extra for the house. We didn't have a prenuptial agreement but I did know about the get law. I would have been prepared to try to use it in secular court but I ended up settling- but it was DEFINITELY get extortion.*

*Turns out that hubby went to a crooked, Ultra Orthodox beit din in Queens and the day before they wrote the get at our meeting, he had written a document stating that he's being FORCED to give the get, still trying to outsmart everyone and control my future by making it seem like it was a get meuseh.*

*In beit din it's not fair like court. There is no reconcilable difference- the power is in the man's hands- and so the get itself is inherently gendered...but nonetheless, the day of the get it was all men but I felt safe and protected, not humiliated at all.*

*I think that people are not afraid of rabbis, but they are more afraid of courts and so prenuptial agreement is the best solution available.*

*I had a collection of CDs of shiurim which gave me chizuk and my emuna in Hashem was strengthened. Nothing happens in this world without Hashem. It was because I'm a strong and happy person, that's why it happened to me.*

*His 6 siblings invite me to their events with my new husband and they were at my 2<sup>nd</sup> wedding, once I finally got my get. I'm happier now than I was miserable then.*

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*We were married 13 years, and had two boys. We separated for the last three years and I fought for the get for three years.*

*Only recently I found out that my husband was a wanted criminal in Israel, and that he fled, bought a new identity down in Florida and gave me a different name. I also learned that he was dismissed from the Israel Defense Forces (IDF) and his gun license was taken away due to an 'impulsive disorder'. It gets worse. His uncle married us. He was aware of his background but did not disclose it to me.*

*In my marriage there was rape, there was abuse of my children and myself, which he would come to lie about under oath. But, I spent months in a shelter so that served as proof. The shelter was very tough for my sons and me even though we aren't religious. He left threatening messages and was a compulsive liar.*

*He also once tried to kidnap my son from school which led to a restraining order which he then broke two more times; one time on Shabbat.*

*At the very beginning I felt that rabbis really didn't believe me since outwardly he was a nice and sympathetic character. Only once the community and my rabbis saw evidence, the community stepped up. When the police went to his home after he broke the order of protection they found 22 guns with a man whose gun license was revoked!*

*My kids have seen their father two times in 3 years. He abused them and at the ages of 8 and 9 they were still in pull ups as a result.*

*I was being punished for something he did and he was trying to extort the get from me. They were all holding me hostage. I didn't have faith in the whole Orthodox world when this was going on and only now I'm slowly coming back to it. I had rabbis on a pedestal for so long and I don't do that anymore.*

*That is a form of abuse- that is withholding a get. I think a permanent restraining order should be enough to warrant a get- because if a civil judge granted it- Jewish law should accept that and issue a get.*

*At the get ceremony itself I did bring a female acquaintance, but yes, there were a lot of men in the room, it's pretty intimidating. But, NOW I HAVE A VOICE. Do I believe in teshuva? No, you can't change a zebra's stripes, you can't paint over it, or dye its hair. Once a sinner, always a sinner.*

*That said, to put a get into a prenuptial agreement is so sad. Do I think prenuptial agreements protect us? Yah, but it shouldn't have to. Rabbis are condoning and enabling abuse rather than counselling, educating, creating awareness, etcetera. I think there should be a Shabbat women's group.*

*I felt so alone. It was my life's test.*

The two narratives which open this chapter are extreme. One from the New York area and one from the Toronto area, each highlights the challenges in collecting and including primary narratives in a study such as this. How does the author choose which stories to include? Do they choose the most horrifying? Do they include full length narratives or excerpts? What is the most impactful but also the most sincere method, which does not reflect calculated, extractionary tactics coming only to include stories which bolster the agenda of the study but rather which reflects dedication to the principles of feminist, socio-legal storytelling in line with the tenets of critical legal pluralism? Balancing complete narratives, along with close analyses of shorter excerpts is the approach taken herein. Nonetheless, the questions around exceptionality and generalizability of instances of *get* refusal do get thrown up.

It is also fitting that these are the stories opening this chapter that conducts careful analyses of narrative excerpts being that these stories highlight many themes arising from a ‘zoom-out’ approach or generalization, which this chapter enables. For example, the narratives signal the extent to which domestic abuse is at the core of *get* refusal. The narratives also indicate the heterogeneity of the participants, and more broadly, of *mesuravot get* in general. Perhaps most striking in these narratives is the extent to which women who have been refused a *get* (and experienced other forms of abuse) are also active agents in their legal and social realities. Through the women’s unsettling storytelling, they illustrate that they have shaped and informed social and legal norms (reflecting critical legal pluralism).

The practical research questions: Who, What, When, Where, Why and How were addressed in chapter four, dealing with methodological and epistemological considerations as well as the question of quantifying *mesuravot get* and elucidating the importance and

effectiveness of gendered storytelling. In this chapter, I will conduct a closer analysis of the gendered stories of *siruv get*, highlighting the lived realities of *mesuravot get* by revealing what is most often invisible in the mainstream discourses and thus I will place women's voices at the centre of my analysis. The gendered storytelling I will explore below, in the tradition of socio-legal storytelling and critical legal pluralism, will highlight many aspects of *siruv get*, particularly speaking to my broad line of inquiry and guiding question: has law reform impacted religious social norms on the issue of *get* refusal and what have been the outcomes of these attempts? The narratives of women give a rich and unparalleled understanding of these and other, deeper aspects of *get* refusal, some of which were not initially anticipated at the outset of this study but became central to its contributions.

Spending a year in the field and attempting to transition the women's stories to the page was challenging. How could I capture it all? I was looking for a methodological tool to aide in my attempts to capture their complexity and enable my deep analytical engagement concurrently. The patchwork quilt metaphor and *milot manchot* or leitworts, highlight a seriality which while simultaneously depicting the illusion of uniformity and standardization, in reality also illustrate that each facet or narrative that emerges is individual and distinctive. I came to find these as compelling tools which also speak to the challenge of research engaging with primary data from participants- that is: giving space and agency to the participants for their complete narratives *or* doing a more targeted analysis of narrative excerpts which serve the thesis, and which may be read as more exploitative and not in line with feminist principles or methodologies. These tools help in balancing the methodological concerns when attempting to integrate primary data.



## The Quilt Metaphor - A Broader Conception

Drawing on the metaphors used by Paula Saukko, Lori Koelsch, Shauna Van Praagh, and perhaps most famously, Deleuze and Guattari<sup>509</sup>, I use quilting as a recurring metaphor fading in and out of the paper when fitting, and most significantly in this chapter. Quilting is the process of sewing two or more layers of fabric together to make a thicker and more constructive object than the sum of its parts. Most often quilts are layered, with a top fabric, a batting in the middle, and a backing. Though there are a variety of quilts, most often they involve repetitious patterns, with an array of colours and shapes. Of course, quilts serve multiple purposes. They are warm and comforting, but may also be cumbersome and old. They are considered to be traditional, but also an updated, modern trend. They are viewed simultaneously as a practical and impractical art and yet they are often used to mark significant life events, like the famous ‘wedding ring quilt pattern’ often gifted to newlywed couples for their matrimonial bed.

The symbol and analogy of a quilt are appropriate in my analysis of *get* refusal for a number of reasons: for example, quilts have a simultaneous weighty and reassuring character. Similarly, the *get* ritual may be viewed as a comforting albeit banal, simple step allowing for spiritual or religious closure, as some women described, and yet in some instances, it may also be viewed as a cumbersome necessity which abusive men may take advantage of and thus it may feel too traditional, requiring updates. Turning this complex site of socio-legal tension- that is, the refusal of a religious divorce in a secular context- into a site where we can summon an image or metaphor allows us to tell a story about *get* refusal in a more nuanced way, that is

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<sup>509</sup> Paula Saukko, “Between Voice and Discourse” *Qualitative Inquiry* 6, no. 3 (2000): 299-317; Lori E. Koelsch, “The Virtual Patchwork Quilt: A Qualitative Feminist Research Method,” *Qualitative Inquiry* 18, no. 10 (2012): 823-829; Shauna van Praagh, “From Secondary School to the Supreme Court of Canada and Back,” *Fides et Libertas – Secularism and Religious Freedom- Conflict or Partnership* (2012): 102-118; Gilles Deleuze and Felix Guattari, *A Thousand Plateaus: Capitalism and Schizophrenia* (Minneapolis, MN: University of Minnesota Press, 1987).

constructive. By weaving an image into the analysis we may capture aspects for our consideration which may have otherwise been left out and which may portray the plural ways in which law interacts with everyday lives or norms, allowing us to question the realities that emerge. This project, like a quilt, investigates the multiple, layers at play regarding *get* refusal in New York and Toronto. As will be illustrated below, some of the strands simultaneously stitched together are religious law, state law, normative religious expectations and rituals, normative ‘secular’/non-religious assumptions, the realities women experience, the contradictory ways in which women are portrayed, the silences- of women, communities, *batei din*, and the control and abuse of recalcitrant husbands. The threads get tangled at times and they are constantly enmeshed and impacting one another, never isolated. The image of a quilt, its multiple layers and diverse patches offers an effective framework for the layered analysis at the nexus of law and religion. Moreover, if we can imagine each story as a patch and this collective project as a patchwork quilt, thus Jewish women’s experiences are not erased, and on the contrary, are reaffirmed and acknowledged. In fact it is my dream that each woman who participated actually fashion a patch and that a real patchwork quilt is created from this study which can travel across Jewish communities unfurling the realities of *get* refusal in New York and Toronto.

Another fitting connection between the quilt metaphor and this study is that there are similarities between the construction of a quilt to legal pluralism, the existence of plural, overlapping normative orders or legal systems in one jurisdiction. Legal pluralism, like the quilt, sees the potential of layering as a strengthening mechanism; to make the whole better than the sum of its parts. By layering fabrics the quilt becomes strong and warm, by layering legal pluralist solutions and grassroots efforts, the tensions arising from *get* refusal may be abated. Furthermore, by layering narratives and experiences of *get* refusal an enhanced and renewed

critical approach regarding the persistence of the phenomenon, coupled with empathy for those refused a *get*, may emerge.

The quilt metaphor also extends meaningfully to the women's stories. Like a quilt, stitched together with different shapes or colours, each story has its own identity and characteristics, and yet like a quilt's repetitious patterns, there are broad tropes and even particular phrases in the stories that are also repetitious, lending us rhythmic resonances. The patchwork quilt metaphor allows us to examine the exceptionality and uniqueness of each narrative by zooming in, and the common elements, the generalizability, and the broader (perhaps problematic) normative elements at play by zooming out. It supports a process of inclusion. Perhaps most importantly, the patchwork quilt metaphor used in analysis of the primary narratives of *mesuravot get* upends conventional notions of Jewish women (as well as men), Jewish marriage and divorce, rabbis and rabbinic courts, as well as state law and legal remedies and disrupts accepted characters of each as well. In order "to negotiate the dilemmas" of conducting research within a "contradictory terrain" wherein we are interested in the voice of subjugated groups while simultaneously investigating discourses and cultures- both social and legal, secular and religious, which in fact shape our voices, I incorporate a quilting mode of analysis where fitting<sup>510</sup> and I further contend that this approach echoes the critical legal pluralist approach employed throughout this study. Thus the metaphor meaningfully integrates the plural strands or objectives and is sensitive to the "resonances between them"<sup>511</sup> both of which illustrate that women refused a *get* are powerful agents who can shape, mobilize, and produce law.

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<sup>510</sup> Paula Saukko, "Between Voice and Discourse" *Qualitative Inquiry* 6, no. 3 (2000): 299-317, 299-300.

<sup>511</sup> Ibid.

## **Tools & Tales: Leitworts, the Patchwork Quilt, and Close Analyses**

This section will explore and analyse the women's narratives that emerged during the course of the semi-structured interviews, revealing what most often is invisible in the mainstream discourses on *get* refusal, and highlighting the lived realities of the women themselves. It is challenging to incorporate the women's stories in a manner that both acknowledges the particularities of each story and the exceptionality of the phenomenon of *get* refusal while simultaneously investigating the recurring tropes, and repetitive language but also the silences, emotions and gestures. Although the women interviewed were a significantly heterogeneous group, with diverse stories, there are noteworthy common, parallel narrative arcs that emerged from the interviews. The remainder of this chapter will both 'zoom in' and 'zoom out' on the narratives to examine more closely (and perhaps surprisingly) some of the recurring expressions, patterns and commonalities in the narratives. Compounding the perhaps unconventional social science methods of *milot manchot* or *leitworts* and Gilles Deleuze and Felix Guattari's quilt method enables both levels of analysis -the 'zoom in' and 'zoom out'- which will allow me to illustrate both the particularities and generalizations that emerge from the narratives.

Before elaborating on my use of these methods, I need to acknowledge that *milot manchot/leitworts* and at times also the quilt method are used as modes of textual analysis which aid in the reading, understanding, and interpreting of written texts. Yet, here, I am using these methods to help in my analysis of oral exchanges (which were subsequently transcribed), a somewhat different genre. I will illustrate in the coming analysis that these methods are appropriate and useful for analysis of oral narratives, yet I need to address some unique aspects of oral accounts that often get lost textual in analyses. Orality and spoken memories allow for a unique analysis of aspects left out of the textual account. This builds on Clifford Geertz's famous

work on ‘thick descriptions’ to some degree, which seeks to capture the richness and complexity of human culture, in part by elaborating on contexts through thick, as opposed to thin descriptions<sup>512</sup>. For example, there many moments when the *mesuravot get* paused, hesitated, fell into silence, were incoherent, laughed, wept, became enraged, gestured, and left the interview for a breath of air. There were also times when a woman and/or I had to navigate the approach of an acquaintance during confidential interviews in public places. There were three occasions where women who answered the call for participants and who had spoken with me over the phone later cancelled the scheduled interviews. These moments do not come through in the text and yet there is what to be learned from the sounds of these silences.

A number of women hesitated while relaying aspects of their narratives and self censored at times. There were pauses and vacillation during some interviews and there were also times when women shared things and then asked that they be ‘off the record’<sup>513</sup>. On the converse, there were women who seemed to hold back very little and yet were incoherent, telling their stories in a disjointed order, sometimes rambling as a result of overwhelming emotions<sup>514</sup>. Some women were so overcome with recounting their stories of suffering, abuse, pain and control that they wept<sup>515</sup> (and there were moments when it was difficult for me as well). Although some women were emotional because they were still in the midst of their *get* refusal, others were affected simply by revisiting the experience of *get* refusal although they were no longer refused a *get*. Two of these women, put on sunglasses, a way to mask their emotional responses. On the spectrum of emotional responses, women not only wept, but a number of them also laughed, often with sarcasm or even ‘gallows humour’ reflecting on their experiences of abuse. Notably,

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<sup>512</sup> Clifford Geertz, *The Interpretation of Cultures: Selected Essays* (New York, NY: Basic Books, 1973).

<sup>513</sup> E.R. May 23, 2014; M.N. 2009, S. 2009.

<sup>514</sup> A.T. October 24, 2013; L.G. October 29, 2013; J.S. January 19, 2014; B.F. June 14, 2014.

<sup>515</sup> S.H. October 29, 2013; C.G. October 24, 2013; L.G. October 29, 2013; D.E. November 5, 2013; B.R.G. December 31, 2013; L.I., May 23, 2014; A.A. June 6, 2014.

most women who displayed humour were women who had received their *gets*<sup>516</sup>. A few women, who narrated very difficult *siruv get* experiences which were ongoing were so clearly in a state of denial, they were disconnected from the dire realities of the marital conflicts they described<sup>517</sup>. Dr. David Pelcovitz has found that *agunot* do experience high levels of anxiety and denial<sup>518</sup>. Finally, there were three women who cancelled scheduled interviews. One explicitly said, “*My husband doesn’t want me to interview. Sorry.*”<sup>519</sup>. While another woman, one of the youngest participants wrote, “*Hey. I am not feeling great today. I didn’t go to school...My mom thinks I’m having a panic attack about telling my story to someone*”<sup>520</sup>. Of course, these silences were the most challenging for me to bear; nonetheless they speak to the layered complexities emerging from the voicing of the narratives and having had to endure the abuse of *get* refusal. I wanted to ask the first woman, “is the husband who doesn’t want you to interview the same one refusing to grant you a *get*? If so, must you obey? If not, I wonder, is it another controlling relationship?” I wanted to ask the second woman who cancelled, “Do you often experience these ‘panic attacks’? Is your day to day activity often compromised due to your experiences of *get* refusal? Have you been able to recount your story to others/to professionals?”. However, all these questions, and so many more, went unasked and unanswered. It became clear that even when women may desire to share their experiences, they may nonetheless find themselves silenced (in perhaps unexpected and challenging ways).

Turning back to the methods used to analyze the narratives, ‘*milot manchot*’ or ‘*leitworts*’ are repeated words that draw attention because of their repetition in a narrative cycle.

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<sup>516</sup> S.Z. October 30, 2013; C.S. August 17, 2014; L.G. October 29, 2013; L.I. May 23, 2014.

<sup>517</sup> E.R. May 23, 2014; P.B. May 28, 2014; B.R.G. December 31, 2013.

<sup>518</sup> Dr. David Pelcovitz, “Running Head: The Psychological Correlates of Being an ‘*Aguna*’” (unpublished manuscript, used with permission).

<sup>519</sup> B.G. May 16, 2014.

<sup>520</sup> L.W. October 22, 2013.

Identifying and analyzing the words and themes is a common method used in the literary study of Biblical narratives<sup>521</sup>. This method encourages being attuned to recurring threads in a series of texts or narratives in a meaningful way so that upon review, there is a bigger picture revealed to the reader<sup>522</sup>. With this literary tool or method, the recurrence must be “meaningful”, relying on circularity where the reader first identifies a specialness in the narrative, and then a secondary specialness when the repetition is identified (the beginning of the process relies on this discretion). To be clear, it is not about the number of repetitions, but the fact that the repetition garners attention due to its repetitiveness, which alerts the reader, or in this case researcher, to notice larger trends or themes across narratives. The reason this method is effective in this context is because it assists in examining not only the particular and the exceptional, but also the wide-ranging, and the generalizable. While the method is traditionally used to analyze a text, I adapt it here slightly to aid in the analysis of an oral narrative, and also a subsequent transcription- a text. The method helps to consider which words some women say and others do not, and which are repeated and what might a word’s repetition or absence signal which might otherwise go unnoticed? Although not every repetition is noteworthy, in my role as listener, and as researcher, I tried to ‘follow the research’. Thus, when women conveyed a concept or experience with meaning, it left a deep impression. The women self-narrated. While it could be argued that the meaningfulness of a repeated word is my subjective response as interpreter of data, I believe that my highlighting the meaningfulness of repeated words is simply transferring to you, the reader, what struck me while sitting across from women, listening to their stories, prior to words becoming a text for which I was involved in creating meaning. And in fact, often, once the narratives were transcribed as text, the meaningfulness of words was reaffirmed by their

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<sup>521</sup>Rav Dr. Yonatan Grossman, “Lecture #11: Leitwort,” *Literary Study of Biblical Narrative*, <http://vbm.torah.org/archive/biblit/11biblit.htm>

<sup>522</sup> Martin Buber, *Darko shel Mikra* (Jerusalem, Israel: Mosad Byalik, 1964), 284.

circular recurrence throughout the narrative texts when applying the analytical tool of *milot manchot/leitwort*.<sup>523</sup>

The patchwork quilt method was first envisioned by Deleuze and Guattari and then applied by Paula Saukko, Lori Koelsch and many other feminist scholars. Deleuze and Guattari describe a patchwork quilt as one with no center and the design (of patches) follows no linear or hierarchical pattern, in contrast to an embroidered quilt which develops a pattern working from the centre. The patchwork method allows for a more tangled, multifaceted, analysis of the “rhythmic resonances”<sup>524</sup> that connect the narratives of the women. Each patch is separate, unique, and independent and when the disjointed patches are woven together, they begin together to create a whole, unified object. So too are the narratives of the participants. Each narrative has its own facets, unique from the others as we see throughout this study. Yet when stitched together and analyzed alongside one another, as I do in this chapter, they begin also to become entwined, weaving a collective story. Additionally, although the women interviewed were unfamiliar with one another, and while each story can stand alone as a unique patch, examining the stories in this manner also highlights the recurring plot patterns. This qualitative research method allows the narratives to remain individualized without conflating or generalizing, yet it simultaneously allows narratives to collectively contribute to the common arcs in the stories, reflecting also the commonalities in the lived realities of the women. According to Koelsch, “The patchwork quilt metaphor is a means to present participant data as both unique *and* as part of a larger whole”<sup>525</sup>.

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<sup>523</sup> I hope this clarification aids the post-modern literary theorists who would say that one is always inevitably involved in the creation of meaning developing in an encounter between an individual and a text and the sociological critics who might claim that the meaningfulness of a word is simply a result of the author’s bias.

<sup>524</sup> Gilles Deleuze and Felix Guattari, *A Thousand Plateaus: Capitalism and Schizophrenia* (Minneapolis, MN: University of Minnesota Press, 1987), 476.

<sup>525</sup> Lori E. Koelsch, “The Virtual Patchwork Quilt: A Qualitative Feminist Research Method,” *Qualitative Inquiry* 18, no. 10 (2012): 823-829, 823.



The patchwork quilt method utilizes the women's narratives, exposing the covert discourses that exist and which silently underpin the issue of *get* refusal. The discourses are like the batting of a quilt, holding it together, yet the discourses are rendered invisible while tying the narratives together. Thus, when I bring the previously-hidden discourses to the fore, the collective patchwork of narratives becomes suggestive, challenging existing claims that are counter to the underlying discourses and thereby serves as a means of collective consciousness-raising, and in line with a critical legal pluralist approach which understands women as active participants in their social and legal realities.

For example, these excerpts (of many more I could have included) serve as disruptive storytelling by challenging normative assumptions about *mesuravot get* which portray them as meek, submissive, passive victims:

*"This has been the best time of my life- I have my boy, I have my girl, I can host Shabbat meals, and I get invited. This is the most independent I've been in years. I couldn't do that with my husband"*<sup>526</sup>.

*"I'm not scared of it now- I'd want to go with women, to hold their hand so they aren't alone like I was..."*<sup>527</sup>.

*"I didn't feel intimidated"*<sup>528</sup>.

*"Not everyone is strong enough to handle it like I did -You don't reason with a terrorist, why would you reason with an abuser"*<sup>529</sup>.

*"Now I have a voice"*<sup>530</sup>.

Indeed, in addition to a more nuanced portrayal of women refused a *get*, there were a number of (unanticipated) themes that emerged from analyzing the diverse narrative patches and the

*leitworts*: 1) *get* refusal is a form of domestic abuse most often present along with other types of

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<sup>526</sup> B.R.G. December 31, 2013.

<sup>527</sup> S.H. October 29, 2013.

<sup>528</sup> C.G. October 24, 2013.

<sup>529</sup> R.W. May 26, 2014.

<sup>530</sup> J.S. January 19, 2014.

domestic abuse, 2) *get* refusal does not discriminate and impacts all types of women- not only observant Orthodox women but women across all levels of observance, 3) *mesuravot get* experience silencing/isolation, 4) *mesuravot get* are active agents/women are their own best advocates, 5) The faith of *mesuravot get* most often persists though their respect for individual rabbis decreases considerably, and 6) *get* refusal has asymmetrical gendered impacts (which I discussed in earlier chapters and in the coming chapter). There were also a number of women who indicated that *get* refusal exists in their husband's family where the mother or grandmother of husbands were *agunot* or brothers of husbands were refused *get*, and then the husband proceeds to do the same to his wife<sup>531</sup>. For example, women described:

*"The men in his family did not believe in giving the get he has three uncles who all didn't give gets"*<sup>532</sup>.

*"My mother in law also paid my father in law for her get"*<sup>533</sup>.

*"My hubby's parents had iggun- both his mum and myself were agunot"*<sup>534</sup>.

*"I became friends with his mom, my mother in law, who needed a get from his step father at the age of 83. In fact she still has no get although the step father himself has remarried"*<sup>535</sup>.

Perhaps this requires further investigation of the possibility that *siruv get*, like other forms of domestic abuse, may become habitual in families as learned behaviours which are shared or passed down. This is potentially significant. Additionally, a few stories emerged, particularly in the Toronto context, where the women sought a *heter*, that is approval or rabbinic 'blessings' prior to leaving the abusive household, indicating both their desire for communal/rabbinic

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<sup>531</sup> S.Z. October 30, 2013; D.E. November 5, 2013; B.R.G. December 31, 2013; R.W. May 26, 2014; J.D. August 22, 2014.

<sup>532</sup> S.Z. October 30, 2013.

<sup>533</sup> D.E. November 5, 2013.

<sup>534</sup> B.R.G. December 31, 2013.

<sup>535</sup> R.W. May 26, 2014.

support likely due to the close-knit, and judgmental community, but also the powerful reach of the rabbinate in the lives of individuals (and women in particular)<sup>536</sup>.

*“Rabbis said ‘not time for divorce yet’”*<sup>537</sup>.

*“I went to Rabbi K’s house for his approval to leave my marriage one night at 11pm with sunglasses because I had a black eye”*<sup>538</sup>.

*“I wanted a get but three rabbis said ‘shalom bayit’ ...”*<sup>539</sup>.

*“I knew I needed to get approval before leaving, I couldn’t just decide to leave on my own. I needed permission and affirmation before acting because I had four young kids, my youngest was only nine months old and I was going to walk away from a marriage and break the family. I spoke to our therapist, a famous rabbi, and my personal rabbi. They all told me to leave”*<sup>540</sup>.

I may be unable to analyze the potential salience of each of these repetitive trends in depth, but I note their significance nonetheless. The fact that there were numerous cases where the refusal recurred within families and that numerous women felt they needed their extrication from abusive marriages endorsed, speaks to the complexities around *get* refusal, particularly as a persisting phenomenon within insular communities (such as Toronto). These two trends in the research reaffirm that *get* refusal is a form of domestic abuse. Furthermore, because rabbinic/communal support is so important to some women, this might suggest to what degree state, civil changes (or even creative alternative *halakhic* remedies) may or may not impact the

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<sup>536</sup> To elaborate on the matter of Toronto being close-knit and judgmental: in Toronto particularly (compared to New York), there is a ‘small-town’ feel where often many people know each other despite different synagogue affiliation, school or camp attendance, and even in some case, level of (religious) observance. There are many overlapping networks which intersect. Simultaneously, there is also a strong culture of avoiding or denying discussing ‘bad’ things such as divorce, abuse/ sexual assault, mental health problems, addictions, suicide, and to some extent, homosexuality, among other matters. Compounding all this, there is also a strong and dominant rabbinic authority in the Vaad Harabonim of Toronto who have even berated more mainstream Orthodox rabbis for their open-mindedness on certain matters (A mild example: Rabbi Daniel Korobkin of the BAYT, the largest Modern Orthodox Synagogue in Canada was reprimanded for permitting quinoa on Passover, A more serious example: Rabbis from the Beth Din wrote a letter to *The Jewish Tribune* in January 2014, critiquing Rabbi Jay Kelman and his educational organization, Torah in Motion, which held a panel on *agunot* (and which often attempts to openly discuss some of the unspoken issues mentioned above)). I elaborate on the nature of communities both at earlier and later points in this study. S.Z, October 30, 2013; L.I., May 23, 2014; A.A. June 6, 2014; J.D. August 22, 2014.

<sup>537</sup> L.I. May 23, 2014.

<sup>538</sup> S.Z. October 30, 2013.

<sup>539</sup> A.A. June 6, 2014.

<sup>540</sup> J.D. August 22, 2014.

phenomenon, particularly if specific rabbis from whom women seek permission/blessing to leave their marriages, do not approve. To clarify, if some women will always only ultimately seek their rabbi's approval, it is possible that for some women a pluralist or civil remedy might never be useful or permitted. Consequently, these two emerging themes are important indicators to consider along with the more prevalent discourses discussed herein, especially in light of the contention that civil law in Toronto has impacted social norms and behaviours. These themes elicit another question: to what extent might civil laws impact religious norms or behaviours when the abuse of *get* refusal runs in families or when women seek the permission of clergy to opt-out of their marriages and perhaps to opt-in to civil remedies?

These themes ought to be exposed in part as comprising the larger discourses underlying *get* refusal that often go concealed, suppressed, or dormant, acting as hidden quilt batting, rather than simply persisting as unexamined "reified tropes"<sup>541</sup>. Bringing these discourses to the foreground of the analysis and acknowledging their ongoing underpinning may lead to the empowerment of the women and perhaps even to widespread normative change being that the emerging discourses are in fact contrary to widespread assertions about *mesuravot get* and *iggun*.

Consequently, and acknowledging that the common drawback of excerpting from the original narratives is that the richness of the complete narrative might be diminished or obscured, I will turn to the *leitworts* as well as common narrative arcs emerging from the patches of the quilt, using excerpts to enable deeper analysis<sup>542</sup>.

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<sup>541</sup> Paula Saukko, "Between Voice and Discourse: Quilting Interviews on Anorexia," *Qualitative Inquiry* 6, no. 3 (2000): 299-317, 304.

<sup>542</sup> This larger piece seeks to alleviate this common debate- can there be the same richness conveyed in an excerpt as comes through in a complete, unabridged narrative- by including both larger narratives, as well as excerpts. Complete, and thus extremely rich narratives, in turn allow for more comprehensive identity discussions, reflections and understandings (both on the part of the writer and the reader) whereas a more analytical approach, using only excerpts of the narratives, perhaps cuts the richness of the narratives on account of the analytical thoroughness included.

The initial trope that emerged from the narratives is that women take marriage seriously. No woman enters marriage thinking that if things ‘get tough’, she will ‘simply get a divorce’, particularly within and among Jewish communities where marriage is sacred and where divorce is not taken lightly and is often still stigmatized as ‘worse than a bad marriage’ in many communities (although getting an uncontested divorce is most often straightforward in Judaism especially when compared with civil law). Jewish communities generally, and rabbis in particular, will often instruct couples to go for counselling and attempt every means for reconciliation before divorce, which is seen as a last resort, for the sake of ‘*shlom bayit*’, “marital home characterized by peaceful and happy relationship between a wife and husband”<sup>543</sup> this will be further elaborated in the coming chapter. And indeed, each woman I interviewed regarded divorce as just that- a last resort. Another emerging trope was that when looking back on their dating relationships with their now-recalcitrant husbands, no woman could have anticipated becoming a *mesurevet get* although some women did describe ‘red flags’ about troubling behaviours of their spouse or even about the ultimate failure of the marriage in retrospect<sup>544</sup>. The trope that emerged was most often that women got married hoping to live ‘happily ever after’, never thinking they would experience *siruv get*. An additional trope that recurred was that women’s primary concern was for their children when faced with the prospect of *iggun*<sup>545</sup>. To reiterate, across the board, among all the women I interviewed, none anticipated getting divorced let alone finding themselves *mesuravot get*. They cherished and struggled for their marriages, often attempting to work things out long after it was clear that the marriage was irreparable and

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<sup>543</sup> Rabbi Yonah Reiss, “Shalom Bayit: The Paradigm of the Peaceful Jewish Marriage,” <http://www.bethdin.org/forms-publications.asp>.

<sup>544</sup> A.T. October 24, 2013; S.Z. October 30, 2013; L.I. May 23, 2014; A.A. June 6, 2014; D.R. June 16, 2014; C.S. August 17, 2014.

<sup>545</sup> S.L. October 23, 2013; C.G. October 24, 2013; A.T. October 24, 2013; S.Z. October 30, 2013; B.R.G. December 31, 2014; D.R. June 16, 2014.

often after abusive incidents. As well, across the board, all the women with children who I interviewed said that they had made decisions motivated by the well-being of their children.

The most notable arc among the narratives of the women interviewed is that despite the extremely heterogeneous group they comprise, each woman valued the *get*. Each woman viewed the *get* as her legal-*halakhic* right and/or requirement, not as an optional deed and not to be replaced by any ‘alternative remedy’. “I’m not religious but it became so important to me”<sup>546</sup>. This reality speaks to the fact that *get* refusal is an indiscriminating phenomenon, and more so, that it is not only Orthodox women who want or need a *get*. The fact that the *get* is required by all types of women allays the common misconception that *siruv get* is only an Orthodox issue.

Additionally, using the method of *milot manchot* or *leitworts* revealed repeated words that unearthed themes whose significance and prevalence were previously indistinct. For example, *get* refusal is often portrayed by non-profit organizations and in the media as a form of domestic abuse as a strategy employed to evoke concern, response, and also to encourage funding for non-profit organizations working on *iggun*. Yet, the real-life, lived experiences of *mesuravot get* indicate that in fact *get* refusers most often *have* actually been abusive in a multitude of other ways, with the refusal of the *get* acting as the final form of abuse in a well-established pattern of abusive/controlling behaviours. The unrelenting re-emergence of the word ‘abuse’ recurred throughout the women’s narratives, often alongside descriptions of emotional, verbal, psychological, financial, sexual and even religious abuses, a revealing narrative similarity in the diverse patchwork. The word ‘abuse’ was used fifty-two times, ‘extortion’ eleven times, ‘power’ twenty times, ‘order of protection’ thirteen times, ‘police’ ten times, and the word ‘control’ emerged thirty-two times throughout the interviews.

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<sup>546</sup> S.L. October 23, 2013.

Women told me about husbands with controlling personalities, anger management issues, drinking problems, drug addictions and gambling addictions, all of which would contribute to abusive events and environments at home during the marriage. They described these among other abuses:

*“I was so scared and subservient. I second guessed myself all the time. He **abused** me and also undermined my parental abilities with the kids, some of whom are high needs. He called me fat, ugly”<sup>547</sup>.*

*“I felt like a slave”<sup>548</sup>.*

*“He lacked emotional intelligence, he was manipulative, took out his rage on me, blamed me. It was like my own personal holocaust that I didn’t see coming and couldn’t believe it when I found myself in that situation. [...] He **controlled** where I went, what I did, who I spoke to. He treated me as a sexualized body, using my past against me, telling me my family and I were useless”<sup>549</sup>.*

*“I was so skinny I couldn’t eat. He said multiple times ‘until you die you won’t see a get’. I felt in jail in an open world”<sup>550</sup>.*

*“He forbid me from seeing my parents, they hadn’t met their grandkids. He didn’t even let me send them pictures[...] He would throw things. He hit our son when he was only 21 months. He didn’t let me sleep at night. There were miscarriages. He had me clock in and out since I was the only one working but he wouldn’t let me leave the house otherwise. I was on a budget. [...] Emotional **abuse** was the worst. I was not permitted to host or visit with friends. He’d give me the cold shoulder while simultaneously **controlling** my time and body. But now, get refusal is the biggest **abuse of power** he wields in the end”<sup>551</sup>.*

In these few difficult excerpts, women described all types of abuses and in interviews they elaborated physical abuse, sexual abuse, and violence, even leading to miscarriages of children, stalking, attempted kidnappings, and rape in marriage. They described financial abuses including racking up debts on women’s credit cards, or severely budgeting women. Women described religious, spiritual, emotional and psychological abuse whereby husbands distorted religion as a

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<sup>547</sup> A.T. October 24, 2013.

<sup>548</sup> S.L. October 23, 2013.

<sup>549</sup> L.I. May 23, 2014.

<sup>550</sup> A.A. June 6, 2014.

<sup>551</sup> B.R.G. December 31, 2013.

means by which to abuse women, using aspects of Jewish ritual observance including laws of *kosher*, forcing wives to eat non-kosher food, laws of *tzniut* or modesty, forcing women to cover or uncover their hair or dress in particular ways, and laws of *taharat hamishpacha* or family purity, *nidda* and *mikva*<sup>552</sup>. Men also threw slurs about wives' lack of piety, and abused wives in the name of religion in other ways. This type or aspect of abuse seemed to be particularly challenging for women, having aspects of their identity which they might otherwise find comforting, manipulated. I elaborate on aspects of spiritual abuse in the coming chapter at greater length.

Women also described husbands turning off hot water valves, naming children without wife's consent, men cutting women off from their families, men insulting women's sexual abilities, figures and intellect. The women described a range of experiences- moving from abuse and controlling behaviours *during* the marriage to *siruv get* as a form of abuse/control that continues into the period in which the marriage is effectively *over*, yet the abuse/control is played out over the issue of the *get*. Women described that their husbands would attempt to leverage the *get* in exchange for civil concessions far beyond those they might be entitled to, turning the religious legal requirement into a civil bargaining chip. Here is a selection of accounts, particularly discussing *get* extortion:

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<sup>552</sup> *Nidda* is Hebrew for a woman during menstruation, who has not yet immersed in a *mikva*. *Mikva/h* is Hebrew for ritual bath. Under the laws of *taharat hamishpacha*, or family purity, at certain points during a woman's menstrual cycle, she is considered to be in a state called '*nidda*' during which she and her husband must abstain from marital relations. Jewish law condemns in most serious terms couples that violate the laws of *nidda* by having sexual relations during such prohibited times. Women shared stories of being forced to engage in sexual relations during the *nidda* period, or to abstain from dipping in the mikva after the *nidda* period, leaving women feeling "tainted, guilty, and emotionally and spiritually depleted and unworthy". Alison C. Cares and Gretchen R. Cusick, "Risks and Opportunities of Faith and Culture: The Case of an Abused Jewish Woman," *Journal of Family Violence* 27, no. 5 (2012): 427-435, 431; Nicole Deshan and Zipi Levi, "Spiritual Abuse: An Additional Dimension of Abuse Experienced by Abused Haredi (Ultra-Orthodox) Jewish Wives," *Violence Against Women* 15, no. 11 (2009): 1294-1310, 1302.



*“He was using his Jewishness to extort money. He claimed his righteousness over me to extort from me”<sup>553</sup>.*

*“He was violent, had a chemical imbalance, mental health problems [...] I lived on eggshells, in terror. I was scared. I once showed up to my rabbi’s house at 11pm with sunglasses because I had a black eye; that was in 2005. [...] I eventually went to court for an **order of protection** after he came in at night with a knife, threatened to hurt me and burn the house down. in January 2009 [...] I paid him \$300,000 for our house. It was definitely extortion”<sup>554</sup>.*

*“When I arrived at beit din the day of the get I made a point of saying out loud, ‘I’m here to buy my get’”<sup>555</sup>.*

*“It was not a good marriage from the beginning. We had 5 kids and I was the sole bread-winner. I had never done anything against him. We did whatever he wanted [...] I went to rabbis for counselling, and I wanted him to go. I went to marriage counsellors too but nothing helped [...] I waited 4 years without doing anything to be freed due to my community. Eventually, the beit din Israel said “Kava diyyun l’get” and the judge acknowledged “Ee efshar l’hachriach otta”- that they could not force me to go back with him because he was abusive and a pathological liar but I still don’t have a get. He portrays himself, and perhaps even really delusionally views himself as a ‘nebach’ case who has been wronged by his wife. He claims I’ve ‘gone modern’ because my sheitel is a few inches too long and I drive [...] It’s not fair. I’m supporting his 5 kids and he is manipulating our religion to use as domestic **abuse** weapon”<sup>556</sup>.*

*“My ex-husband took my religion to the bank. It was complete extortion. I ended up paying \$30,000 for my get”<sup>557</sup>.*

*“He had an internet addiction. He played video games for hours, I found out he was chatting with women online. He racked up debt in my name and took loans without my knowledge with which he bought an extensive and pricey Star Wars collection. [...] He told me he hadn’t loved me in 10 years and that I wasn’t good in bed so I revamped my style and became a gym rat thinking if I changed myself that would change him. I was only without my get for two years, but those were the longest two years of my life. [...] He still got everything- \$20,000 to pay his debts and \$80,000 for the sale of the house”<sup>558</sup>.*

*“It’s one thing when you’re the one getting the **abuse**, it’s another thing to watch it happen to your kids [...] The situation paralyzes you. Your brain is compartmentalized. You become desensitized to **abuse, control, fear**...”<sup>559</sup>.*

Women (and their children) suffered staggering abuses at the hands of their husbands (and fathers). The repeated patterns that emerged throughout my interviews regarding a variety

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<sup>553</sup> S.H. October 29, 2013.

<sup>554</sup> S.Z. October 30, 2013.

<sup>555</sup> L.I. May 23, 2014.

<sup>556</sup> E.R. May 23, 2014.

<sup>557</sup> R.W. May 26, 2014.

<sup>558</sup> B.F. June 14, 2014.

<sup>559</sup> C.S. August 17, 2014.

domestic abuses was alarming despite the fact that it is widely understood (at least among ‘*aguna* experts’) that a husband’s refusal of a *get*, which is his absolute right, has become a means to control the destiny of a woman. In interview after interview, women described abuses which preceded the refusal of a *get* and which thus indicated a pattern of abusive or controlling behaviour. Their repeated words and stories highlighted a significant, albeit alarming trend.

The repetition of the word ‘abuse’ in the passages from the interviews triggered me to re-examine the cyclical nature of the narratives being that many follow the same trajectory. It is a recurring refrain, although these narratives are not representative of all women’s experiences or narratives. However, the examination revealed that framing *get* refusal as a form of abuse is much more than a strategic tag-line by advocacy groups. Indeed the repetitions and cyclical nature of the narratives reveal an incontrovertible reality - each and every woman, out of the dozens and dozens of women I interviewed also described some former controlling and/or abusive behaviours culminating with the final abuse of *get* refusal (as well as *get* extortion at times).

This fact is not to say abuse definitively exists in all cases of *get* refusal everywhere, at all times, only that it did exist in each of the marriages of the women I interviewed. This fact also need not imply that domestic abuse causes *get* refusal. The relationships must not be viewed as necessarily causal, for that implies there is no free choice of a moral actor to overcome individual tendencies or histories of abuse and do the right thing- that is give a *get* unconditionally, which men are capable of despite habitually abusive behaviours. There are certainly instances where a couple divorces due to abuse in the marriage, yet the husband does not refuse his wife a *get*. That said, while we must be cautious not to view the relationship as causal, there is certainly correlation. Women who are *mesuravot get* seem very often to, and in

the cases of my participants, have always also experienced previous abuses at their husbands' hands (figuratively and frequently literally). The repetitive narratives have illustrated that *get* refusal is a significant form of control as it impedes a woman's future and impacts her legal, social, marital, and sexual status. While he is more easily able to move on, she is dependent on her abuser for her freedom. Her destiny and liberty are unambiguously in his hands. Husbands who refuse a *get* are individuals who have abusive and controlling behaviours and thus it is not unlikely that they would have abused or controlled their spouse in numerous capacities during marriage. This assertion emerging from my primary research is confirmed by Rabbi Dr.

Abraham J. Twerski, scholar of Jewish domestic abuse, who echoes this claim and goes so far as to say:

A husband's refusal to provide a *get* is an obvious abuse of power. He has taken a provision of the Torah and made it into a weapon of tyranny and oppression. *Without exception, every case of an aguna, every case of a husband's refusal to give a get will reveal a history of a woman having been abused during the marriage.* This last and perhaps greatest abuse of power, the refusal to give a *get*, is used only by individuals who were abusers and who had been either batterers or tyrannical controllers of their wives<sup>560</sup>.

Moreover, the common arcs and *milot manchot* among the diverse narratives reveal that women who are *mesuravot get* are subject to abuse in triplicate. That is to say, a pattern emerged from the patchwork of narratives. Multiple women illustrated: 1) the abuses they endured in their marriages, (as was illustrated above); and then further described 2) the abuse that is the act of *get* refusal in and of itself, (which I will illustrate below); while concurrently enduring 3) the silent acquiescence of their communities and rabbis who, by not doing or saying anything at communal or even grassroots levels, passively enable the abuses. Excerpts of interviews will illustrate the trifecta follow further below.

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<sup>560</sup> Rabbi Dr. Abraham J. Twerski, *The Shame Borne in Silence: Spouse Abuse in the Jewish Community 2<sup>nd</sup> edition*, (Jerusalem, Israel: Urim Publications, 2015), 117.

“To have to pay your abuser off in order for him to grant a get of his free will is just another kind of **abuse and control**”<sup>561</sup>.

“I got divorced because of **abuse** - and this- [get refusal] was just another form of **abuse**- another form of **control**. The communal silence is a whole other level”<sup>562</sup>.

“I’m free though imprisoned because I’m without an **abusive** husband and yet get refusal is **abuse** [...] get refusal is biggest **abuse of power** they wield in the end”<sup>563</sup>.

“It bothered me that he was able to one up them- the rabbis. When they asked him why it took 6 years, it was all about financial gain and **control, power**. The get was his golden ticket, his trump card”<sup>564</sup>.

“Withholding a get is the ultimate **control** because I can’t run from it like you can run from physical or emotional **abuse**”<sup>565</sup>.

It is noteworthy that perhaps the most egregious descriptions of the silences occurring within communities come from the Torontonians *mesuravot get*, rather than those I interviewed from New York. The women highlighted not only the silent acquiescence of rabbis and communities at large, but they astutely bring these previously-covert discourses to the fore. That is, their collective patchwork of narratives becomes suggestive and even consciousness-raising by challenging existing claims. Particularly in the Toronto Jewish community, there is a challenge to the claim that the civil legal amendments to *get* refusal were effective in remedying *get* refusal and/or denying there are any *agunot* in Toronto<sup>566</sup>. The fact that these, the most troubling accounts of communal futility amongst all my interviews, come from Torontonians women, helps to decipher some distinctions between *siruv get* in Toronto and other legally plural Jewish centres, like New York. The Torontonians women paint a bleak picture of their rabbinic leaders, in particular the Toronto *beit din*, which is in contrast to the much more mixed accounts

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<sup>561</sup> S.H. October 29, 2013.

<sup>562</sup> P.L. August 13, 2014.

<sup>563</sup> B.R.G. December 31, 2013.

<sup>564</sup> D.E. November 5, 2013.

<sup>565</sup> S.L. October 23, 2013.

<sup>566</sup> The earlier anecdote describing the snub by the Toronto Grapevine, supposedly a safe place for women to share, further confirms this hidden discourse arising here.

from the women in the New York context. Here is some of what the Torontonians *mesuravot* get described:

*“At the time, I felt they were abusing their authority, and that they shouldn’t have authority, but really- if people cared, we would have another *beit din*. But if no one cares, if the community is silent, complacent, then why should our rabbis care?”<sup>567</sup>.*

*“They revoked get 100% because I went to **police**. My involving the secular legal system due to my need for protection and **fear** of **abuse**, made them exert religious control [...] they didn’t care at all about **abuse**, they forced me to be in the same room as my abuser, despite legal restriction on this, and even mocked me about this saying, “don’t worry, no one will be calling the police here”. They ignored my suffering. [...] It’s also very offensive that so many girls, who had been my friends, supported him and invited him to social events, birthday parties and things... I felt betrayed”<sup>568</sup>.*

*“If the rabbis would stand up against domestic **abuse**, women wouldn’t have to live in **fear**; they wouldn’t have to go back into **abusive** marriages because they are left no other choice, with nowhere to turn for support and without a get! [...] None of the rabbanim understand. They don’t have a grasp of the issues that arise in marriage and they think the causes of problems are simple, like I don’t know how to cook dinner properly. They have no idea about the levels of **control** and withholding that might exist”<sup>569</sup>.*

*“You feel stuck, like a chain on your leg and you can’t really move. I felt stuck. Worst feeling I’ve ever had in my life and no one in our community helped. I had called Rabbi O., the Av Beit Din of Toronto twenty times but he never called me back and he never once called my husband. Eventually he told me ‘when your husband is ready, he will come. Rabbi S just said, ‘*hatzlacha raba*’”<sup>570</sup>.*

An additional discourse unearthed by the *milot manchot* throughout the diverse narrative patches of the women’s stories, is the degree to which the women themselves are silenced, alone, fearful and captive and yet, they often become savvy, active agents working as their own best advocates to unstitch themselves from the ties that bind. Alongside the accounts of abuse and communal inaction, women repeatedly described their experiences of isolation, fear, and being silenced. However, the women also, and I believe perhaps

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<sup>567</sup> D.R. June 16, 2014.

<sup>568</sup> P.L. August 13, 2014.

<sup>569</sup> J.D. August 22, 2014.

<sup>570</sup> B.F. June 14, 2014.

*Hatzlacha rabba* is Hebrew for, lots of luck.

unintentionally/unconsciously, conveyed their dogged tenacity, faith and endurance in their quest to get their *get*. This most-often-hidden theme, just like quilt batting, surfaced between the lines of their narratives in our meetings becoming visible to me in the course of their storytelling (not their self-description). This conflation of two seemingly contradictory experiences emerges as a vital discourse underlying *get* refusal. The stories of the women I interviewed, themselves confirm that although *mesuravot get* may be subject to the whim of their recalcitrant husbands, and although they do indeed feel suppressed, silenced, isolated and scared, they are nonetheless proactive, determined, and resolute both in their pursuit of a *get*, and most often, in their faith as well. This empowering lesson has been problematically overlooked in the existing discourses that circulate by and among ‘*aguna* experts’ - both in the socio-legal and Jewish bodies of literature and at conferences<sup>571</sup>. The *milot manchot* that highlighted these important tropes for deeper analysis were the words: ‘free/freedom’ which was used fourteen times, ‘silent/silenced’ which was used twelve times, ‘fear’ which was used seven times, and the word ‘alone’ which was used seventeen times.

*“Basically I was being held hostage but at the same time I was so proud of myself, I was doing so much alone. I went to a ‘do your own divorce’ place for \$399, because I had no money and I filed all kinds of motions and that was really putting pressure on him. [...] Beit din doesn’t do anything alone”*<sup>572</sup>.

*“I felt like a slave. [...] No one would have believed me if I hadn’t gone to the hospital. [...] I was all alone. [...] It freed me, getting the get...I refused to be victimized. [...] It will give you something you didn’t know you needed. Don’t accept that you don’t need a get even if you are*

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<sup>571</sup> The inconsistent role *mesuravot get* play and the inconsistent experiences they endure have been ignored. ‘Experts’ - advocates, academics, and feminists alike, who claim to work on behalf of women refused a *get*, have quite often further silenced women by neglecting their stories and voices which ought to reflect *not* only their ‘submissive victimhood’ of being chained to a marriage against their will (which is how *mesuravot get* are habitually spoken about) but also the women’s independence, agency, resilience, etcetera. This was the case in recent work by noted scholars and this was unfortunately also the case the NYU Tikvah Centre for Law and Jewish Civilization’s ‘Agunah Summit’ (where 200 ‘experts’ convened for a conference that had no women refused a *get* on any panel). *The Agunah Summit*, Conference by the NYU Tikvah Center for Law and Jewish Civilization and JOFA- Jewish Orthodox Feminist Alliance, New York University School of Law, New York (June 24, 2013).

<sup>572</sup> P.B. May 28, 2014.

*Reform...It's my freedom, it's my power. [...] You have to self-advocate, because otherwise you are just a number, just a statistic*<sup>573</sup>.

*"When I was going through it I had nowhere to turn. I suffered in silence. [...] There is no support here in Toronto, not legal, nor rabbinical and so there is nothing to give hope. I had to get a job at my age... [...] I sought out Yad L'Isha in Israel myself and worked with an advocate there*<sup>574</sup>.

*"I'm doing everything alone, raising 5 children." Then she asks me if I know what the hardest day is for her? She answers: "The holiday of Passover because it's totally within peoples' hands to change this and nobody is. How can I celebrate freedom on Passover, when I myself am not free?"*<sup>575</sup>.

*"I was scared...but I forced them (beit din) to do seruvim*<sup>576</sup>.

*"The beit din here is more passive, they'll do stuff and support me but only at my constant request*<sup>577</sup>.

*"I was offended that anyone would steal my freedom; my inalienable right. [...] I made my own fact sheet and put it up around town. I went to shul each morning to the 6am minyan so the rabbi would have to see me and I would ask 'is today gonna be the day?' I went to the women's tehillim group and I made them add my name to daven for. I even donated a new door-stop to the shul which they really needed at the time. I inscribed it 'donated by R anticipating her get from Y.D.' so they would have to see it and think of me every day. I did all this because I felt that whatever I had to say would not be heard. I really felt abandoned. [...] The bottom line is, when communities cease to tolerate wives being agunot, the problem will cease to exist*<sup>578</sup>.

These, among other of the women's narratives, unearth how the individual women act but also how they feel being *mesuravot get*. They allow us to peer into their lives. The women's own descriptions, rife with contradiction portraying themselves *both* as isolated and scared and simultaneously (and subconsciously) brave and able to channel the inner workings of obstructive communities, help us to better understand what it is both to navigate and to *experience siruv get*. The desire to be 'free', expressed in a multitude of ways indicates that women feel "stuck, unable to move on with life", "trapped", like a "hostage" or at times, even like a "slave", to use their

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<sup>573</sup> S.L. October 23, 2013.

<sup>574</sup> C.S. August 17, 2014.

<sup>575</sup> E.R. May 23, 2014.

<sup>576</sup> S.Z. October 30, 2013.

<sup>577</sup> B.R.G. December 31, 2013.

<sup>578</sup> R.W. May 26, 2014.

own words. It is clear that the lived realities of the women interviewed are complex. The women refuse to be stifled, and although they are silenced in some ways, they are also active, independent, strong and self-advocating. It is important to accurately portray *mesuravot get* as the complex and multifaceted women they are. They are a diverse a group, united by their experiences of being refused a *get*, and by their persistence in seeking one. Portraying the women as one-dimensional, with only a passive existence of victimhood to be pitied, serves to re-silence and re-victimize women, and egregiously, portrays the women inaccurately, undercutting their dynamic and inspirational steadfastness<sup>579</sup>.

Thus far, and with the help of the *milot manchot/leitworts* and patchwork quilt methods, my analysis has shown that there are noteworthy *similarities* in the narratives of *mesuravot get* despite the diversity of the women themselves. The women described numerous common experiences, regularly using the same recurring words and across all of the diverse narrative patches. However, there is also a diversity of experiences that emerges through this analysis. Shifting slightly, the remainder of this chapter will examine broad themes emerging from the patchwork of narratives which reveal *particularities* of the women's narratives, experiences, and even ideologies. These particularities illustrate the women's diverse positions on the same sets of issues, rather than emerging as a direct result of *milot manchot* indicating similar positions on similar issues. There were marked distinctions among the women's narratives on three

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<sup>579</sup> While Susan Weiss and Netty Gross-Horowitz's book unfolds around the personal stories told *about six agunot*, I find limitations to their approach regarding empowerment of women. In fact they state, "the halls of the religious courts are full of powerless women" (page 40). The book is a significant contribution to the field, but the goals are different (than my own) and focus more on describing experiences in Israel with the Israeli *batei din* and the complex lay-of-the land regarding *agunot* in Israel. The *agunot* do not necessarily come across as positive, active agents, particularly since they are labelled, "Clueless, Scarlet, Ping-Pong, Accidental, Pawn and Reluctant". The dozens of women I interviewed would not have wanted to be labelled by any of the names used therein. They would find it a betrayal. They were so much more than clueless victims or pawns and were most-often active agents in attaining their *get*. Susan M. Weiss, and Netty C. Gross-Horowitz, *Marriage and Divorce in the Jewish State: Israel's Civil War* (Waltham, MA: Brandeis University Press, 2012).



significant issues: 1) when asked what they felt was the best solutions for *get* refusal, 2) when speaking about how *get* refusal may have impacted their faith in G-d, observance of religion, and respect of rabbis, and 3) when describing/when asked about gendered experiences or effects navigating *siruv get*.

Women had a diversity opinions regarding the ‘best solutions’ for *get* refusal, illustrating both their agency and their law-creation, ranging from civil/state to religious, top down or legally implemented to bottom up or grassroots, and even new suggestions that had not previously been proposed. In a sense, women were and are undoubtedly shaping and producing new legal norms which, in turn, and with time, will impact both social and legal realities. The diversity of ‘best solutions’ not only reflects the diversity of women the phenomenon of *get* refusal impacts, but also informs my call for a ‘grab bag’ of remedies and suggests that this approach is one that women both desire and which would respect feminist principles. I argue that through this multiplicity of proposed remedies offered by women, we get a glimpse into the power of narratives and the impact of asking how individuals treat law, rather than asking only about how law treats them, a true critical legal pluralist approach. The range of the women’s responses to ‘best solutions’ emphasizes also that women take on the role of law-makers, influencing law as it influences them.

The discussions around women’s persistent faith and continued belief in G-d and devotion to the religion, coupled with women’s simultaneous criticism of rabbis and *batei din* emerged from the patchwork of narratives throughout my interviews with the women. This plurality of views appeared and reappeared at times in the women’s own words during the interview, as excerpted below, and at times these differences were more subtle, surfacing in other ways- through comments before or after the interview about one’s weekend, one’s kids, or even

through women reciting blessings over their coffee, or their choice of venue. Another particularity that emerged was the women's opinions and experiences regarding *siruv get* as a gendered phenomenon. Here too there were a grab-bag of responses from the women, with some women stating, and at times insisting, that their experiences were not gendered, yet described incidents at other points of the interviews that might be viewed as gendered by others, contrary to a particular *mesurevet get*'s self-narration and/or experience.

I deliberately included many additional excerpts from the women's narratives, compared to the prior excerpts above, in order to demonstrate the array of particularities women described regarding each of the three issues, without attempting to generalize or simplify their own self-narration. Here are excerpts on women's diverse ideas around 'best solutions' for the phenomenon of *get* refusal:

*"Civil law is not the answer and not any better than beit din you are still 'just a number'. It's just a day at work and that's all. In fact civil lawyers and judges are even less invested than rabbis, and in my case, the civil system really didn't influence my husband"<sup>580</sup>.*

*"I went to civil court first, before my husband, because I needed an order of protection and then found out that because I was the plaintiff, the get law could do nothing to protect me. [...] Later it became increasingly clear by working within the system and from my network of aguna friends, that the secular family courts in Nassau County were extremely unsympathetic to the plight of agunot, even despite the prominence of Jews throughout the area. The prenuptial agreement is okay but who enforces the money owed as maintenance? It just gives the power back to the secular courts and away from rabbis. This ping pong might work sometimes, but it could also just be more time and costly to the wife and so I'm not sure it will help in all cases. That said, I do think it should be possible for a secular remedy to solve this problem- a get law that actually helps women and is still halakhically viable. [...] I'm frum, but Rabbi Rackman's court makes sense. A woman should be allowed, even not right away, but after a period of 10, 20 years to just go to a beit din for frauded marriage and get hafka'ot or mekach ta'ut. It can't just be up to rabbis because many of them have their heads in the clouds. If it doesn't touch them, if it's not their daughters, they aren't aware. Problem stems from rabbanim around [...] More of them need to be made aware and do whatever it takes to modify halakha to change this"<sup>581</sup>.*

*"Real consequences, real solutions must come from civil court because beit din cannot enforce and if we can't go the route of forcing, and we can't enforce, than we have to rely on civil. There*

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<sup>580</sup> S.L. October 23, 2013.

<sup>581</sup> D.D. October 24, 2013.

*should be willingness to help and support. Some rabbi's instigate a fight and they are hurting not only women, but their entire congregations too. And let's not forget- who is a rabbi? It's just a person who passes a test of knowledge; they are not necessarily all ethical*<sup>582</sup>.

*"New York Get Law did nothing for me because I was the plaintiff, although I only learned it worked like that once I was in court. [...] Are bottom up approaches ever going to change someone who knows that they have something over you in the get? It's very powerful. Batei din should have the power to issue a get if a woman has a good enough reason, without the husband's free will/consent. Secular solutions are good, they can't hurt, but they won't solve religious problems. [...] It's frustrating that nothing can be done when the rabbis can come up with a solution if they wanted to. We need to ask, who is gaining by not doing this?"*<sup>583</sup>.

*"I think a permanent restraining order should be enough somehow for a beit din to issue a get on their own, without a husband's consent or free will. If the civil judge can grant it, Jewish law should accept that and just go ahead and issue a get [...] Jewish law has to change rabbis are enabling rather than counselling and educating. To put a get in a prenup is so sad. I do think they protect us but they shouldn't have to"*<sup>584</sup>.

*"Marriages have to have an expiry date- if a couple is separated for a certain, lengthy period of time, there needs to be a way rabbis can give an automatic get without the husbands consent. The civil secular remedies won't work in my community- they are good for the modern. It's funny because the only solutions we have for this are from the middle ages and rabbis are so busy with trying to control all the new stuff, the use of the internet. They should be busy trying to make the old stuff new, so that we can apply it today"*<sup>585</sup>.

*"Prenuptial agreements are good, but also important to get married civilly, which I hadn't done and which I think made it harder to get a get"*<sup>586</sup>.

*"I had a prenuptial agreement but the rabbi who married us lost it and there were no other copies, so it didn't help in my case. [...] you wouldn't reason with a terrorist so why would you reason with an abuser? The solution must involve empowerment of beit din rather than individual man"*<sup>587</sup>.

*"I know this sounds horrible but right now, in the thick of things, the only solution I see for my own case is if my husband would just die. [...] There is no solution. Everything is in the man's hands and women like me are just screwed. [...] there should be some sort of rule that if you have a restraining order in place that should guarantee an aguna her freedom after a while. [...] There is no point in annulments if you can't move on within your community. I think a get tied to civil law is fantastic because secular law can be more powerful than getting a get, which is such*

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<sup>582</sup> C.G. October 24, 2013.

<sup>583</sup> D.E. November 5, 2013.

<sup>584</sup> J.S. January 19, 2014.

<sup>585</sup> E.R. May 23, 2014.

<sup>586</sup> L.I. May 23, 2014.

<sup>587</sup> R.W. May 26, 2014.

*a crock because it's ineffective, outdated, and unfair to women. You can wait until he decides to untie you, or you can wait until he dies, whichever comes first*<sup>588</sup>.

*“Prenuptial agreements are a must. They must become as natural as a ketuba. And, if you ask me, I would take that even one step further. With a ketuba, I would prepare a ready get and even an agreed upon time frame before marriage, that if there is no get after a certain amount of time, the couple would both agree to using the pre-prepared get. Like maybe after a year and a half to show the couple really tried to reconcile, and then use the ready get. Tying it to secular is also good because with the rabbanim nothing moved with me, but once the secular was in play that added pressure. But people have to sit with secular courts and judges and explain the issue because they don't always get it. [...] The ultimate solution must come from halakha, but in the mean time also prenuptial agreements and pre-made gets should be done by everyone*<sup>589</sup>.

*“The best solution would be if rabbis found a loop-hole and just went ahead and issued gets after a certain amount of time. Short of that there needs to be support groups since there's nothing in Toronto, not even the civil laws, and women have to be their own advocates- strong and tenacious, because there is no one else to help in Toronto. Unfortunately, not every woman is capable of being like that when faced with this situation*<sup>590</sup>.

*“I have no clue what the best remedy is, but civil law is amazing- or at least it was in my case, I was in a position where civil law was on my side but the actual get laws won't help in reality.. [...] I used the civil as a scare tactic first to get him to show up at beit din. [...] Then, in my case I had made a detailed ruse, after seeking rabbinic consultation with a leading American Orthodox rabbi and with my Canadian lawyer. We came up with a plan and I agreed to mediate all issues in beit din, which was the only way my husband agreed to show up but, that right after the shtar berurin was signed and I was delivered my get, we would serve him with papers to go to civil to mediate the rest of the issues. I would never mediate in beit din over custody. Since my case though, the beit din has made it clear they would name any get derived in this manner unkosher. [...] I realized that you have to figure out what is going to motivate a person to give a get- it may be vilifying them, but it may be building them up. A part of me wonders if emotional validation would help get refusers more than making them a pariah. [...] I had to almost become unemotional to get the get. I realized that you are more likely to get a get when you stop asking*<sup>591</sup>.

*“I would have used the civil but I had heard that the Toronto Beit Din finds the civil remedy as conditional due to the amendments' necessity to impose a time-frame or deadline on removing the barriers to remarriage. The beit din started to view the imposition of a deadline as a coercive tactic or penalty in exchange for a get and so won't allow gets granted as a result or at least won't view a get given as a result as kosher gets. Ironically though, it was still conditional on my part because it was predicated on my first delivering a cheque to pay-off my husband for the get. [...] The best solution for Toronto is to get rid of the Toronto Beit Din. [...] We all agree that halakha is archaic but true believers are okay with archaic halakhic principles the issue is that*

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<sup>588</sup> P.B. May 28, 2014.

<sup>589</sup> A.A. June 6, 2014.

<sup>590</sup> B.F. June 14, 2014.

<sup>591</sup> D.R. June 16, 2014.

*the leaders must step up and must acknowledge that refusal is a form of domestic abuse, that abuse in and of itself does exist within their communities, and about how individual men can abuse halakha”*<sup>592</sup>.

*“The solutions should be: 1) the prenuptial agreement- this should be like genetic testing in our community, everyone should just do it for protection and without question. It needs to become a safety requirement, without emotion just a banal necessity 2) Re-name and re-market the prenup so it doesn’t have any negative associations like regular pre-nups 3) more awareness. There is more awareness than even a few years ago, when I was going through it, but there needs to be even more. [...] The only way the solutions will work or even just start to make a dent is if the frumer community is engaged. It’s gotta be within halakha otherwise it will never work. What’s the point if frum women will be abandoned by a fringe solution? We need to work with them and even appease batei din to create a unified path. [...] I believe there can be a solution, because if they could ultimately find me one in Israel, than the beit din in Toronto could have found it here as well. The Canadian get laws did not help me”*<sup>593</sup>.

Whereas some women articulated the civil court judges were empathetic and understanding, others expressed the opposite- that civil courts and judges do not at all understand, and are in fact harsh on women such as the judges in Nassau County on Long Island, which has a significant Jewish population. There are also judges who are simply unaware of the phenomenon and have not been educated on how to appropriately navigate between the two legal systems as civil judges with sensitivity. Some women insisted that because the civil/state courts and judges are more authoritative than rabbis on the *beit din*, the solutions must come from them to be impactful. Conversely, some women insisted that no matter how impactful, the civil/state system would still fall short of inducing certain abusive and recalcitrant malicious men to grant *gets*. Some women also astutely noted that while the civil/state court system might have more ‘teeth’, it is most often a lengthier and more costly process. Some women insisted, that no matter the cost, or duration, it is still vital to have civil remedies and enforceability insisting that all the power cannot be solely in the hands of rabbis who frequently do nothing with their power to help

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<sup>592</sup> P.L. August 13, 2014.

<sup>593</sup> C.S. August 17, 2014.

women or worse, wield the power to further their own interests or the recalcitrant husband's interests rather than help *mesuravot get* attain their freedom.

Women were correct to point out that despite the intent behind the civil legal amendments, and the authority and enforceability that comes along with the state centralist legal regime, the civil *get* laws fail women, at least some of the time. Under the *New York Get Law*, women cannot be the plaintiff and benefit from the protections of the law as the *Law* precludes this, yet very often women are the plaintiffs, as they petition the court for Orders of Protection in many cases. In Canada, the amendments to the *Family Law Act* and the *Divorce Act* dealing with the *get* refusal have also not been effective in eradicating *get* refusal, as I discussed earlier. Civil enforcement of prenuptial agreements is a separate matter. By and large, women, even Hasidic and Ultra Orthodox women, did feel that should prenuptial agreements be upheld in civil courts and allow women to sue for damages, that they might be effective particularly if all segments of Jewish communities agree to sign them and it becomes mainstream like the *ketuba*, the Jewish legal marriage contract. Here too however, women were cautious and mentioned a variety in instances in which prenuptial agreements, while a significant accomplishment, might still fall short of protecting all women in all cases. One woman interviewed, who had signed prenuptial agreement, was unable to benefit from it simply because it got lost during the course of her marriage and was not filed by a reputable *beit din*.

While many women support civil/state remedies in whole or in part, there were still women who insisted that such remedies could never completely solve a religious legal/ *halakhic* problem. The question repeatedly arose, 'is it a matter of rabbinic will?' even if rabbis wanted to find a solution, would they? Could they?<sup>594</sup> Women had diverse opinions on this matter (as do

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<sup>594</sup> Blu Greenberg invoked this phrase early on in the context of *agunot* arguing, "Where there's rabbinic will, there's a *halakhic* way". Blu Greenberg, *On Women and Judaism: A View from Tradition*. (Philadelphia, PA: Jewish

advocates). That said, quite a few women suggested a statute of limitations on *get* refusal after which time a *beit din* should unilaterally, without a man's consent or free will, be able to issue a *get* in his stead. Women also suggested that an Order of Protection and/or a documented pattern of abuse should be enough for a *beit din* to issue a *get* without a husband's consent after an agreed upon length of time. Some women proposed that rabbis and rabbinic courts should simply be bold enough to rely on old, and outdated Talmudic remedies which have fallen into disuse (such as those enumerated in chapter two).

It is evident that when asked about 'best solutions' there is no consensus among the women; no generalizable and conclusive ideal remedy. The diversity of responses from women reinforces understandings regarding the diversity of their narratives and experiences. The narratives surrounding best remedies also elaborates not only on how law or legal systems treat women, but perhaps more interestingly and significantly, they illustrate how women treat law, exploring to what extent particular laws or norms are relevant to them and if and how they might determine women's behaviours. Women believe in a range of remedies because they have had a range of experiences in navigating their *get* refusal. Whether they believe the best remedies come from within the religion or outside it, from within legal systems, or from grassroots efforts, the only conclusion that can decisively be drawn is that women are faced with this form of abuse to which there is no remedy to date, yet for which there exists a variety of potential remedies. This conclusion in and of itself is potentially both socially and legally transformative, indicating that women's storytelling is a powerful tool through which women can shape and produce law and legal norms.

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Publication Society of America, 1981); Blu Greenberg, "Where There is a Rabbinic Will, There is a Halakhic Way: A Defense and Critique" (presentation at the Twelfth Annual Caroline and Joseph S. Gruss Lecture at New York University School of Law, New York, NY, October 21, 2013).

There were also marked distinctions among the women's narratives regarding religious belief and adherence. Below are women's excerpts reflecting on how *get* refusal may have impacted their faith in G-d, observance of religion, and respect of rabbis. I group them roughly into two categories: 1) women who express disillusionment with and/or disappointment in rabbis/rabbinic bodies, distinguishing between religion, Torah and God, and the people who misuse, abuse, and twist it; and 2) women who see their suffering in context of a divine plan and link their suffering to a traditional Jewish way of understanding both personal and collective suffering in which women feel a direct line to God (an assertion of self worth and dignity in a situation that strips one of it); or women who have had positive interactions with rabbis or others in the Jewish community who help maintain a positive attitude towards Jewish community and Judaism.

*"The hardest part is the rabbis. They say 'too bad, you're married, deal with it'. I find myself asking 'why am I in a religion that's working against me? And even more so, why am I bringing up my girls in a religion that may not protect them like it's not protecting me now? It's just regular human rights; we shouldn't have to explain why we want a get. [...] I would never leave my community'"*<sup>595</sup>.

*"It felt like a money business- I was dealing with rabbis, but not with the rabbis you think of- they were robotic. The rabbis I went to initially were awful but ORA really helped me. I learned that religious people are not necessarily good or honest, just because they are religious. I felt judged because I had not really been a part of the community previously or maybe because my family is not religious. Maybe a non-charedi beit din would have treated me better and I would have gotten my get sooner. [...] I lost my naiveté; I had lots of resentment. [...] I learned that some rabbis are just people. Now I base my religious observance on Halakha, not on people or on what people might think"*<sup>596</sup>.

*"I didn't have faith in the Orthodox world for a while and only now I'm slowly coming back to it because I see now that the problem is not the religion. I realize now that I had put rabbis on a pedestal for so long and I don't do that anymore.[...] At first they didn't believe me but who can you trust if you can't trust a rabbi?!"*<sup>597</sup>.

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<sup>595</sup> E.R. May 23, 2014.

<sup>596</sup> L.I. May 23, 2014.

<sup>597</sup> J.S. January 19, 2014.



*“The rabbis didn’t know how to deal with him. They thought that if they wouldn’t let him in to shul (synagogue) he’d stop being religious and what kind of a role model would that be for our sons? But I answered that what kind of a role model is he for his sons by refusing his wife and their mother a get? Minyan (quorum of ten men needed for prayer) is not what makes someone a role model or a good person to emulate. [...] I have to be honest, I’m really disappointed - Hashem helped me want to be divorced but the get process was sick. There was no support; it was a sick, sick thing. I was and still am disillusioned. This is a frum guy with a long beard. Although, he could behave this way without religious or social repercussions. [...] The attitude in Lubavitch is that the ‘abishter et helfen’ but I believe you need to make it help- to be active. [...] halakha is a little screwed. [...] I daven (pray) to Hashem everyday both for myself, and for him. [...] I gave up so much to become religious so why is this my life, I was a little angry with Hashem and I was disillusioned with the Toronto Beit Din, but mostly I realize it’s all my husband’s fault”<sup>598</sup>.*

*“It was a nes. I never expected to get my get. [...] He went back to the beit din a few months later to try and revoke the get. I freaked out and called Rabbi O. and while Rabbi O. said the beit din wouldn’t give it much credence, he also said, ‘but everyone deserves their day in court’. That really changed my outlook because after all of my husbands’ manipulation, lying and cheating, the beit din still give men like him the time of day. That was an eye-opener. [...] Perhaps in Lubavitch they are too busy not wanting to turn away a Jewish soul and so would never turn a man away from shul but really that is a super negative thing because they are not thinking about the potential for a woman to leave Judaism because she feels abandoned or even of the potential children she’d be able to bring into the world if she was not chained”<sup>599</sup>.*

*“The problem is not religion; it’s the people who don’t adhere to religion”<sup>600</sup>.*

*“Beit din in Toronto believes in extortion. He wanted me to delete evidence I had against him, pictures of abuse, recordings of his rage, in exchange for a get- that was definitely extortion. It also speaks to the clash between the Jewish and secular systems. [...] They revoked my first get 100% because I went to police and involved the civil system, after I had agreed not to do so when I was granted my (1<sup>st</sup>) get. [...] The Toronto Beit Din is scared of the secular legal system encroaching on their turf and the women are the collateral damage. [...] Leaves me questioning. I don’t know if I’d ever get married again, and if I do, maybe only civilly. I am healing from all this now but after having my get revoked once I can’t trust that it’s really over”<sup>601</sup>.*

*“I’m not putting down rabbis, it’s not their fault”<sup>602</sup>.*

*“The rabbis don’t do anything but give a speech on Shabbos. But, they are just human, I’m indifferent, I have no opinion of them. I’m still a deep believer in this religion. This hasn’t turned*

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<sup>598</sup> B.F. June 14, 2014.

<sup>599</sup> J.D. August 22, 2014.

<sup>600</sup> C.G. October 24, 2013.

<sup>601</sup> P.L. August 13, 2014.

<sup>602</sup> S.L. October 23, 2013.

*me off religion, not at all. I send my kids to yeshiva day school. It's about my husband, not the religion. Do I think badly of this religion? NO!"*<sup>603</sup>.

*"At first the rabbis did nothing, they said 'shalom bayit' [...] Now I compartmentalize rabbanim vs. rabbanut. Some rabbis felt my pain but couldn't help- they belong to bigger rabbinic organizations, groups and they felt they'd lose their status or 'lose face' if they'd speak out and help me. It's not halakha, but, there is a petach (a small opening)- if they wanted to, they could be creative and open it up and help, not too much, but just a little. [...] I believe everything happens for a reason and I am still religious, I am still a believer. I was very strong with emuna- people used to come give me chizuk (strength) and they'd tell me that I gave it to them [...] My father told me he gave me permission to move on and try to remarry if I could, but I told him that I was still a believer"*<sup>604</sup>.

*"I know I couldn't have gotten the get in Toronto if he hadn't moved to Israel. I would still be an aguna so that certainly makes me feel negatively toward the Toronto Beit Din. They had never even issued any hazmanot or seruvim. At the very, very end, when I was finally about to get the get in Israel, the beit din there asked for a letter affirming I had tried in Toronto to get my get before in Toronto and Rabbi O. obliged. [...] If my husband's father hadn't moved to Israel this never would have been solved. It couldn't have happened two years earlier, when my husband gave the get and ripped it up in a rage, it was meant to be at that exact time. All the stars lined up just at that moment, it was all yad Hashem. There is no way I would have my get today if I was depending on or waiting for the actions of the Toronto Beit Din"*<sup>605</sup>.

*"My rabbi was awesome and he hooked me up with ORA and he was such a support throughout the process. ORA was a good support too and I felt that the Beth Din of America really heard me. They spoke to me for hours at a time"*<sup>606</sup>.

*"The Av Beit Din of Queens helped me [...] In beit din, it's not fair like secular court [...] I gained emuna in Hashem and learned that nothing in this world happens without Hashem"*<sup>607</sup>.

*"The experience strengthened me. There must have been a reason that Hashem kept the get from me for that exact number of years until the point when I was meant to get it. It strengthened my emuna (belief or faith) because logically it made no sense, so you have to look higher or deeper- there must be some reason Hashem is doing this, there must be a plan but you just don't know it at the time..."*<sup>608</sup>.

*"It's not the Torah that's the issue, it's the people. They are abusing the Torah. [...] I clearly saw the hand of G-d repeatedly throughout this ordeal"*<sup>609</sup>.

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<sup>603</sup> P.B. May 28, 2014.

<sup>604</sup> A.A. June 6, 2014.

<sup>605</sup> C.S. August 17, 2014.

<sup>606</sup> S.H. October 29, 2013.

<sup>607</sup> S.Z. October 30, 2013.

<sup>608</sup> D.D. October 24, 2013.

<sup>609</sup> L.G. October 29, 2013.

*“Although it took me a while to get to this point, I realize that being an aguna is straight from Hashem. I grieve so much, but Hashem wants me to be alone now. Yoseph Hatzadik (righteous) was happy in prison, he’s inspiring me. I am free while imprisoned though, because I don’t live with my abuser anymore<sup>610</sup>. [...] I won in civil court every time and so it would be a deep insult to Hashem to be anxious and have doubts. The get has to come through prayer, teshuva. We have to thank Hashem for the blessings and for the hardships, both”<sup>611</sup>.*

*“Two miracles happened when I needed them to, which were straight from Hashem: 1) I got sole custody of our kids and 2) I eventually got my get all the other matters, including the civil divorce itself are dragging slowly through the courts”<sup>612</sup>.*

Women often made distinctions between their faith in G-d or their continued adherence to religious laws and rituals and their disrespect that emerged for individual rabbis and/or rabbinic courts. While many women’s faith seemed at times unwavering and even strengthened, some had seen another side to the clergy and consequently distinguished the individual ‘bad men’ from the collective ‘good religion’. That said, some women, even when faced with unhelpful clergy, were able to decipher that the lack of empathy, support, or willingness to speak up in the face of an acquiescent, passive community was not even to the fault of the individual rabbi, but rather to rabbinical training which does not adequately equip rabbis to deal with *get* refusal and issues of domestic abuse and counsel women in overlapping legal jurisdictions. Perhaps surprisingly, women often reported in fact that their faith was strengthened during their struggle for a *get* and that the struggle itself made it clear that individual bad people were the problem, rather than the religion or even religious law/*halakha* in and of itself. This strengthening of faith was not characteristic of all the women who participated, but it was true for the majority, a finding I was

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<sup>610</sup> It is interesting that this woman links her experience to the experience of a character from the Bible. The very act of doing so is an assertion of religious continuity, rather than a rupture with Judaism. It is also interesting that this woman links her experience to that of a man (based on the idea of imprisonment and also the implied promise of redemption from prison of Joseph). It also seems like an assertion of agency/power, and perhaps the denial of the genderedness of the experience of *siruv* in claiming for herself and association with Joseph (who found himself in prison for refusing to abuse the sanctity of marriage).

<sup>611</sup> B.R.G. December 31, 2013.

<sup>612</sup> J.D. August 22, 2014.

not expecting, and which made the women all the more inspiring in their tenacity<sup>613</sup>. This finding also speaks to the critics<sup>614</sup> who argue the best solution is to simply opt out of (patriarchal) religion and/or religious marriage altogether<sup>615</sup>.

There were women too who described individual rabbis and rabbinic courts that were supportive, particularly ORA and the Beth Din of America in New York. That said, the Toronto rabbis were largely described by women who had been refused a *get* as lacking empathy, and mired in community politics and judgement. The Toronto *Beit Din* was also described as lacking protocol and cowering to pressure by influential individuals, enabling financial extortion, and seizing an intense desire to hold on to power over the civil court system, all of which further deleteriously impacts women's impressions of rabbis and rabbinic courts and their experiences with them. Several women indicated in fact that their pessimistic impressions of rabbis and rabbinic courts is informed by the rabbis' support of abusive men, abusive tactics like extortion, and shirking ethical behaviour when communal politics are at play. Women explained that these factors, among others, lead them to question their religious observance in particular, and the religion itself, more generally. In some cases, their experience of the abuse of *get* refusal is so traumatic that they walk away from the entire system.

Perhaps most striking was the reference to human rights abuse by E.R., a woman from the Hasidic community of *Ger*. We met secretly, at a coffee shop in a Jewish neighbourhood in Brooklyn, but not her neighbourhood, in order to minimize the chances of her being recognized with someone as 'modern' as me. The coffee shop, although it had a kosher certification, did not

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<sup>613</sup> There are likely women who have had different experiences who did not respond to my call for participants and who are not represented here.

<sup>614</sup> Critics such as: Susan Weiss, Estelle Freilich, Alexandra Leichter, and others. *The Agunah Summit*, New York University Law School, New York, NY, June 24, 2013.

<sup>615</sup> This sentiment has to do with respecting women's choices and their just attempts to balance their right to religion and their right to be free from abuse. This is echoed in the work of Saba Mahmood (among others) and will be revisited in the conclusion of this study.

meet the exacting standards of *Ger*, and E kindly declined my repeated offer to join me for a coffee and a muffin. In fully modest garb, her hair covered with a wig, E shared her story of *get* refusal with me and while she made it explicitly clear that she would never leave her community, and that it is where she belongs, she simultaneously questioned her ability to raise daughters in a community which she felt had not protected her, nor had it protected her human rights. She also used the word “sexist” in the interview (see excerpt below), and as the only woman to use the word, it stood out amongst all the narrative patches. It is vital not to scrutinize or purport to understand the significance or motivation of E’s word choices, words which were not *milot manchot*, yet in their gravity draw attention. That said through my analysis here an appreciation for the marked distinctions among the *mesuravot get*’s narratives concerning how *get* refusal may have impacted their faith in G-d, observance of religion, and respect of rabbis does emerge.

There was also striking diversity among the women’s narratives describing gendered experiences or effects navigating *siruv get*. While some women described a power imbalance based solely on gender, some did not see their situation in gendered terms. A number of women were struck by the maleness of the *beit din* and *halakhic* authorities and some seem to place the gendering of *siruv get* in the context of a larger gendered system with which some women took issue as having broad negative implications on women, and with which some had no problems. Indeed some women were able to distinguish between a negative, gendered *siruv get* experience, that is the abuse of gendered power inherent in the *siruv* or refusal of the *get*, and recognize that the experience need not necessarily sour women on the gendered structure or interpretation of *halakha*, religious community, or communal participation generally. Below are women’s excerpts reflecting this diversity:

*“Even though they all - the rabbis and dayyanim- supported me, I still felt separate from them [...] I definitely feel like it was gendered but I don’t want to say that I wasn’t supported. It’s just, if you walk into a room with all one gender...”<sup>616</sup>.*

*“She was adamant that her experiences were not gendered but in the next answer described how women are “made to feel like chopped liver- I had a 10 year-old son that no one offered to take to shul to kiddish, etcetera.” She also noted that rabbis asked her “what more can you give him in exchange for your get”<sup>617</sup>.*

*“The first rabbi I went to discuss a get was my husband’s rabbi, Rabbi O. He said, ‘it won’t be easy’ and laughed at me; but the Beit Din of America gave me confidence and I didn’t feel as intimidated as I thought I would when I had to speak in beit din. Rabbi R. from the Beit din of America was my cheerleader. [...] It did strike me that I accepted the get in a room full of men, while my husband kept leaving disrespectfully in the middle. It’s also gendered in terms of motherhood, all the onus is on us”<sup>618</sup>.*

*“I didn’t feel like it was gendered and I have no bad feeling toward rabbis but it did make me question my religion. And yet, I would do anything for the get, my Jewish divorce. I believe that it separates two peoples’ neshamas from each other and that’s what I wanted”<sup>619</sup>.*

*“There is no reconcilable difference- the power is in the man’s hands that is the bottom line, and so the get itself is inherently gendered. Being gendered is not always necessarily bad; it’s when one gender takes advantage that things go bad”<sup>620</sup>.*

*“I did bring a female support the day of the get, yes, the situation felt gendered, there were a lot of men in the room and I felt pretty intimidated and alone”<sup>621</sup>.*

*“Ger is very sexist in New York, women basically don’t exist”<sup>622</sup>.*

*“Let’s be honest, guys have all the power and women have nothing. I have a civil restraining order but even then it’s all up to him, it’s horrible to be a woman. I’m Orthodox and I believe in it, but it’s geared towards men. An individual man can use Jewish law...”<sup>623</sup>.*

*“...harder to be women. Every woman has to ask herself before she gets married, ‘can I divorce him. A woman’s dedication and commitment to family is innate and internal, a husband’s is not the same”<sup>624</sup>.*

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<sup>616</sup> S.L. October 23, 2013.

<sup>617</sup> D.D. October 24, 2013.

<sup>618</sup> C.G. October 24, 2013.

<sup>619</sup> D.E. November 5, 2013.

<sup>620</sup> S.Z. October 30, 2013.

<sup>621</sup> B.R.G. December 31, 2013.

<sup>622</sup> E.R. May 23, 2014.

<sup>623</sup> P.B. May 28, 2014.

<sup>624</sup> A.A. June 6, 2014.

*“I believe the rabbis listen and believe women more than men, but they can’t and won’t do anything”<sup>625</sup>.*

*“It was actually a liberating experience...where my concerns for community standards and what other people think of me were broken down. I did feel I had communal support from individual friends and rabbis, though there was no action taken against him by/within community, and remained in a community kollel but rabbis did go to try and reason with him on my behalf even though he makes a very sympathetic character. [...] This has made me feel resentful to...gender...a woman’s status in Judaism...but it’s we who are perverting it- the halakha. We are perverting it by making every other boy a rabbi, rather than just the elite learned and pious. This gives more and more power to men and a higher status who don’t deserve it and who are not worthy. By doing this we are also making the implicit statement that men may be the moral and spiritual leaders of the home, but that is not true in the Torah, nor it is historically accurate, it has always been the women”<sup>626</sup>.*

*“I had to deliver a cheque before I got my get and that was okay, that was not viewed as my receiving get in a way that was against my will as long as it would be given of his free will... I didn’t really want to say that I was ‘willingly’ accepting the get when the rabbis asked me that question at beit din. Because, in reality, I was unwillingly paying him off in order for him to agree to give me a get of his free will. It is hypocritical and ironic that his willingness in this sense was more important than mine to beit din. He would not be permitted to give me a get unwillingly and he would only agree to give it a get willingly if I paid him off, even though I would be doing so unwillingly. At the end of the day, I had no choice. [...] It was my most humble experience but it did feel very one-sided. I knew he was dating after the get was revoked and even after I got a letter from the beit din telling me I was not allowed to date since I was technically still married. He just went on with life, went to our friends’ parties and everyone believed him while I stayed home”<sup>627</sup>.*

*“It’s definitely gendered but what can we do? I understand halakha and I don’t challenge it, I don’t want to but I do hope that there could be unity amongst Jews to find halakhic solutions, especially for child-baring aged women”<sup>628</sup>.*

When asked pointedly about gendered experiences in our interviews, women often denied having such experiences or expressed hesitation in answering the question. I assume these women do not often think about their lived experiences in those terms. Most often however, women did describe gendered experiences and/or effects over the course of our interviews without framing them or perhaps perceiving them as explicitly gendered. Even within interviews,

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<sup>625</sup> B.F June 14, 2014.

<sup>626</sup> D.R. June 16, 2014.

<sup>627</sup> P.L. August 13, 2014.

<sup>628</sup> C.S. August 17, 2014.

women described conflicting accounts of support of men/rabbis and discrimination from men/rabbis based solely on gender, and often times not intentional or malicious but rather simply banal fallouts of an abuse perpetrated on women most often. In discussing the burdens of being a single mother without support, the gendered effects of *get* refusal emerged (although this is characteristic of many women going through contentious divorce). Women with sons particularly described how their status as a *mesurevet get* impacted their boys, who suffered in the religious ritual observance demanded of males without a present guiding male role-model; prayer with a *minyan*, or quorum, *kiddush*, or consecrating the wine on Sabbath, and *Bar Mitzvah*, the ceremony celebrating a boy's transition to manhood, often by chanting from the Torah.

Women described the gendered effects embedded in *siruv get*, such as the assumption that a woman must negotiate or barter for her *get* rather than be granted it unconditionally, as is required by *halakha*. Women made it clear that the requirement of their receiving the *get* of free will was negated, trivialized and disparaged by rabbis' enabling the extortionate demands and advising women to pay off their husbands in exchange for a *get*. Some also illustrated that the *get* itself is inherently gendered being that it is initiated by the man and placed into the woman's open arms. Consequently the structure itself is gendered or at least the structure enables men to use it as a tool of abuse. Women also described the gendered format of the *beit din*, where the woman was the only female in the room, surrounded by men and despite feeling safe, still feeling outnumbered. While women noted that they would not change *halakha*, and that individual rabbis were often supportive in one-on-one environments, women also recognized that it is communities' passivity that enables the gendered abuse perpetrated by men in their refusing a *get*. As the excerpts and analysis have shown, women's narratives describe a range of gendered experiences or effects navigating *siruv get*.



## Conclusion

Using the unconventional tools of *leitworts* or *milot manchot* as well as the patchwork quilt metaphor, I conducted a closer analysis of the narratives of *mesuravot get* in this chapter. These tools, supporting both a close analysis and a broader one (allowing us to ‘zoom in’ and ‘zoom out’) enabled previously unforeseen discourses to come to the fore and allowed space for women’s voices and experiences to be seen and heard, revealing that women refused a *get*, while heterogeneous in many ways, also share many commonalities and in fact can be seen not as passive victims but as active agents who are “law-creating and law-defining” in many ways.

The marked distinctions among ‘patches’ of the women’s narratives on the final three significant issues discussed in this chapter: best solutions for *get* refusal, impact on their faith in G-d, observance of religion, respect of rabbis, and gendered experiences or effects navigating *siruv get*, are noteworthy for multiple reasons. The distinctions explore patterns of the interactions between legal and normative systems in particular social sites, thus making space for women and their perceptions and experiences of state and religious law. Simultaneously, the differences among the narrative patches speak to the importance of analyzing narratives for both the similarities *and* particularities therein. The points of comparison and the points of divergence both allow us to peer into and better understand the multiplicity of experiences diverse women have of *siruv get* and the complex realities they are forced to navigate. Through the deep analysis done in this chapter, employing the *leitwort* and patchwork quilt tools, the women further demonstrate their roles as legal actors who can shape and produce law and legal norms as well as demonstrating the transformative power of narratives. Furthermore, through this comprehensive analysis, the principal contentions of this study become further established. That is, there are distinctions between Toronto and other legally plural communities. *Get* refusal is a form of abuse that potentially impacts all types of Jewish women but women do not necessarily blame or

abandon religion altogether, nor do all women necessarily considered their experiences to be gendered. Women endure abuses yet they are also their own best advocates when faced with *iggun* and are not solely defined by their victimhood. And ultimately, the narratives further allow us to consider to what degree civil/state remedies actually impact religious and social behaviours- both for better and for worse regarding *get* refusal. Thus, I argue, the narratives of women considered in this chapter are powerfully law-generating and law-defining and further build on the critical legal pluralist approach embraced in this study. Moreover, the narratives illustrated that although law reform has had some impacts, in its primary goal of changing behaviours in the most basic way- that is preventing *get* refusal altogether, it is clear from the women's narratives, that it has failed to impact social behaviour in that intended and most significant way. Perhaps in New York law reform has at least lead to a secondary goal, a greater willingness to speak openly and greater awareness having lead to collective consciousness raising, but even that secondary accomplishment is lacking in Toronto after and despite the legal regulation here.

Few women professed the virtues of any *get* law and there were mixed opinions regarding the positive impacts of other civil remedies. When reflecting on the excerpts regarding this point, it is possible that the quotes referring to Toronto illustrate that Canadian civil remedies have hardened the Toronto *Beit Din* in a way that is distinct from New York. While women expressed hope for the effectiveness of pre-nuptial agreements, they have poked holes too in its universal acceptance and effectiveness among all levels of observance. Consequently, when reflecting on the principal guiding question, to what degree civil/state remedies actually impact religious and social behaviours, the excerpts do not conclusively reveal either legal order to be the ideal venue

or schema for solving *get* refusal. In fact I contend that the diversity of narratives indicates that the best approach to solutions is also one of diversity.

The gendered stories of *siruv get* I analyzed in this chapter highlight the lived realities of *mesuravot get* and place their voices at the centre of the analysis. *Milot manchot* or *leitworts* and the patchwork quilt metaphor were effective methods in that although each story of abuse is staggering in and of itself, compounded over and over again, it has become undeniable that the underlying issue is the concealed conflagration of domestic abuse persisting unacknowledged in Jewish communities, particularly in Toronto. There are lessons to be learned here both by looking at the exceptional instances of egregious abuse in marriage, but also in the generalizability that emerges upon analysis of the repetitious patterns of the narrative patches. Women also had wide-ranging, particular, and distinct opinions as to best solutions; regarding religion, rabbis, and rabbinic courts; and even gendered experiences and impacts. To be clear, I am arguing that we need to see that particularity, not solely the exceptionality - meaning each story is unique and distinctive but together these stories are not so rare, infrequent, sporadic, or uncommon that the phenomenon and experiences of *get* refusal should be considered altogether exceptional. Each story ought to stand alone, and be distinct, but also allow us to make generalizations across stories, while simultaneously reinforcing that *get* refusal is a unique phenomenon yet not too unique or rare, that it happens everywhere and to anyone.

## **Chapter Six - The Batting of the Quilt: Investigating Overlooked Aspects of Get Refusal**

*Everyone in this 'business' is liars.*

*Mendel Epstein, you know the famous rabbi who was just arrested, worked with me for 1 year before his arrest. I had faith that he'd help, but he didn't help me either and now he's gone. He wanted to transfer my file from New York to Israel in the hopes that the beit din in Israel might put more sanctions on my husband but that got schlepped along for a year and we were just about to move forward and he goes and gets arrested. Epstein's rate was \$500/hour but when someone really didn't have the money, like me, he didn't take that rate- he charged her very little for the entire year. When you think about it, lawyers could take the same rate and not get your get, so really, if he's providing the service, why shouldn't he charge for it? I don't blame him, but why did he have to go and leave me like this? What do I do now?*

*It was not a good marriage from the beginning. We have 5 kids, I'm the only one making parnasa. I never did anything against him or without him.*

*After we married, we moved to Israel so my husband could learn in the Ger kollel and we lived there for 7 ½ years. We only moved back to the States because my son needed therapy.*

*I had gone to rabbis for counseling and I wanted him to go too. We went to a marriage counsellor finally and then it turned out he was going alone and I found out that he had been trying to manipulate counsellor against me despite the fact that he's a pathological liar.*

*He has the best lawyer. I'm not sure where the money comes from to pay the lawyer though. He portrays himself, and perhaps even really dillusionally views himself as a 'nebach' case, the victim in all this who has been wronged by his wife. He claims I've gone modern because my sheitel is a few inches too long and I drive, but how else am I supposed to take care of 5 kids?!*

*After 4 years of waiting around without doing anything against him or for myself to be freed, due to community pressure and because of my lack of funds, raising 5 kids alone, I finally went to Epstein and he schlepped me around for a year.*

*Previously I had gone to rabbis who all said I should stay with my husband. I've been waiting for a get for 5 years.*

*It's not fair. I'm supporting his 5 kids. He's not a mensch.*

*Even in beit din, everyone is thinking about him versus me- the two sides, nobody was thinking about the kids. You know, in civil court, sometimes the judge appoints a lawyer for the kids- I think that's smart, I wish that would happen in this case and that beit din would do that too.*

*Marriages have to have an expiry date – if a couple is separated for a certain period of time, there needs to be an automatic get.*

*It's funny because the only solution we have for the problem of get refusal is from the middle ages and they (the rabbis) are so busy with internet, with all the new stuff they want to control or monitor rather than making the old stuff new again.*

*Secular civil remedies won't work in my community- it's good for the more modern people. (I asked her what will work?) Nothing will work. Ger is the hardest place, the hardest community. Ger is very sexist, women basically don't exist. It's such a weapon that they have. It's just regular human rights. We shouldn't have to explain to anyone why we want a get. The Torah says we have to push geirim away three times, but that's not true for the get! I find myself asking "why am I in a religion that's working against me? And even more so, why am I bringing up my girls in a religion that won't protect them? The hardest part is the rabbis.*

*I wonder, do you know the average length of time women are agunos and what do you think are solutions? ...*

*Will I get the prenuptial agreement if I ever get married again? Definitely, even though it's not done in my community, and I wouldn't let my daughter get married without one!*

*By the way, do you know what the hardest day is? The holiday of Passover because it's totally within peoples' hands to change this and nobody is. How can I celebrate freedom when I myself and not free?*

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*I almost forget to think I'm divorced*

*We met in the Bukhari community. He was from abroad, and I was a baal teshuva.*

*I felt communal pressure to marry, but not really from my parents who were not too religious.*

*We married in March 2010.*

*Looking back, I can see now that there were red flags, but I ignored them and got married anyway.*

*I guess the Jewish notion that 'you can make it work for shalom bayit' and that 'it's up to the woman' played a role. I was naïve and I believed it. Maybe it was 'baal teshuva syndrome' you just believe deeply that everything's gonna work out.*

*Our wedding was really great, people still say what a great wedding it was, but immediately, the next day it got bad.*

*He was controlling and lacked emotional intelligence. He was manipulative, took out his rage on me, blamed me for things. It's a terrible comparison to make but it was kind of like my own Holocaust in that I totally didn't see it coming and I couldn't believe I was in that situation with nowhere to go.*

*He really had lots of control issues. He treated me as sexualized body, using my past against me, saying that my family and I are worthless.*

*He started to control where I went, what I did, who I spoke to he would say things like, "I suggest you should..."*

*I felt completely alone and I tried not to involve my parents since they were more modern, not religious and wouldn't understand.*

*Now I think that you can only be subjected to control when you have some weaknesses...*

*There was a cycle of abuse. He left after a fight wanting a break, then we got back together and he was very charming, then it happened again. Finally he agreed to go to a Kabbalistic rabbi. I had begged him to try anything even to go to such rabbis but then the rabbis said "it's not time for divorce yet" ...*

*He racked up debt of 100 grand, told lies, got paranoid, blamed others.*

*I got pregnant and he was better for a while but things got bad again and I lost the child. Worse, he genuinely felt he was victim; that I did him wrong.*

*He wanted to use this Charedi beit din in Boro Park and they asked me, "Why should he give you a get? It's his right so what are you going to do about it?" I felt like it was just about the money, a business. It's not the rabbis you think of...He was extorting me for the get and they were enabling it.*

*He called me names, stalked me on Facebook, and left incessant messages on my phone. He had irrational views and demands, and didn't admit his wrongs. He was malicious. I needed orders of protection because I felt unsafe and unprotected.*

*Lawyers, mediators, rabbis who were awful and dropped me- ORA really helped me.*

*When I arrived at beit din, September 24, 2013, I announced to the rabbis, “I’m here to buy a get”!*

*I felt judged because I was not really a part of the community- my family not being religious- maybe a non-charedi beit din would have treated me better and gotten me my get sooner. Is it gendered? Absolutely! Women should at least be heard but also have control over bodies and futures.*

*I lost my naiveté; I had lots of resentment. I learned the important lesson not to base religion on people- not my ex, his family, or rabbis. Religious people are not necessarily good or honest, just because they are religious. I base my religion on Halacha now, not on people. Rabbis are just people.*

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*We got married in Sept 2011. In June 2012, we separated- on the 30<sup>th</sup>, a Tuesday, after a terrible weekend. I changed the locks. He thought it was an empty threat, but I did it.*

*I asked for the get numerous times. On Dec 24<sup>th</sup> I got my get through mediation with rabbi B.*

*There had been verbal, emotional and then a couple of incidents of physical abuse. There were Threats, I had fear. I had restraining order against him in place. On Jan 10<sup>th</sup> 2013, a Thursday, there was an incident. I found out he still had key to building/garage. I filed a police report, and because of the order of protection I had, police had to arrest him and lay charges. He had been stalking me leaving threatening messages, leaving notes on window sills.*

*Later, on November 13, 2013, I got a letter from the beit din, nullifying/revoking the get- after about 1 year of divorce and a year and a half of separation. I was told that this was unheard of in any beit din worldwide; none of them revoke gets.*

*I felt like the civil law and religious law were at odds...*

*In February, on Purim, we both wound up at the same party. He legally was supposed to leave, even if he was there 1<sup>st</sup> (which he wasn't) and he did not leave. I knew something bad would happen. Sure enough he began to cause a scene. He started to rant and rave about 'how he was so happy not being married to such a terrible person' - even though we both knew technically he still was married to me, the terrible person, because we both knew the get was revoked.*

*I believe that the Toronto Beit Din believes in extortion. He wanted \$7000 for the 2<sup>nd</sup> get in order to pay for criminal lawyers needed after I called police on him and they laid charges. He also wanted me to delete evidence I had against him- photos and recordings proving his abuse, rage, etcetera. It was definitely get extortion, and definitely speaks to clash between civil and religious legal systems...because the beit din didn't seem to care about my need for a restraining order.*

*I had to deliver the cheque before I received the get, and that was okay, but going for a support order was viewed as not okay, as contrary to Beit Din ...*

*His dad is the real crazy one, it was all driven by him, more so than my ex. He threatened the Beit Din, made stink all over city. He threatened the Beit Din that he'd go to the media, he told lies about me and my family... My family and I didn't say anything, we were very private.*

*To have to pay your abuser is another form of abuse and another form of control. I did not want to say that I was "willingly" accepting the get because I was unwillingly paying him off in order for him to give it to me. It is hypocritical and ironic that his willingness in this sense is more important than mine to the Beit Din - he can't give a get unwillingly and will only give it willingly if I paid him off which makes me then unwilling...*

*At the end of the day, I had no choice. I believe they revoked my 1<sup>st</sup> get 100% because I went to police. They didn't care at all about abuse, they forced me to be in the same room as my abuser, despite legal restriction on this, and even mocked me about this saying 'don't worry, no one will be calling the police here'.*

*I would have used civil amendments but I heard the Beit Din finds the civil as conditional due to amendments which impose a time frame or 'penalty' in exchange for a get – ironically though, it's still conditional because it was predicated on him first receiving \$7000 from me.*

*It was my most humble experience. I felt betrayed by people who are supposed to be the holiest in the community. My needs were not important, I was never asked why I went to the police. No one ever asked if I was okay; if I was safe. I was silenced- by the Beit Din - no one even called me to meetings, they called my proxies- brothers and my lawyer.*

*I lived in fear for the first 6 months after the get was revoked and I was really hurt. It's very offensive that so many young girls, our age supported him and continued to socialize with him.*

*It felt very one-sided. I knew he was dating, he just went on with life and everyone believed him, but in the letter I got from the beit din telling me my get was void, it also said I could not date.*

*I want you to know:*

- 1- I got divorced because of abuse – and this was just another form of abuse- another form of control, refusing to give me a get.*
- 2- Communal silence is a whole other form of abuse I had to endure.*

*Therefore problems in Toronto are abuse, and communal silence, and Beit Din's actions or inactions. I wasn't counted as a person with my own voice; I was talked to through men- they even complained to my brothers at the Beit Din that my hair wasn't covered!*

*All this leaves me questioning...The halacha is archaic but a true believer will be okay with that- with archaic halachic principles- but, leaders must step up. They must acknowledge get refusal is a form of domestic abuse, it's about how individuals use halacha. Also, if we are going to be real about it, the bigger picture is that rabbinic leaders refuse to acknowledge that there is abuse within their communities' altogether. Domestic abuse is the untold norm!*

*It was a long process, but it was healing in the end.*



Once again, the narratives opening this chapter demonstrate the diversity of the women refused a *get*. However, what is particularly noteworthy is that the narratives here also hint at hidden aspects of *get* refusal upon which I elaborate herein. Specifically, each narrative draws on terms or concepts existing within Judaism which, when misconstrued, help to sustain abusive relationships. They illustrate the pressure felt by women to get approval of rabbis or community leaders before leaving abusive spouses as well as the shame, guilt, and responsibility individual women feel when a marriage breaks down, particularly due to the concepts such as *shalom bayit*, a peaceful house, among others. These participants also insinuated that they have become social pariahs within their communities for speaking out about, or even just for actively attempting to navigate being refused a *get*. This aspect of the narratives speaks to another issue underpinning *get* refusal, the potentially effective remedy of shaming recalcitrant husbands. The final story in this trio, from a Torontonion woman, also indicates the degree to which domestic violence may be intertwined with *get* refusal although it is not often understood in such terms in the existing literature or even amongst scholars, activists, and feminists.

Picking up on my previous discussion, in this chapter I analyze unexplored issues that underpin the issue of *get* refusal. That is, I will explore themes and tactics chosen by those who are trying to confront *get* refusal. I reflect on visual representations associated with *get* refusal (and how they portray women as slaves), the use of social media by *mesuravot* *get* to assert their agency in galvanizing *kherem* or ‘e-shaming’<sup>629</sup>, and I examine *get* refusal as a named site of

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<sup>629</sup> E-shaming has never been used in the context of *get* refusal, or *agunot*, though it has been employed in other contexts, such as shaming criminals, particularly those who have committed crimes against women and children. In this context I am defining e-shaming as the interaction between *get* refusal and technology wherein the use of technology helps to remedy instances of *get* refusal by shaming recalcitrant husbands

domestic abuse which is bolstered by abusive men manipulating a lexicon existing within Judaism and the normative cultural assumption that a *get* can be negotiated. While these aspects of *get* refusal may seem at first glance to be disjointed, in reality these are all facets of *get* refusal which have been eschewed in the existing literature. These aspects of *get* refusal are understudied if not altogether overlooked- both by the socio-legal literature addressing *get* refusal, as well as the literature by Jewish scholars, including feminists. They are connected in that they have been absent. Thus, I bring them to the foreground in this chapter, linking these seemingly disjointed components of *get* refusal, rather than continuing to conceal or repress these analyses.

In fact, my image analysis of the visual representations and the shift toward ‘e-shaming’ will directly link to my subsequent examination which sees *get* refusal as a form of domestic violence that is supported by normative cultural assumptions and terminology. Thus, not only have these facets all gone unexplored, but my exploration of one of these facets lead me to the (re)affirmation of the (need for the) other. To clarify, my analysis of the visual representations of *get* refusal and the use of social media further exposed the profundity of the abuse of *get* refusal. Conversely, framing and understanding *get* refusal as a site of domestic abuse reaffirms the need to employ ‘e-shaming’ not only as a potential remedy to *get* refusal itself, but also as a tool for empowering women who have experienced the abuse of *get* refusal; it has dual corrective power. The ensuing analysis furthers and deepens the plural objectives of this research by empowering women, ‘voicing their void’<sup>630</sup>, and by considering the extent to which internal (religious) social

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<sup>630</sup> Sara R. Horowitz, “Voicing the Void: Muteness and Memory in Holocaust Fiction,” (New York, NY: SUNY Press, 1997). In her study, Horowitz notes that where silences exist, they represent a both a difficulty in saying something meaningful about a trying issue or event and a difficulty about the issue/event in and of itself. In this context, when we allow women to voice their void regarding *get* refusal we are attempting to acknowledge both these aspects.

norms have been impacted by state legal reforms (thereby also demonstrating the potentially transformative power of grassroots efforts to impact both social and legal change).

### **Representation Analysis: From Images and Wanted Ads to ‘E-Shaming’**

Inspired by Rae Anderson’s, piece in *Ethnographic Feminisms: Essay in Anthropology*, titled “Three Voices”<sup>631</sup>, this section will draw on an analysis of images of *get* refusal used in an array of circumstances; namely: images used by advocacy groups, posters at rallies, and newspaper and social media advocacy/advertisements. Here, I will pick up on my earlier discussion of ‘wanted ads’ of men 100 years ago and connect them to similar contemporary images, I will consider a rebooted, re-imagined *kherem* through social media ‘e-shaming’, and I will illustrate how social media has become a platform whereby *mesuravot get* can assert their agency. Consequently, this analysis will also elaborate on a few ‘bottom up’<sup>632</sup> remedies available to respond to *get* refusal, including community organized grassroots initiatives.

I will begin by exploring an unexpected and often ignored site of analysis that has not been previously analyzed - and that is the representations of *get* refusal. I use the word ‘representations’ in a broad sense, to include pictures, descriptions, or accounts of someone or something specific, the collection or description of somebody or something specific, or a set of recognized images in a particular field of activity, including social media. This exploration will underscore a way in which women are silenced and have been portrayed as passive. Furthermore, regarding my consideration of the question ‘to what extent has law impacted social norms’, the

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<sup>631</sup> Rae Anderson, “Engendering the Mask: Three Voices,” in *Ethnographic Feminisms: Essay in Anthropology*, ed. Sally Cole and Lynne Phillips (Ottawa, ON: Carleton University Press, 1995). Their piece does not privilege one form of knowledge and they tell the same story in three voices- through images, through stories, and through a scholarly analysis.

<sup>632</sup> That is the ‘non- official’ or grassroots approaches to remedy *get* refusal that do not rely on the official legal mechanisms of state or Jewish law.

“massification”<sup>633</sup> of the representations, that is the persistent scale portraying *get* refusal, indicates that to some degree, top down approaches<sup>634</sup> to remedy *get* refusal alone have not sufficed and that women are erroneously portrayed as helpless, shackled, victims, much like slaves are depicted. Through analysis I illustrate that grassroots efforts are still a necessity and that legal reforms have not impacted social norms in a sufficient way so as to negate the need for the massification of representations by solving the issue because culture has been more forceful and potent.

### **Images**

Fuyuki Kurasawa, in the context of contemporary forms of slavery, developed a model for analyzing the images depicting slavery. Inspired by his methodology, I adapt his comprehensive model here to some extent for analysis of *get* refusal. Interestingly, often the images used in *get* refusal advocacy invoke that of slavery or chattel- that is, shackles handcuffs, chains or anchors. Recall that the word *agun* in Hebrew translates literally to ‘anchor’. Consequently, women without a *get* (whatever the reason) are considered anchored, chained, or shackled to their unwanted marriages, unable to escape and move on with their lives freely. One woman told me, “*I felt like a slave*”<sup>635</sup> and Alan Dershowitz expressed at the 2012 Aguna

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<sup>633</sup> Fuyuki Kurasawa, “Show and Tell: Contemporary Anti-Slavery Advocacy as Symbolic Work,” in *Contemporary Slavery Popular Rhetoric and Political Practice*, eds. Annie Bunting and Joel Quirk (Vancouver, BC: UBC Press, 2017). While Kurasawa uses ‘massification’ as the illustration of the scale of slavery by portraying an undifferentiated group of enslaved subjects” page 3, I am inspired by his use of the term and the connections between the representations of slavery and *get* refusal. Consequently, and with his study informing this analysis, I adapt the term more literally- implying that the massification of the representations themselves have been an indication of the persistence (and to some degree the scale) of that which they portray. In other words, it is not only that the representations portray a large undifferentiated group of women refused a *get*, although, that is also accurate to some degree, but rather I focus here on the volume of representations – the ongoing massification as indicative the significant persistence of the phenomenon and the meanings that might be drawn by the similar representations.

<sup>634</sup> That is the approaches of the ‘official’ legal systems, whether they be the state-run or internal, Jewish legal systems.

<sup>635</sup> S.L. October 23, 2013.

Summit, “*let us not mince words, agunot are modern day slaves*”<sup>636</sup>, both echoing the same sentiment, that women refused a *get* are unable to make basic choices about their lives and their destinies, much like slaves whose decisions are understood to be made by their owners/masters. Moreover, the right to marry and divorce has been a principal issue taken up by CEDAW<sup>637</sup>. Some feminist critics of Jewish marriage claim that the *kinyan* requirement is a *halakhically* mandated way to ‘own’ a wife, similar to chattel<sup>638</sup>. It is intriguing that slavery or chattel are used as the comparators to *get* refusal. Indeed slaves and *mesuravot get* have been similarly depicted as victims without agency, or even identity. It is this vein I rely on Kurasawa’s model of analysis for slavery iconography and (liberally) adapt it to analyze various representations in the field of *get* refusal.

Rather than assuming *get* refusal is a ‘bad’ phenomenon existing in society “whose self-evident status as a morally abhorrent fact serves as an unquestioned point of analytical departure”, I will examine some of the images through which advocacy groups produce such a construction as a moral evil against which public opinion can be mobilized and steps can be taken to prevent or stop the phenomenon’s persistence<sup>639</sup>. Understanding how the evil of *get* refusal is formed as a public ‘wrong’ is interesting because the images/representations are virtually identical across time and place, despite diverse contexts- social, political, historical, etcetera.

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<sup>636</sup> Alan Dershowitz, Keynote Address, (presentation at *The Agunah Summit*, New York University Law School, New York, NY, June 24, 2013).

<sup>637</sup> As was noted by Ruth Halperin-Kaddari, member on the expert committee of the UN Committee on Elimination of all forms of Discrimination Against Women (CEDAW), though she was speaking more in her capacity as academic rather than UN representative (if the two can be cleanly severed). Ruth Halperin-Kaddari, “Call to Action” (presentation at *The Agunah Summit*, New York University Law School, New York, NY, June 24, 2013).

<sup>638</sup> For example, Rachel Adler, *Engendering Judaism: An Inclusive Theology and Ethics* (Boston, MA: Beacon Press, 1999).

<sup>639</sup> Fuyuki Kurasawa, “Show and Tell,” in *Contemporary Slavery Popular Rhetoric and Political Practice*, eds. Annie Bunting and Joel Quirk (Vancouver, BC: UBC Press, 2017), 1.

Having examined hundreds of images, I grouped them together based on the “visual tropes” I identified<sup>640</sup>. The images are evocative at times and “harness power to gain socio-political traction”<sup>641</sup>. The vast majority of the existing images (which are used by advocacy groups) are of women’s hands in shackles, handcuffs, or tied and constrained in some way (see images 1.1-1.9 at the end of this chapter). The women’s faces and bodies are not shown (much like the images Kurasawa analyzes in the context of slavery). This portrayal makes this issue both simultaneously unrelatable and yet a universal phenomenon. On the one hand, by showing only hands it may be difficult to elicit empathy, after all, if this issue is faceless, one might ask, who does it impact? Moreover, showing only the cuffed hands of women portrays them as “suffering, enslaved subjects”<sup>642</sup> passive captives, victims, unable to assert agency by navigating their way through the complex web of normative legal and social orders, which of course, is contrary to my empirical evidence. While perhaps this design “cultivates moral revulsion and outrage among viewers”<sup>643</sup> and is consequently effective, “women’s agency is central to the practices of feminist advocacy” and yet ironically, as with the massification of this first visual trope, much of the feminist advocacy uses imagery that portrays the very opposite- that is, women’s passivity, their victimhood and subjugation<sup>644</sup>. On the other hand, consider that the manacled hands could belong to anyone, and potentially any Jewish woman *is* at risk. I believe the massification of these types of images, this particular visual trope, *should* emphasize the universality of *get* refusal and its interdenominational impact and that is in fact an powerful impact of the trope.

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<sup>640</sup>Fuyuki Kurasawa, “Show and Tell”, 3.

<sup>641</sup> Ibid, 2.

<sup>642</sup> Ibid, 10.

<sup>643</sup> Ibid 10-11.

<sup>644</sup> Andrea J. Nichols, *Feminist Advocacy: Gendered Organizations in Community-Based Responses to Domestic Violence* (Plymouth, UK: Lexington Books, 2014), 12.

The second category of images portrays the shackles or manacles breaking open, freeing the woman's hands (images 2.1-2.3). Massification of these images is not nearly to the same degree as the previous icon; far fewer exist. These images are interesting though in that they evoke a different reaction. While the previous icon elicits sadness, anger, despair at an abuse with no end in sight, moral indignation at an immoral abuse; this image elicits hope, optimism, renewal and a restored sense of justice. That said, the images do nothing for the accurate portrayal of women. They are still face-less and body-less, and consequently still problematically represented as silent and passive.

The third and fourth representations or iconographic tropes or are sloganed posters and rally posters, both used as part of advocacy efforts by organizations (images 3.1-3.8 and 4.1-4.14). The latter always have the same format and include the picture of the recalcitrant spouse and/or a picture of the formal, rabbinic *seruv* or order of contempt which 'officially' allows for *kherem* manoeuvres, a few key facts of the case, including the length of recalcitrance. The similarity to the 'wanted ads' in the *Gallery of Vanished Husbands* from *The Jewish Daily Forward* in the early 1900s will be elaborated below<sup>645</sup>. These ads are publicized by social media campaigns on Facebook and other forum, and email blitzes by advocacy organizations which organize rallies, most often ORA. The former include slogans like: "When one is in chains, we are all bound", "Every *Aguna* is my sister", "*Get* refusal=domestic abuse", "Shame on you, stop the abuse", etcetera. The only slogan with the explicit goal of empowering women states, "*Agunot* of the world unite, you have nothing to lose but your chains". These slogans are significant for a number of reasons. They invoke community, they associate *get* refusal with

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<sup>645</sup> Indeed there are examples from even earlier, as Professor Haim Sperber's research illustrates. Including those from *Hamagid*, a Hebrew newspaper circulated throughout Europe. Sperber notes in particular examples from Warsaw in 1866 and Bucharest in 1873. Haim Sperber, "Agunot in Eastern Europe and North America, 1900–1914: Sources and Narratives" (presentation at Hadassah-Brandeis Institute's Spring Seminar Series on New Approaches to the Agunah Problem, Brandeis University, Waltham MA, February 4th, 2015).

abuse, and they invoke shame. I will discuss them briefly here and will expand on their significance further below. The first two slogans are a communal call to action and lay responsibility at the hands of community. This is significant in that women often described their solitude and having no sense of communal support in my empirical interviews. The third slogan, associating *get* refusal with domestic abuse is imperative to advocacy movements and ORA has led this charge. The significance of this association is plural. While there is greater acknowledgement within Jewish (observant) communities that domestic abuse exists and is a harm that ought to be contained, this acknowledgement does not extend to *get* refusal. Consequently, framing *get* refusal as a form of domestic abuse is a smart, strategic move, making it difficult for communities to (continue to) ignore. Framing it as domestic abuse also puts the onus on the recalcitrant in a way none of the other iconographic tropes have done and moreover, shame as a strategy to impel the recalcitrant is invoked, hearkening back to the traditional *kherem*, a method of persuasion employing shaming, ostracism, and even excommunication or banishment. The final slogan interestingly empowers women refused a *get* and encourages them to self-identify in order to unite and build a community and support network. Consequently this slogan is not only unique in that it empowers women and is explicitly for the *mesuravot get*, contrary to the other representations, but moreover, it is a call to action for the women to sound their silences and use their agency to empower the larger group.

Like in Kurasawa's analysis, I have not offered here a comprehensive analysis of every visual representation of *get* refusal, for that would be far beyond the scope of this chapter. I examined hundreds of images and grouped them into the most common visual tropes or categories of images, which gives a good sense of the current trends in the field more broadly. Using Kurasawa's model and adopting a "culturally-attuned critical sociology enables us to gain



a fuller understanding of the oft-neglected symbolic work that underpins” *get* refusal activism<sup>646</sup>. It is crucial also to note that while the visibility of the representations in and of themselves are positive, when women are “positioned as passive victims awaiting rescue” there are troubling gendered narratives that percolate into the important “pictorial campaigns”<sup>647</sup>. What is revealed through this analysis however, is the striking reality of *get* refusal as a form of abuse (wherein women are chained, unable to assert their freedom).

### **Wanted Ads**

Apart from the four visual tropes emerging from the images associated with *get* refusal, other significant representations of *get* refusal are prevalent ‘in the field’- both in print and online/ on social media- and those are lists of *seruvim*, or orders of contempt published in popular Jewish Presses as well as the Israeli Rabbinic Court’s wanted ads, and specific social media campaigns for particular *mesuravot get* (images 5.1-5.3). Although some might consider listings to be a different class of subject, I include the listings in this analysis of diverse representations nonetheless being that they are a comparable symbolic feature. Akin to the previous images, the listings too have become potent representations of *get* refusal (that are often accompanied by images as well). And, because the modern-day representations so clearly harken back to the images of ‘wanted ads’ from 100 years ago in the “Gallery of Vanished Husbands” featured in *The Jewish Daily Forward*, it would be remiss not to pick up on our earlier discussion. The modern-day stream of images of men who have absconded from marriages figuratively rather than literally, are more than reminiscent of the 100-year-old wanted ads, they are a re-imagined, rebooted version. Although the “Gallery of Vanished Husbands”

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<sup>646</sup> Fuyuki Kurasawa, “Show and Tell”, 2.

<sup>647</sup> Ibid, 20.

dealt with the ‘classic’ *agunot*, whose husbands were missing and thereby unable to grant them a *get*, similar methods are being used today to deal with *mesuravot get*, women who are not ‘simply’ abandoned, but are openly refused a *get* by recalcitrant men whose whereabouts *are* known. As a means of grassroots storytelling, these images are meaningful in that they do often elicit social or at times even legal transformations (rather than legal regulation leading to normative social reform). But, on a simpler and yet significant level, these representations are meaningful even without transformation, but in their mere existence in the public realm, raising awareness and insisting that the problem persists.

The list of *seruvim* appears weekly in Jewish news media, in particular *The Jewish Press*. They may also be publicized within communities, posted in Jewish establishments and synagogues and disseminated widely via social media. The listing includes the husband’s name, city, the *beit din* that issued the *seruv* and the year in which it was issued. There is also disclaimer that each person included on the list has either withheld a *get* upon being ordered to grant one (by a *beit din*) or has refused to appear before a *beit din* in matters pertaining to a *get*, or for otherwise failing to follow the orders of the *beit din* in matters pertaining to a *get*. The disclaimer also refers the public to sources for consultation regarding how to treat the men listed, who are *mesarev l’din*, refusing to submit to judgement. The Israeli Rabbinical Court’s webpage which features their ‘wanted ad’ similarly features pictures and some biographical information about the men refusing *gets*, but it goes even further. Because family law is under the purview of the rabbinic courts, this webpage is a tab on the rabbinic court’s site which also features an entire investigation bureau whose task it is to search the world for the absconding husbands. The tab, titled, “wanted pages” includes pictures of the men and a plea to the public, “the administration

of the *beit din* requests the help of the public ... If you have details that aid in the capture of one of these *get* refusers please fill out a form and you can help release an *aguna*”<sup>648</sup>.

There are also individual websites and Facebook pages set up for particular *mesuravot get* (images 6.1-6.5). The websites, comprised primarily of images telling a story of *get* refusal, also include information about the recalcitrant husband and the conditions of the *seruv* along with links to legal documents to support their claims, and also often including personal information having to do with the wife and children and at times also information about the husbands’ family and/or supporters<sup>649</sup>. The websites, hashtags, and Twitter pages such as: [freelonna.org](http://freelonna.org), [freegital.com](http://freegital.com), #freeadina, #Tweet for Freedom, #freehernow, @Eli\_Shur\_, and others, are powerful representations of the women’s journeys, proactively navigating plural legal systems, while concurrently being abused and controlled by their husbands in the form of *get* refusal. ORA, who often helps women establish these campaigns has said, “we want their names and faces to be known throughout the United States and worldwide, so they can’t escape or hide in another community, that his back will be against the wall... We aim to make them so famous, they can’t slink away change their names and continue their abuses toward their families”. As a result, some of the YouTube clips have had 68,000 views while some websites have had 14,000 hits<sup>650</sup>, publicising the men who have chained their wives to unwanted marriages. The *seruv* listing, the wanted page on the rabbinic court’s website, and the individual websites for particular *mesuravot get*, are three examples of noteworthy representations prevalent in the field of *get* refusal.

The ongoing use of these diverse publicized representations is symbolic and the significance of their perpetuation is threefold. The *seruv* listings, wanted page, and individual

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<sup>648</sup> <http://rbc.gov.il/Wanted/Pages/default.aspx>.

<sup>649</sup> Often, a condition of giving the *get* is the removal of these websites and other social media.

<sup>650</sup> Email correspondence from ORA, January 7, 2016.

websites, despite being different mediums, each make the *get* refuser known, while illustrating the willingness of some communities to acknowledge the persistence of *get* refusal and challenge it publicly, in newspapers and online. This highlights a marked distinction, particularly between New York, which has the highest readership of *The Jewish Press* and where the Organization for the Resolution of Agunot (which helps some women with setting up websites) is most active, and Toronto, which has no public notification system in place regarding *seruvim*, and has no community support organization in place to advocate for *agunot*. The representations additionally illustrate that the phenomenon persists, despite the available pluralist remedies at hand (including in the New York context, the New York *get* laws, the *Domestic Relations Law*, and prenuptial agreements, and in the Canadian context, the *get* amendments to the *Divorce Act* and *Family Law Act*). The representations are also significant in that they chronicle the stories of particular instances of *get* refusal, illustrating the sustained utility and persistence of telling the stories of *get* refusal as well as exposing the reality that *get* refusal is in fact a form of domestic abuse.

These three representations have much in common with the *Gallery of Vanished Husbands*, noted above. The analysis here, will elaborate and explain the similarities in greater detail, and will elucidate the significance of the parallels. The *Gallery* is fascinating in that it brought the issue and the faces of deserters “compellingly into the broad public arena”, telling stories and biographies of individual men and the circumstances under which they disappeared<sup>651</sup> (image 7). I should note that ads were most often placed by Jewish social service organizations trying to find the men no longer supporting their families (and in order to alleviate the great drain the phenomenon was having on the agencies themselves). Similarly, the *seruv* listing and wanted

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<sup>651</sup>Bluma Goldstein, *Enforced Marginality: Jewish Narratives on Abandoned Wives* (Berkeley, CA: University of California Press, 2007), 92-93.

page particularly mimic the *Gallery* being that they too are often updated by social service agencies or rabbinic courts and by including minimal biographic information about the absconding or *get* refusing husband as well as a photograph. However, the individual websites telling the stories of individual women also share similarities. At the time the *Gallery* was published in the *Jewish Daily Forward*, it had another feature in contrast to the *Gallery* which was often the front page feature. Running in tandem to the *Gallery*, the *Bintl Brivs*, or *Bundle of Letters*, were letters to the editor which notably ran as responses to the *Gallery*, and were featured at the back of the section. The *Bundle* featured letters from abandoned, silenced wives in contrast to the *Gallery*, which only introduced the men. These letters filled in the gaps of the men's stories featured in the *Gallery*, being that they were written by the women or even their children at times, often describing their shame, abuse, anger, love, needs and destitution<sup>652</sup>. These letters demanded that women's voices and stories be heard and that *their* needs and experiences be known by the community, just like what is being accomplished through the popping up of websites and twitter pages. What is noteworthy, is that the letters, like the use of social media by *mesuravot get* are a means of 'talking back', of the women moving from the margins to the main stage and affirming that women are not only passive victims of this form of abuse, as they were, and are often still portrayed, like in the images of shackled hands, but rather they are simultaneously, active agents as well. It is in this vein that the individual websites harken back to the *Gallery* and the *bintl brivs*. Comparing the modern-day representations: the *seruvim*, the wanted ads, and the social media movement by individual women to the to the representations of the past is significant because the *Gallery* and the *Bintl Brivs* together reflect

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<sup>652</sup> Bluma Goldstein, *Enforced Marginality*, (Berkeley, CA: University of California Press, 2007); Anna R. Igra, *Wives Without Husbands: Marriage Desertion and Welfare in New York, 1900-1935* (Chapel Hill, NC: University of North Carolina Press, 2007); Isaac Metzker, Ed., *A Bintel Brief: Sixty Years of Letters from the Lower East Side to the Jewish Daily Forward*, (Garden City, NY: Doubleday, 1971).

the powerful remedy resurfacing today of voicing the voids of the marginalized while *simultaneously* adapting the traditional remedy or social pressure of *kherem*.

### **E-Shaming**<sup>653</sup>

The contemporary *kherem* emerging from the varied representations is a renewed version of the traditional mechanism to pressure or shame a husband to grant a *get*, using what I would like to call, ‘e-shaming’. E-shaming is the interaction between *get* refusal and technology wherein the use of technology helps to remedy instances of *get* refusal by shaming recalcitrant husbands. While this nexus is not novel, as our analysis of the *Forward* (which used the technology of the day) illustrated, the use of the technology, is an innovative take on remedying this challenging, deep-rooted phenomenon (one which persists despite legal regulation). In this digital age, the interaction between *siruv get* and technology has only intensified as we have moved on from solely poster-ing communities or setting up rallies (though these are still important facets of *kherem* that must persist). E-shaming is a constructive and effective strategy, another grassroots approach to induce husbands to grant *gets*, despite their desire to control their wives by refusing the *get*. The reason e-shaming is so beneficial, more so than other grassroots remedies, is because it cuts across boundaries and networks of affiliation that exist in the real world. One of the major critiques of traditional *kherem* is that recalcitrant husbands can move to a new community or join a new synagogue pretty easily in contemporary times, leaving their bad behaviour behind them. Thus, the effects of the *kherem* are not nearly as severe or impactful as they were centuries or even decades ago, when moving was far more onerous and expensive and

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<sup>653</sup> Dan Kahan, legal studies scholar famously discusses alternative sanctions such as shaming- first advocating strongly for them, then offering some critique upon reflection. First, Dan M. Kahan, “What do Alternative Sanctions Mean,” *University of Chicago Law Review* 63, (1996): 591- 653. Then, Dan M. Kahan, “What’s *Really* Wrong with Shaming Sanctions,” *Texas Law Review* 84, (2006): 2075-2102.

congregations were not as prevalent. E-shaming reverses this effect. Using social media to shame and shun husbands makes it extremely difficult for recalcitrants to simply move on, despite the ease with which they may physically move away or find a new synagogue. The free flow of information makes it so that the husband too is chained to his choice to chain his wife. Markedly, approaches to *siruv get* have transformed under the sway of new developments to a broad array of social media.

Yoni Goldstein, editor of the *Canadian Jewish News*, wrote in his ‘letter from the editor’ on “The Media’s Role in Helping Agunot”, that he had recently met a woman whose husband was refusing to grant a *get*. He asked how he could help, and she asked for him to help her get her story into the Israeli news media because, “*she hoped the media might be able to shame her husband into freeing her*”<sup>654</sup>. Goldstein believes, “*if the media and the Internet can be harnessed to further this agenda, that can only add another powerful weapon in this essential battle*”<sup>655</sup>. *The Times of Israel* Blog<sup>656</sup> also recently featured a post by Osnat Sharon, rabbinic court advocate with Yad L’Isha<sup>657</sup> on “Using the Power of Shaming for Good”<sup>658</sup>. She made the argument that while online shaming has led to significant negative consequences online, such as teen suicides and bullying, online shaming has also had success in other arenas, “last week shaming proved its strength against one of the more difficult phenomena our society must deal with: *sarvanut get*”. Sharon was referring to an Israeli case, which after one Facebook post

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<sup>654</sup> Yoni Goldstein, “The Media’s Role in Helping Agunot,” *Canadian Jewish News*, November 5, 2015. Page 6.

<sup>655</sup> Ibid.

<sup>656</sup> *The Times of Israel* is a non-partisan, online newspaper which highlights developments from Jewish communities both in Israel and throughout the Diaspora, and thus serves as a global focal point for the Jewish world – informing and engaging ‘members of the tribe’ everywhere. <http://www.timesofisrael.com/about/>.

<sup>657</sup> This Israeli non-profit organization helps women refused a *get* and primarily supports them throughout their legal battles with (female, Orthodox) rabbinic court advocates, or ‘*to’anot halacha*’.

<sup>658</sup> Osnat Sharon, “Using the Power of Shaming for Good,” *Times of Israel* Blog, November 9, 2015. <http://blogs.timesofisrael.com/shaming-as-a-social-instrument/>.

telling of a man's refusal to grant a *get* (from a modern Orthodox enclave in central Israel), went viral.

A few hours after the post was published, the internet overflowed with comments against the husband and his family who had supported him in his actions. Like joined like; share was heaped upon share in what can only be referred to as a modern interpretation of the power which was, in days of old, reserved only for the couple's community" (referring here to the traditional *kherem*).

Confirming my contention that e-shaming is an effective mechanism of a reimagined *kherem*, Sharon went on, "The term 'shaming' is integral to the vocabulary of the Facebook and Twitter generation...the Town Square has been replaced by a virtual space in which one's individual influence is, at all times, a finger click away"<sup>659</sup>. Jewish communities the world over are now employing their individual, online influence to fight the injustice of *get* refusal wherever it may rear its head. Already in 2013, Mayim Bialik, PhD, popular actress, writer, and blogger wrote a month-long series on her blog about the *aguna* issue with the intention of raising awareness through her social media presence, taking the issue from the margins to the main stage. While this educational campaign did not explicitly 'e-shame', it nonetheless publicized the issue, setting the stage for potent 'e-shaming'. Stories have been chronicled in publications ranging from *The Daily Mail* and *The New York Times* to *Haaretz* and *The Brooklyn Buzz*. Crowd-funding and YouTube videos have been used in some cases along with the Facebook and Twitter campaigns.

On yet another popular Blog, *Kvetching Editor*, a recent post, "Agunot in the Age of Facebook", also surfaced recently<sup>660</sup>. Discussing what the implications are of shaming someone publicly in the new age of technology, the author acknowledges that we turn to Facebook to

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<sup>659</sup> Ibid.

<sup>660</sup> <http://www.kvetchingeditor.com/agunot>.



“make things happen”<sup>661</sup>. Citing as well the *Gallery*, the author highlights the interesting shift from going to the Yiddish newspapers to a Facebook page or website in order to pressure men to “do the right thing”<sup>662</sup>. Rabbinic Court Advocate and author of an Israeli version of the *aguna* prenup, *The Agreement for Mutual Respect*, Rachel Levmore also picked up on this interesting trend in her piece “‘Wanted’ on International Aguna Day”, in *The Jerusalem Post*<sup>663</sup>. Citing the Israeli Rabbinic Court’s ability to “keep up with the latest technological tools available”, Levmore also makes the link between the ‘wanted’ ad on their website and the *Gallery*, referring to both as the most “modern means” at the disposal of communities to help free *agunot*<sup>664</sup>. Levmore further corroborates that with mobility between communities being easier than ever, the traditional *kherem* may no longer be as effective as was intended. The recalcitrant can easily “distance himself from a rabbi he doesn’t like or retreat from a community altogether...the most sophisticated or stubborn the individual, the more difficult for the community *kherem* to exert any authority”<sup>665</sup>.

These reports confirm the contentions I illustrate here regarding the significance of e-shaming and using social media. This nexus, of *get* refusal and technology, enables women to be active participants in navigating plural, complex legal orders, challenging the merely passive victims they are portrayed as. Indeed, and as noted above, *agunot* are often portrayed as submissive and powerless, as is reflected in the images of anonymous shackled hands, yet the next part of our discussion will reflect on but one example (of many) which illustrates the shift from framing and understanding *mesuravot get* as passive or helpless victims of abuse to active

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<sup>661</sup> Ibid.

<sup>662</sup> Ibid.

<sup>663</sup> Rachel Levmore, “‘Wanted’ on International Aguna Day,” *Jerusalem Post*, February, 16, 2011. <http://www.jpost.com/Opinion/Op-Ed-Contributors/Wanted-on-International-Aguna-Day>.

<sup>664</sup> Ibid.

<sup>665</sup> Ibid.

participants in the campaigns to exact a *get* through the innovative use of social media and e-shaming. Gital Dodelson's story (which follows) will further demonstrate how e-shaming via social media has become a platform whereby *mesuravot get* can recast the mistaken perceptions about themselves and assert their agency, changing the narrative about *mesuravot get* as (only) submissive victims.

### **E-Shaming: A Number of Illustrations**

Gital Dodelson married Avrohom Meir Weiss in February 2009. They had a baby boy, Aryeh, in November 2009, and ten months after their marriage, in December 2009, Dodelson took her newborn son and left. Weiss initially filed for full custody in New Jersey civil court in 2010, circumventing the tradition, particularly of the ultra-Orthodox (which the couple was), that is, to go first to *beit din* to resolve all legal matters. The couple was eventually civilly divorced in 2012 and in their divorce, the court had blocked his bid for full custody. Weiss was unhappy with the conditions of the civil court, and used the *get* as leverage in the *beit din*, attempting to renegotiate terms in his favour, in exchange for the *get*. Among his new demands was shared custody, 50-50, as well as \$350,000 to cover his legal expenses. That said, at this point, Weiss was also in contempt of rabbinic court, ignoring several *seruvim* from reputable *batei din* and leading rabbis in the ultra-Orthodox community, of which he purported to be a part.

After more than three years Dodelson went public with her story thereby challenging the normative reactions, responses, and perceptions about *siruv get*, *mesuravot get*, and *sarvanim* and their supporters, particularly through the social media movement she created which served to both support her in her plight, and shame her husband in remarkable and creative ways.

Dodelson told her story in her own words and wrote as a first-person narrative to the *New York Post* on November 4<sup>th</sup>, 2012 (image 8). A conflagration erupted after breaking her silence by

telling her story, particularly on and through social media. Dodelson's use of social media and e-shaming was an act of resistance. She resisted the silencing so often imposed on *mesuravot get* and communities were forced to take heed to her plight in particular, and the abuse that is *get* refusal more broadly. They listened *and reacted* to Dodelson's story, demonstrating the effectiveness of using social media to shame recalcitrant husbands in light of *siruv get*. Indeed, the *Post* story, which was released both in print and online versions, led to a ripple effect of stories about *siruv get* (regarding both the Dodelson and other cases) in a wide variety of media outlets. Significantly, the e-shaming and social media pressure served to spread the word about a variety of influential, grassroots approaches communities should take to aid Dodelson in her efforts to get her *get*.

Weiss' family has significant ancestral heritage; his great-grandfather was Rabbi Moshe Feinstein, a revered rabbinic authority, who most ironically, was a champion of *aguna* rights. His grandfather was the head rabbi of the Yeshiva of Staten Island, where Weiss was a student, while his father and uncle, who had supported him financially and personally, both held important positions at Artsroll, a leading Jewish publishing house. I say, 'held' because Dodelson's e-shaming efforts garnered such a support movement that community members inundated Artsroll with so many phone calls that Weiss' father and uncle were forced to step down. There was also pressure on his grandfather to expel Weiss from the Staten Island Yeshiva<sup>666</sup>. Dodelson's

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<sup>666</sup> While this may seem extreme or unjust to some, in fact, once a *seruv* is in place, Jewish law allows for certain degree of pressure on the recalcitrant husband committing the unjust act of chaining a wife to an unwanted marriage (and his family, if they are complicit), in order to alleviate the chained wife.

In fact the Tzohar Rabbinical Organization (a modern Orthodox group of rabbis in Israel) has released a directive for online shaming of *get* refusers, drafted by Rabbi Yuval Cherlow, a leading Israel rabbinical ethicist. David Israel, "Rabbis Release Directive for 'Online Shaming' of Get Refusers," *Jewish Press*, February 21, 2016.

<http://www.jewishpress.com/news/rabbis-release-directive-for-online-shaming-of-get-refusers/2016/02/21/>.

In another example of rabbinic endorsement of shaming, the London Beth Din with the support of the Sephardi Beth Din in England recently placed an advertisement in *The Jewish Chronicle* in which they named and shamed a husband, similar to the ad in *The Jewish Press*, as was discussed above. Deanna Levine, "Shedding Light on the

unsilencing led to a movement which garnered a online communal, reimagined *kherem*, far more effective than a traditional *kherem* within the physical community might be, that pressured *and* shamed not only Weiss himself, but all those close to him, supporting and even encouraging his *get* refusal. Ultimately, this strategy did precipitate Dodelson's *get*<sup>667</sup>. In fact, this grassroots (rather than legal) strategy not only contributed to Dodelson securing a *get*, but it also exposed the depths of the abuse of *get* refusal including the troubling normative cultural assumption that a *get* can be negotiated<sup>668</sup>.

In another well-publicized case, Tamar Epstein also saw improvements when she went public about her husband's *get* refusal in 2012. Her husband, Aharon Freidman was an aide to United States Congressman David Camp, House Chair of the Ways and Means Committee. Protesters launched a "full scale social media attack" to compel Congressman Camp to grant a *get*<sup>669</sup>. They "swarmed his Facebook page as part of a concerted effort to pressure Camp to coax his employee into granting his wife a divorce"<sup>670</sup> and Camp swiftly ordered that his public posting page be disabled. Separately, a video clip of a rally was shared with over 1,600 people on Facebook and a petition garnered over 2,500 signatures urging Camp to take a stand against domestic abuse being perpetrated by his aide. It read,

By refusing to condemn Friedman, in fact, dismissing criticism of Friedman's behaviour as "gossip", Dave Camp is by default supporting abusive behaviour. We aren't asking Dave Camp to fire Aharon Friedman. All we want is for Camp to require that Friedman stop abusing his wife. It is a pity to be known as the congressman who employs and encourages abuse of women<sup>671</sup>.

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Darkness of Abuse," Woodside Park Synagogue, England, <http://www.woodsideparksynagogue.org.uk/shedding-light-on-the-darkness-of-abuse>.

<sup>667</sup> Private conversation with Jeremy stern, ORA.

<sup>668</sup> I should note that one of the conditions of Dodelson receiving her *get* was the removal of all social media which shamed her husband and his family, indicating in fact, that the mechanisms where a motivating factor which precipitated the granting of the *get*.

<sup>669</sup> Rabbi Jason Miller, "Agunah Cases in the Age of Facebook," *Jewish Week*, February 28, 2012.

<sup>670</sup> Judson Berger, "Congressman Facing Pressure from Jewish Groups on Adviser's Religious Divorce Dispute," FoxNews.com, February 29, 2012.

<sup>671</sup> Rabbi Jason Miller, "Agunah Cases in the Age of Facebook," *Jewish Week*, February 28, 2012.

Camp was dragged into a complex tangle of religion and politics through an epic social media campaign as a modern day *kherem* mechanism.

Both Epstein and Weiss were able to rely on the reputations of their husbands (and their families) in order to elicit response and action by going public. There is strong evidence, both historical and current, that gendered storytelling by *mesuravot get* using media, and now “web soap boxes”<sup>672</sup> via social media and e-shaming *does* have positive impact on, and may even remedy the abusive instances of *get* refusal that women experience. Not every *aguna* might find e-shaming to be as successful as women with husbands whose reputations matter- whether professional, communal, or ancestral, but the nexus of technology and *get* refusal is nonetheless a promising, innovative tactic that may have positive impacts on the phenomenon and one which is becoming dominant.<sup>673</sup>

Most recently, one of the women I interviewed went public with her story and although her husband did not have important lineage or reputation, the tactic of e-shaming proved successful in her case. In January of 2006, at thirty-three years old Basya Ruth Gilman met the man she would marry, Isaac Duke, on the Upper West Side of Manhattan. They were married in a Hasidic wedding in Boro Park, New York in August of 2006. Shortly after the wedding, Duke began his verbal and psychological abuse by isolating her from her family and friends, using derogatory language toward her and her family. Gilman ran away from her marital home four times during her first year of marriage. She was immersed in a cycle of abuse. During one period of reconciliation she agreed to move to Miami Beach to ‘start over’, giving up her

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<sup>672</sup> Ibid.

<sup>673</sup> Sadly, even with the notoriety of David Camp due to the e-shaming campaigns, Camp persisted in his abuse of Tamar Epstein, refusing to grant her a *get* for some time. In this case, while Camp was negatively impacted and Epstein was empowered, the tactic did not directly result in a timely *get*. Though the pair are now divorced, the circumstances under which the divorce occurred remain unclear and controversial.

successful business and the family's only income. In Miami, the cycle continued, and while there were good periods, Duke quickly bankrupted the couple, having complete control of their finances. The couple had their first child, a boy, born in June of 2008. Shlomo Helbrans, the cult leader of Lev Tahor, a group of religious extremists (living in Montreal at the time and who have been continuously investigated for wife and child abuse), named their son, without Gilman's knowledge and at Duke's request. After the birth, the situation further deteriorated. He forbid her parents from ever meeting their grandchild and became extremely physically and spiritually abusive. In September of 2009, Gilman given birth to a daughter, but while on hospital bed rest for two months she called a divorce attorney, learning for the first time that she could go to the Miami courthouse and obtain a domestic violence injunction, and that it would not be kidnapping if she left the house with her children. Once home from the hospital, and with threats of kidnapping and encouragement to commit suicide from Duke, Gilman made covert plans to escape with her children one Friday afternoon, with the help of one remaining friend. Subsequently, Duke told Gilman that he would exchange a *get* for their son, attempting to negotiate, with their children as collateral. She never spoke to Duke again.

Since then, Gilman, with the encouragement of her rabbi in Miami, obtained a restraining order from the civil court, a civil divorce, and all the protections from Duke that they could afford her. She has sole custody of both children, sole decision making for both of them, a domestic violence injunction (stay away order) that does not expire for fifteen years, and the court supervises all visits between Duke and the children. At of the time of this writing, the court has suspended his visitation altogether as a result of his aggressive and difficult behavior at supervised visitation and yet Duke wanted Gilman to renegotiate custody. Gilman's son is now seven, her daughter is six, and she is forty-four. She has been separated from her husband and

waiting for a *get* for six years and civilly divorced as of July 2012 but Duke continued to make good on his threat to indefinitely refuse Gilman's *get*, that is, until the campaign took off. Gilman, after being abused in her marriage and then abused by the denial of a *get* for six years, finally decided she had nothing left to lose and allowed a group of her friends to create a website and launch a social media campaign to attempt to exact a *get* from her husband, Isaac Duke (image 9). Gilman recounts her story on the site, includes links to court documents, pictures of Duke, and a list of suggested ways to 'e-shame' or pressure Duke to grant a *get*. The site recommended praying for Gilman and all *agunot*, writing letters to Duke at his home, place of business, and on Facebook, writing letters to Duke's rabbi/the synagogue that allows him to continue to pray there, avoiding socializing or doing business with Duke, and spreading and sharing the story in communities around the world and on social media.

Even without the help of a support organization, Basya Ruth's story went viral, Duke's face was all over social media, all over Miami, and massive letter-writing campaigns rapidly resulted. This case of e-shaming was so successful, that after some manoeuvring (on Duke's part) but within two months, Gilman received her *get* after waiting without hope of a *get* for six years, illustrating that e-shaming can be an effective remedy for women (and/or inducement for men) and in fighting the normative cultural assumption that a *get* can be negotiated. Duke also illustrated the capacity of women to be innovators and mobilizers in her ability to harness community and shift socio-legal and socio-cultural norms about law and the *get*, reflecting the potential impact of a critical legal pluralist approach.

On a smaller scale, *mesuravot get* who participated by allowing me to interview them also described making use of e-shaming. Two of the women created their own fact sheets, similar to ORA's and sent the fact sheets to individuals in their respective communities in an 'e-

blast' (image 10). Two more women contributed personal reflections and/or poems which were published in popular Jewish news media and picked up in their online forum ('Image' 11). One woman created a 'meme' that went viral amongst her contacts (image 12) and one woman, who noticed the synagogue door always banged shut, donated a door stop to her synagogue and wrote on it 'donated by R.W. in honour of her anticipation of her *get* by Y.W.' in the merit of receiving a *get*<sup>674</sup> (image 13). She sent the photograph of the doorstep to members of her community and said to me, "I donated the doorstep so they would see it every single day as they walked into and out of synagogue and so they'd have to stop and think about my being stuck every day, just like the doorstep". This type of contemporary *kherem* and e-shaming are extensions of the representations of *get* refusal in that they each symbolically publicize the abuse that is *get* refusal with the ultimate goal(s) of (potentially) remedying a case, exposing *get* refusal as domestic abuse which controls the destiny of women, and/or empowering the previously silenced *mesurevet get* herself. The examples of my participants using social media and e-shaming in their own, innovative capacities is a noteworthy example of critical legal pluralism and further attests to the vital connection that has emerged between technology and *get* refusal, a connection that is seldomly spoken about or acknowledged in the academic literatures and yet which has had profound impacts for *mesuravot get* in a plurality of ways, as this chapter indicates. Although these varied representations have not been considered until now, their utility ought to be revealed and embraced.<sup>675</sup>

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<sup>674</sup> R.W. May 26, 2014, New York.

<sup>675</sup> I would be remiss if I did not note a GQ fashion spread and article (along with many other social media/news media reports regarding allegations against Rabbi Mendel Epstein and a group of his associates, some also rabbis. In an undercover, FBI sting operation (right out of Hollywood) the group was arrested and indicted on multiple counts of kidnapping and assault. Dubbed the "prodfather" for his use of electric cattle prods to coerce recalcitrant husbands to grants *gets*, 69 year-old Epstein faces 10 years in prison (with some of his associates receiving similar sentences and some cutting deals). While violence is of course not condoned here nor is it condoned by Orthodox congregations, recall that there was a rabbinic allowance for 'forcefully convincing' a husband to recall that giving a *get* was in fact always what he intended to do (noted earlier in this study). What I would like to point out is that



That said, I want to be clear that this analysis should not be taken as my unabashed championing of this type of campaign for each and every woman refused a *get* for two reasons. First, and in reality, not every woman would feel comfortable with the creative technique of e-shaming using a variety of social media platforms, it should be noted, and I am not advocating that each woman go to the local press necessarily. Moreover, while I do argue that e-shaming and platforms that enable women to express their experiences of *get* refusal have the benefit of empowering women, that is not to say that women who choose not to go public are passive victims (who are to blame). On the contrary, choosing not go public is a calculated choice as well. Indeed, the complexity and ‘messiness’ of individual families’ lives and choices ought to be respected and a public campaign may not always be in everyone’s best interests.

Additionally, e-shaming should not be taken as *the* absolute solution to *get* refusal nor should it absolve attempts for other solutions. In reality, e-shaming does not always exact a *get*. However, I would contend that where women are comfortable, e-shaming ought to be embraced as one of many potential tools that might elicit a *get*, along with other legal, *halakhic*, and social pressures and potential remedies (such as framing the refusal as domestic abuse, prenups, annulments, etcetera). That said, while e-shaming may not exact a *get* in *every* case, the converse is also true. E-shaming *may* and *has* exacted a *get* in many cases (as I illustrated above)<sup>676</sup>.

Moreover, e-shaming always exacts success (even if it does not directly lead to a *get*) because it

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some women who sought help from Epstein (a few of whom I interviewed) viewed him as their saviour, their last vestige of hope when they had nowhere else to turn and his arrest distinguished any chance at a *get*. While Epstein at times charged women tens of thousands of dollars for his ‘services’ many women felt it was money well spent, and certainly preferred than paying off their extorting husbands. While this example of media use may require analysis, here I raise this story simply as a counter to the ‘traditional’ e-shaming discussed above, but yet as another example of the effective use of social media at the nexus with *get* refusal. Matthew Shaer, “The Orthodox Hit Squad,” *GQ-Gentelman’s Quarterly*, September 2, 2014, <http://www.gq.com/story/epstein-Orthodox-hit-squad>.

<sup>676</sup> And there are additional cases that confirm this phenomenon such as David Porat/Eli Shor who refused his wife Adina Porat a *get* for eight years and within a few weeks of an e-shaming social media campaign granted a *get*, among others.

empowers *mesuravot get*<sup>677</sup>. Consequently, e-shaming, even when failing to exact a *get*, is still a remarkable accomplishment in that women refused a *get* who choose to shame, are no longer silenced, they are using their agency by employing the tactic of e-shaming to reverse their slave-like, anonymous portrayals as passive victims so prevalent in the massification of existing iconography.

The objective of this analysis is to alert readers to the rising phenomenon of publicizing stories symbolically, utilizing diverse representations<sup>678</sup> and the potentially transformative successes they have been known to produce. In this context, I want to reiterate that I am examining e-shaming as an offshoot of the prevalent representations surrounding *siruv get*. Because of the rising trend employing these ‘e-mechanisms’, it is important to highlight this type representation as well and underscore its potential effectiveness in challenging dominant perceptions about *agunot* as weak, passive, submissive victims of abuse, and in challenging dominant normative reactions by communities (particularly Toronto) which is to deny and avoid the phenomenon altogether. This representation further contributes to the self-narration of *mesuravot get* and I welcome giving them a safe, welcoming and encouraging platform from which to tell their stories should they choose to do so. If this can be achieved through social media campaigns and e-shaming, that is noteworthy. Significantly the representations discussed also have the power to redirect the shame. So many of the women I interviewed described the shame they feel, having endured abuse, having wronged their families by failing at marriage, having disappointed the community/ the marriage ideal the religion propagates, among other

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<sup>677</sup> Susan Weiss (long-time *aguna* advocate and scholar) has criticized the use and supporters of shaming, in her article, Susan Weiss, “Why ‘Shaming’ Get Refusers in Shameful,” *Sisterhood Blog*, [www.Forward.com](http://www.Forward.com), March 8, 2016. Weiss claimed shaming distracts from finding a ‘real’ solution and keeps the patriarchal power arrangement in balance without considering that it in fact empowers women. She encouraged changing the foundation of Jewish marriage entirely, without acknowledging that the most vulnerable women (the Hasidic) will never be support this, and ignoring the fact that women of all observance levels want *halakhic* get, not alternative/radical changes.

<sup>678</sup> Whether they be images, wanted ads, or e-shaming.

shameful expressions they described<sup>679</sup>. Using varied representations at the nexus of technology and *get* refusal in order to expose recalcitrant husbands as those who should be ashamed is a powerful tool which recasts the key characters. Moreover, my analysis of the visual representations of *get* refusal and the use of social media further exposes the extent of the abuse that is *get* refusal. These diverse representations have the ability to re-empower the traditional *kherem* mechanism with the objective of encouraging unwilling husbands to willingly grant *gets* making a traditional tool which was criticized as being virtually obsolete in a global world, into an expedient, digital tool of the 21<sup>st</sup> century and beyond.

In their study of the impact of religious images in, “Photo Elicitation and the Visual Sociology of Religion”, Roman Williams and Kyle Whitehouse illustrate that, “research (methods) that rely on words or numbers alone may miss visual data important to understanding”<sup>680</sup>. They are correct in their contention and indeed this study is richer having analyzed the representations surrounding *get* refusal. Undoubtedly, they do impart additional understanding of the phenomena itself (that is, women relying on the free will of abusive, contemptible men for their own freedom), as well as understanding about Jewish communities (their ability to shame the husbands rather than ignore the shame the wives feel), and the evolution of tradition (the high-tech *kherem*). In particular, the analysis of various representations highlights the extent to which *get* refusal is entangled with domestic abuse.

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<sup>679</sup> B.F., August 22, 2014; A.A., June 6, 2014; L.I., May 23, 2014; E.R., May 23, 2014; L.G., October 29, 2013; S.H., October 29, 2013; C.G., October 24, 2013.

<sup>680</sup> Roman R. Williams and Kyle Whitehouse, “Photo Elicitation and the Visual Sociology of Religion,” *Review of Religious Research* 57, no. 2 (June 2015): 303-318, 304.

## Manipulation of Culture Buttresses Abuse

While the earlier portion of this chapter analyzed diverse representations of *get* refusal which highlighted the fact that *get* refusal is always linked with domestic abuse, the remainder of the analysis will discuss aspects of *get* refusal and domestic abuse reflecting the need for diverse representations such as ‘e-shaming’ both as a potential remedy to *get* refusal itself, but also as a instrument of empowerment for women. This next part of this chapter will shift in theme, though will continue to uncover unacknowledged aspects of *get* refusal. In the previous chapter, I illustrated that *get* refusal is a form of domestic abuse that, like other forms of domestic abuse, is arbitrary- potentially impacting any Jewish woman, and at all levels of (non)observance. In the remainder of this chapter I will illustrate that *get* refusal is often the culmination of a pattern of abuse which persisted throughout the marriage. Subsequently, I will investigate how the phenomenon of *get* refusal enables men to use religion (in this case, Judaism) as a weapon or tool of abuse<sup>681</sup>. Indeed, a woman’s “membership in a faith community or religious subculture is another aspect perpetrators can use in their efforts to control”<sup>682</sup>. Women described husbands distorting religion as a means to abuse by throwing slurs about wives’ lack of piety, ritual observance, and even *mikvah* attendance. I maintain that there is a hidden pervasiveness of domestic abuse persisting unacknowledged in Jewish communities (and likely other religious communities as well). Like in other religions, spirituality is an integral part of everyday life, and thus often plays and integral role in domestic abuses occurring within religious communities<sup>683</sup>. In particular, individual, recalcitrant men manipulate Jewish law and use religion as a weapon to

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<sup>681</sup> It is likely that *get* refusal as a form of domestic abuse is a part of a larger trend in religious communities, whereby abusers use religion as an abuse tactic, particularly in the context of Muslim marriage/divorce.

<sup>682</sup> Alison C. Cares and Gretchen R. Cusick, “Risks and Opportunities of Faith and Culture: The Case of an Abused Jewish Woman,” *Journal of Family Violence* 27, no. 5 (2012): 427-435, 427.

<sup>683</sup> Nicole Deshan and Zipi Levi, “Spiritual Abuse: An Additional Dimension of Abuse Experienced by Abused Haredi (Ultra-Orthodox) Jewish Wives,” *Violence Against Women* 15, no. 11 (2009): 1294-1310, 1300.

commit spiritual abuse both by negotiating that which should be granted unconditionally and by employing a lexicon of terms existing within Judaism to buttress them in their recalcitrance.

Rather than concealing or repressing analyses regarding *get* refusal and domestic abuse, I bring them to the foreground here, where I will explore more deeply the intrinsic connection of *get* refusal to domestic violence, picking up from my introductory discussion emerging from the *mesuravot get*'s own words in the previous chapter and from discussions in this chapter illustrating that *get* refusal is abusive through the diverse representations analyzed. There has been minimal acknowledgement of *get* refusal as a noteworthy type of domestic abuse, and mostly by organizations such as ORA, rather than in the existing body of literatures. Indeed the existing literature on *get* refusal- whether it be Jewish, feminist, or socio-legal- does not frame the phenomenon as an example of domestic abuse<sup>684</sup>. Only in the last year have courts begun to consider this connection, with the Israeli *beit din*, London *beit din*, and Australian Supreme Court all explicitly labelling *get* refusal as psychological abuse, emotional abuse, and domestic abuse respectively<sup>685</sup>. Although the various representations of *get* refusal alert us to this phenomenon, there has not been an in-depth examination of the ways in which *get* refusal as a Jewish, legal/*halakhic* requirement is potentially the culmination or zenith of a protracted pattern of abuse which is bolstered by religion, although Alison Cares and Gretchen Cusick note that the

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<sup>684</sup> To name a few: Rabbi Dr. Michael J. Broyde, *Marriage, Divorce and the Abandoned Wife in Jewish Law: A Conceptual Approach to the Agunah Problems in America* (Hoboken, NJ: Ktav, 2001); Aviad Hacoheh, et al. *The Tears of the Oppressed, An Examination of the Agunah Problem: Background and Halakhic Sources* (Hoboken, NJ: Ktav Publishing House Inc., 2004); Pascale Fournier, "Halakha, the 'Jewish State' and the Canadian Agunah: Comparative Law at the Intersection of Religious and Secular Orders," *Journal of Legal Pluralism and Unofficial Law* 65, (2013): 165-204; Susan M. Weiss and Netty C. Gross-Horowitz, *Marriage and Divorce in the Jewish State: Israel's Civil War* (Waltham, MA: Brandeis University Press, 2012).

<sup>685</sup> "Israel: Beis Din Demands a Get Due to Harsh Psychological Abuse," March 8th, 2016, <http://www.theyeshivaworld.com/news/headlines-breaking-stories/394564/israel-beis-din-demands-a-get-due-to-harsh-psychological-abuse.html>; Deanna Levine, "Shedding Light on the Darkness of Abuse," March 2016, <http://www.woodsideparksynagogue.org.uk/#!/shedding-light-on-the-darkness-of-abuse/z7unn>; Talya Faigenbaum, "Getting Somewhere? Jewish Divorce, Agunot and Family Violence in Victoria," Faigenbaum Law, March 5, 2015. <http://www.faijenbaumlaw.com.au/jewish-divorce-family-violence/>.

*get* is a fundamental way in which men use Judaism to control their wives<sup>686</sup>. I have found that *mesuravot get* describe their husbands using religion or religious obligations in their abuse and as additional ways to abuse them (as the women’s first-hand narratives illustrated in the last chapter). For example, there have been manipulative attempts to negotiate for a *get*<sup>687</sup> which should be granted freely, unconditionally, and separately from other matters arising in divorce, and there are also a number of traditional expressions, which when misconstrued by abusive men, will act as conceptual resources to support and justify their domestic abuse. Below I address some aspects of the interface between religion and domestic violence that emerge within Judaism, as well as those aspects which are *not* distinct to Judaism and which emerge elsewhere, but which nonetheless feature prominently in the narratives of *mesuravot get*.

### **Twisting Terminology**

In “The Perils of Privatized Marriage”, Robin Fretwell Wilson demonstrates that domestic violence exists amongst religious groups in almost the same rates as it does amongst the general public, despite common misconceptions to the contrary, and yet religious groups do not have the same protections in place for women who experience domestic violence as the general public<sup>688</sup>. Nancy Nason-Clark, in, “When Terror Strikes Home”, contends that “violence knows no boundaries of class colour or religious persuasion” and religious women are almost as likely as any other women to experience abuse despite the fact that their husbands vow to love

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<sup>686</sup> Alison C. Cares and Gretchen R. Cusick, “Risks and Opportunities of Faith and Culture,” *Journal of Family Violence* 27, no. 5 (2012): 434.

<sup>687</sup> For example, attempting to use children as pawns, often going against court rulings with the “best interests” taken into account, attempting to renegotiate other unfavourable terms already decided by civil court, and in one case even demanding a woman recant claims to police and delete evidence of domestic violence in order to expunge a husband’s record because he was a day school teacher (P.L. August 13, 2014).

<sup>688</sup> Robin Fretwell Wilson, “The Perils of Privatized Marriage,” in *Marriage and Divorce in a Multi-Cultural Context: Considering the Boundaries of Civil Law and Religion*, ed. Joel A. Nichols (Cambridge, UK: Cambridge University Press, 2011), 253-283, 269.

them before God<sup>689</sup>. Nason-Clark notes that theistic women are more vulnerable to abuse even though there is no evidence that violence is more frequent or more severe in theistic families<sup>690</sup>. The reason they are more vulnerable is because they are less likely to leave marriages, more likely to forgive and believe a husband's pleas for forgiveness and promises to change abusive behaviours, less likely to seek support resources or shelters, more resistant to separating or divorcing, and more likely to experience shame and guilt in having failed their families and God in not being able to make the marriage work<sup>691</sup>. These last two contentions particularly came through in the narratives of the *mesuravot get* I interviewed.

Consequently, a theistic woman may be more vulnerable than a non-believer. In Judaism this vulnerability is compounded by the lexicon of ideological concepts which are internal to communities, as I elaborate below. Fretwell-Wilson (corroborating some of my own findings as well as Nason-Clark's contentions), further maintains that all theistic women find it difficult to leave their abuser due to their "religious beliefs about...doctrinal distortions about suffering and forgiveness" as well as traditional gender roles<sup>692</sup>. Moreover, while the abused women may look to their communities for support, "studies reveal that victims are likely to find cold comfort in their religious communities. Religious groups often acquiesce, or worse, condone family violence"<sup>693</sup>. As I illustrated in the previous chapter, these findings are reflected in many of the narratives of the women interviewed who described having nowhere to turn for support or comfort. Some women also described that their husbands had communal support in their abuse/*get* refusal or even that certain rabbis did condone the abuse. Two women explained,

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<sup>689</sup> Nancy Nason-Clark, "When Terror Strikes at Home: The Interface Between Religion and Domestic Violence," *Journal for the Scientific Study of Religion* 43, no. 3 (2004): 303-310, 303.

<sup>690</sup> Nancy Nason-Clark, "When Terror Strikes at Home," *Journal for the Scientific Study of Religion* 43, no. 3 (2004): 304.

<sup>691</sup> *Ibid.*, 303-304.

<sup>692</sup> Robin Fretwell Wilson, "The Perils of Privatized Marriage," in *Marriage and Divorce in a Multi-Cultural Context*, ed. Joel A. Nichols (Cambridge, UK: Cambridge University Press, 2011), 274.

<sup>693</sup> *Ibid.*

“Rabbi W did give him an *aliya* in *shul* on Shabbos<sup>694</sup>. The rabbi was pushed to choose between his job and my husband and so the rabbi chose supporting my husband”<sup>695</sup> and “My husband can now get *aliyot* in *shul* and give *kiddushim* but my rabbi won’t support me”<sup>696</sup>. Another described, “My Rabbi is always helpful in the private, emotional process, but not when he needs to speak up or help in public”<sup>697</sup>. Yet another woman expressed, “Some rabbis felt my pain but couldn’t help me- they belonged to larger rabbinic organizations and they’d lose their status, and/or ‘lose face’ if they’d come out and help me”<sup>698</sup>. In keeping with these excerpts, Nason-Clark describes the phenomena of condoning abuse or of turning a blind eye to the negatives that happen within a religious community as a “sacred silence”<sup>699</sup> and she includes religious women who do not seek support because of their shame in this notion wherein their communities pay no heed to the abuses existing within. She concludes that religion constructs the notion of family as being of utmost importance and consequently also constructs divorce ‘bad’<sup>700</sup>. Moreover, religion “spiritualizes social problems” such as divorce and abuse, and makes abuse marginalized because of the gender divide in religion<sup>701</sup>. This is particularly true regarding the phenomenon of *get* refusal.

In fact, my primary research illustrates that the contentions of Nason-Clark and Fretwell Wilson about the persistence of domestic violence within religious communities and their assessments regarding some of the additional vulnerabilities religious women face when they experience abuse holds true for Jewish communities and Jewish women, at least in New York

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<sup>694</sup> *Aliya* (*aliyot* plural) is Hebrew for an honorary prayer said in synagogue which requires being called up to the Torah; *Shul* is Yiddish for synagogue; *kiddush* (*kiddushim* plural) is Hebrew for a celebratory meal after synagogue.

<sup>695</sup> L.G. October 29, 2013.

<sup>696</sup> J.D. August 22, 2014.

<sup>697</sup> B.R.G. December 31, 2013.

<sup>698</sup> A.A. June 6, 2014.

<sup>699</sup> Nancy Nason-Clark, “When Terror Strikes at Home”, 303.

<sup>700</sup> *Ibid.*

<sup>701</sup> *Ibid.*, 306.



and Toronto. Janet Mosher, in “The Complicity of the State in the Intimate Abuse of Immigrant Women”, picks up on the theme of the vulnerability of women when faced with domestic abuse in her discussion about low-income/migrant/racialized women. However, her arguments can be applied in the context of Jewish women refused a *get*. She argues, “social structures too often reinforce the batterer’s conduct and enable his power...abusive men often manipulate systems to further their control” and she later states, “...men’s abuse is emboldened by the inaction of those same systems”<sup>702</sup>. Indeed *mesuravot get* reinforce Mosher’s claims. One woman explained, “The *beit din* was so strict and my husband knew how to use and manipulate their stringency to his benefit”<sup>703</sup>. Another woman described, “The problems in Toronto are abuse, communal silence, and the *Beit Din*’s actions or inactions; and my ex took advantage of those problems”<sup>704</sup>.

Whether they are state systems or religious ones, I would posit that Mosher is correct in arguing that individual men are often emboldened and enabled by the attitudes of the regulating social structures, which in the Toronto context would have recalcitrant husbands refusing their wives a *get*, emboldened and enabled by the Toronto *Beit Din*, as my interviews have demonstrated.

Mosher further contends that abuse in cultural/religious communities is not always solely about the individual abuser, but rather about institutions, ideologies, structures and regulating normative orderings, all of which either blatantly favour men, or which abusive men are able to manipulate in their favour<sup>705</sup>. Indeed one woman I interviewed spoke about how “We are somehow perverting it”<sup>706</sup> when speaking about the entire system regulating marriage and

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<sup>702</sup> Janet Mosher, “The Complicity of the State in the Intimate Abuse of Immigrant Women,” in *Racialized Migrant Women in Canada: Essays on Health, Violence, and Equity*, ed. Vijay Agnew (Toronto, ON: University of Toronto Press, 2009), 41-69, 41, 41, 44, 49.

<sup>703</sup> J.D. August 22, 2014.

<sup>704</sup> P.L. August 13, 2014.

<sup>705</sup> Janet Mosher, “The Complicity of the State,” in *Racialized Migrant Women in Canada*, ed. Vijay Agnew (Toronto, ON: University of Toronto Press, 2009).

<sup>706</sup> D.R. June 16, 2014.

divorce- *halakha* and ritual observance. The “system is flawed” she said<sup>707</sup>. Cathy Holtmann and Nason-Clark similarly suggest, “some men misinterpret elements of their faith or tradition to justify their abusive behaviour”<sup>708</sup>. Moreover, communities as well as abusive, observant men often tend to minimize and or rationalize their abuse and its significant danger and exploitation. In fact, there is a “tendency of community, particularly men to deny or minimize the occurrence of violence within the family” altogether<sup>709</sup>. As reflected in my primary research, the assessments of Sevcik, Mosher as well as Holtmann and Nason-Clark are correctly upheld by my study. Individual men do manipulate or intentionally misinterpret the system or the tenets of their faith in order to further their abuse and persist in their recalcitrance at times with the aid of *batei din* or indeed even entire communities (and consequently it is not necessarily *halakha* in and of itself which is flawed as was established in the previous chapter). Moreover, “Rather than broad public concern...instead we see women positioned as the object of public disdain, regarded as the other within their own communities...instilling fear in the normative centre” and this contention also bares true regarding *agunot*<sup>710</sup>. *Mesuravot get* are at times, and always in Toronto, cast as the Other<sup>711</sup>, isolated and marginalized, thus feeling disgraced and shamed.

As the literature illustrates, there are certainly culturally nuanced aspects to domestic violence which are not distinct to Judaism alone. Many cultures and/or religions share a number of aspects of domestic violence which the general public do have to navigate; some of which were enumerated above, including the insular, tight-knit communities focusing on the sanctity of

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<sup>707</sup> Ibid.

<sup>708</sup> Cathy Holtmann and Nancy Nason-Clark, “Reconfiguring Stained Glass: Visual Methods and Research on Religion and Domestic Violence,” in *Seeing Religion: Toward a Visual Sociology of Religion*, ed. Roman R. Williams (New York, NY: Routledge, Taylor Francis Group, 2015), 180.

<sup>709</sup> Irene Sevcik, Michael Rothery, and Nancy Nason-Clark, *Finding their Voices: Women from Religious/ Ethno-Cultural Communities Speak about Family Violence*. Report to Faithlink and Resolve, (2010): 1-63, 16.

<sup>710</sup> Janet Mosher, “The Complicity of the State”, 64.

<sup>711</sup> Simone de Beauvoir, *The Second Sex* (Paris, France: First Vintage Books Edition, 1949). De Beauvoir used the term ‘Otherness’ to express the constructed differences between men and women, with men constructed as superior and women inferior and thus to be excluded from society.

the family unit and responsibility to maintain intact family structure<sup>712</sup> as well as avoiding the scandal of divorce and the intense shame and isolation that often accompanies it, to name a few. That said, *get* refusal and *get* extortion are aspects or types of domestic abuse that are unique to Judaism, as was elaborated and demonstrated in the previous chapter<sup>713</sup>. *Get* refusal as a form of domestic violence impacts more than “the interpersonal level, but the transcendental one”<sup>714</sup>, leaving scars on the soul, not only the mind and/or body. Carol Goodman-Kaufman confirms, “Jewish women must endure a unique form of psychological abuse known as the withholding of a *get*”<sup>715</sup>. Refusing a spouse a Jewish divorce controls her destiny in a nuanced way that uses religion as a form of domestic abuse, as the narratives demonstrate. Moreover, Judaism has a lexicon that buttresses this type of abuse (*get* refusal).

“Myths die hard” as Rabbi Dr. Twerski reminds us, in the second edition of his groundbreaking, *Shame Borne in Silence: Spouse Abuse in the Jewish Community*, which was re-released in 2015<sup>716</sup>. There exists a misconception that Jewish men make ideal husbands, “they don’t drink, gamble, or beat their wives” and thus domestic abuse does not exist within the Jewish community<sup>717</sup>. Yet, as my primary research confirms, “race, religion, ethnic group, philosophy, socio-economic level, education level – none of these preclude abuse like *siruv get*...there is simply no immunity”<sup>718</sup>. Nonetheless, this persisting myth of the ideal husband leads to a stigma surrounding Jewish domestic abuse leading to shame, silence, and things going

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<sup>712</sup> Cathy Holtmann and Nancy Nason-Clark, “Reconfiguring Stained Glass,” in *Seeing Religion*, ed. Roman R. Williams (New York, NY: Routledge, Taylor Francis Group, 2015), 180.

<sup>713</sup> Though there are certainly comparators in other religions, such as women being denied their *Mahr* in Muslim marriages. There can be analogies within a range of religious traditions because abusive, religious men who manipulate their religions are also manipulating the patriarchy and power embedded in those power relations which they use as justification for their behaviour.

<sup>714</sup> Nicole Deshan and Zipi Levi, “Spiritual Abuse,” *Violence Against Women* 15, no. 11 (2009): 1302.

<sup>715</sup> Carol Goodman-Kaufman, *Sins of Omission: The Jewish Community’s Reaction to Domestic Violence* (Boulder, CO: Westview Press, 2003), 40.

<sup>716</sup> Rabbi Dr. Abraham J. Twerski, *The Shame Borne in Silence: Spouse Abuse in the Jewish Community 2<sup>nd</sup> edition*, (Jerusalem, Israel: Urim Publications, 2015), 9.

<sup>717</sup> Abraham J. Twerski, *The Shame Borne in Silence* (Jerusalem, Israel: Urim Publications, 2015) 9.

<sup>718</sup> *Ibid*, 23.

untreated, “perhaps the incidence is not the astronomical number that exists in the non-Jewish population, but neither is it an isolated phenomenon that can be ignored”<sup>719</sup>. Twerski notes that there are *halakhot* and other Talmudic precepts that address the love and respect a husband must show his wife. Even aside from his *ketuba* contract obligations, the Talmud states, “a husband should love his wife as much as he loves himself and should respect her even more than he respects himself”; “restoring peace in the home is of the highest order”; “This relationship cannot be a master-slave relationship in either direction and neither a husband nor a wife should be emotionally abused and have their dignity shattered”<sup>720</sup>. Maimonides goes even further and prohibits sexual abuse within marriage, noting that a husband “is not to have intercourse while drunk or in the midst of a quarrel; he is not to do so out of hate, nor may he take her by force with her in fear of him”<sup>721</sup>. Thus, the myth of the ideal Jewish husband persists. The canonical discussions about marital abuse only support the myth that domestic abuse does not exist in Jewish families<sup>722</sup>.

In tandem, the concept of the *Yiddisheh Mameh* and the *Eshet Chayil* compound the myths that Jewish marriages are immune to abuse. A *yiddisheh mameh* is based on the traditional, immigrant Jewish mother who puts husband’s and children’s needs before her own, strives for happy families and full bellies ahead of her own personal aspirations<sup>723</sup>. An *eshet chayil* or woman of valour is the ideal Jewish wife, encapsulating the ideal wife and mother. These concepts place the responsibility (or burden) on the wife to achieve the ideal of *shalom*

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<sup>719</sup> Ibid, 12.

<sup>720</sup> Ibid, page 58 citing tractate Yevamot 62b, among numerous other Talmudic quotes. Page 115, and page 67 interestingly refer to this recurring theme- comparing *get* refusal to slavery as the representations also achieved.

<sup>721</sup> Ibid, page 71, quoting Maimonides Laws of Marital Status 15:17.

<sup>722</sup> Simona Steinmetz and Muhammad M. Haj-Yahia, “Definitions of and Beliefs About Wife Abuse Among Ultra-Orthodox Jewish Men From Israel,” *Journal of Interpersonal Violence* 21, no. 4 (2006): 525-554, 526; Alison C. Cares and Gretchen R. Cusick, “Risks and Opportunities of Faith and Culture”, 428.

<sup>723</sup> Beverley Horsburgh, “Lifting the Veil of Secrecy: Domestic Violence in the Jewish Community,” in *Domestic Violence at the Margins: Readings on Race, Class, Gender and Culture*, eds. Natalie J. Sokoloff and Christina Pratt (New Brunswick, NJ: Rutgers University Press, 2005).

*bayit*, or peace in the home, as we discussed earlier in this study. There is greater pressure on women/wives to avoid the ‘failure’ of a non-ideal marriage even in cases where they might be abused. Moreover, these concepts all but absolve the (abusive) husband of any responsibility or obligation to fulfill *shalom bayit* himself. In fact, the sanctity of this concept is so robust, “Jewish women feel obligated to maintain *shalom bayit* in the home”<sup>724</sup> and when they ‘fail’ and when there is abuse in the home, the level of shame is immense in that they are not only failing at this ideal of *shalom bayit* and thus at their very identities and obligations as Jewish women/mothers, but they are also failing their communities and religion. Irene Sevcik confirms in, *Finding Their Voices: Women from Religious/ Ethno-cultural Communities Speak about Family Violence*, that a Jewish woman’s experience of domestic abuse is challenging in part because of this concept of *shalom bayit* which is often misinterpreted as the “sole responsibility of the wives”<sup>725</sup>.

If it is a “wife’s responsibility for ensuring domestic tranquility- *shalom bayit*, ... there is shame and self-blame if she is unable to achieve the ideals to which Jewish marriage is held”<sup>726</sup>. There is “embarrassment for seeking help from within their community; concerns that seeking help from resources outside the community will bring shame upon all Jewish people; and a deep sense of failure on both emotional and cultural levels”<sup>727</sup>. Indeed by turning faith into a weapon of abuse, *get* refusal perpetrators render their victims unlikely to turn to their religious communities for support, as they may have otherwise.

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<sup>724</sup> Carol Goodman Kaufmann, *Sins of Omission* (Boulder, CO: Westview Press, 2003), 44.

<sup>725</sup> Though I imagine Jewish women’s experiences are not distinct from the experiences of women within other religious persuasions. In fact, I suspect most religions would find analogous concepts. Alison C. Cares and Gretchen R. Cusick, “Risks and Opportunities of Faith and Culture: The Case of an Abused Jewish Woman”, 428.

<sup>726</sup> *Ibid.*

<sup>727</sup> Irene Sevcik, Michael Rothery, and Nancy Nason-Clark. *Finding their Voices Report* to Faithlink and Resolve, (2010): 1-63, 5.

In addition to the routine role the concept of *shalom bayit* plays in Jewish domestic abuse as just described, often in cases of *get* refusal *shalom bayit* is used as a rationale for men refusing a *get*, claiming they want to reconcile when in reality they want to prolong their control and abuse by refusing to grant a *get*. The concept is also used by rabbis and/or *batei din* who counsel and encourage reconciliation of couples for the sake of *shalom bayit* when one party appears before the rabbinic court to exact a *get* and despite the risk of ignoring (allegations of) abuses and potentially empowering recalcitrant husbands<sup>728</sup>. This was reflected in the narratives of a number of women who wanted to leave their marriages but stayed for the sake of “*shalom bayit*”. They do not realize that “the abuser does not see this as a restoration of *shalom bayis*, a peaceful home. Rather, the abuser sees his wife’s return as a triumph on his part and as a capitulation by the *beit din*”, thus only empowering the abuser further<sup>729</sup>. Husbands use the threat of *get* refusal as a way to keep their wives in the marriage, threatening that if they try to leave, they will never grant a *get*, thus it is not even worth trying. As the primary evidence illustrated, a number of participants in my study reported that they were encouraged to reconcile with their spouse/abuser- the ideal of *shalom bayit* being more valued than their safety and experiences of abuse.

Compounding this principle, there are a number of other concepts that are available tools in Judaism that feed and support the abusive dynamics some men construct by refusing a *get*. With the pressure on Jewish women to maintain the ideal of *shalom bayit* women refused a *get* may well (want to/ feel pressure to) consider such normative values and principles despite the fact that some women described these very notions as complicating their attempts to exact a *get*. *Teshuva*, the significant value of repentance and forgiveness in Judaism makes it all the more

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<sup>728</sup> Abraham J. Twerski, *The Shame Borne in Silence*, 117.

<sup>729</sup> *Ibid*, 117-118.

difficult for Jewish abused women who, if the husband is remorseful about his recalcitrance or other abuses, would often “want to embrace this value, wipe the slate clean and begin again”<sup>730</sup>. Like the cycles of abuse typical of many abusive relationships, the concept of *teshuva* may make women more vulnerable to abuse by believing a husband’s pleas for forgiveness. Thus, when intersecting with domestic violence, *teshuva* may place women in even greater danger with the weight of a moral/religious precept coming to bare on their decision to stay, forgive, and accept apologies for abuse. Jewish women might also want to avoid a *shandeh*, a shame or disgrace and thereby avoid leaving abusive relationships or attempting to obtain a *get*. In line with the shame women of many religious persuasions feel (as discussed above), this form of shame, a *shandeh*, has Jewish elements. Jewish domestic abuse, Jewish divorce, and particularly *get* refusal all carry the stigma of being a *shandeh*. Consequently, women, even if they would not normally concern themselves with the opinions of others in their communities (although many of them would and would want to avoid a *shandeh*,) would certainly resist a shameful stigma that could affect their children’s marriage prospects, which these types of *shandehs* undoubtedly do<sup>731</sup>. On a larger scale, there is concern that the disgrace and shame travels beyond the insular Jewish communities, “exposing Jewish misconduct to a Christian majority is a *shandeh*, a shame that brings disgrace upon all Jews in that each shoulders the burden of representing an entire people...anti-Semitism”<sup>732</sup>. Indeed, in some communities, even in the 21<sup>st</sup> century, the pressure to not bring shame or disgrace is compounded by significant fears of anti-Semitism, which is on the rise worldwide, and women refused a *get* feel this pressure<sup>733</sup>.

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<sup>730</sup> Ibid, 38.

<sup>731</sup> Ibid, 45. And Carol Goodman-Kaufmann, *Sins of Omission* (Colorado: Westview Press, 2003).

<sup>732</sup> Beverley Horsburgh, “Lifting the Veil of Secrecy: Domestic Violence in the Jewish Community,” in *Domestic Violence at the Margins: Readings on Race, Class, Gender and Culture*, eds. Natalie J. Sokoloff and Christina Pratt (New Brunswick, NJ: Rutgers University Press, 2005), 211.

<sup>733</sup> Ibid.

Picking up on the notion that Jewish women are pressured to avoid communal shame as well the broader shame that may spill over to the general community, the *shandeh* that is *get* refusal is then further compounded by additional concepts such as *chilul Hashem*, *mesira*, *da'at Torah* and *lashon hara*. “Airing dirty laundry” has long been a fear of Jews living in Diasporic communities worldwide<sup>734</sup> “due to fear developed over hundreds of generations wherein Jewish communities were persecuted, victimized and when regimes randomly captured Jews and tortured them”<sup>735</sup>. Fear of the host nation and what may be the fallout of Jewish ‘bad’ or shameful behaviour is commonplace and is simultaneously a “communal defense mechanism of survivorship”<sup>736</sup>. Michael Salamon, speaking about abuse in the Jewish community and factors that undermine the apprehension of offenders and the treatment of victims, goes so far as to say that in a post-Holocaust world, Jews have significant fears that no one will help them in times of need -which history has proven is a recurring phenomenon and rising anti-Semitism reaffirms and compounds these fears<sup>737</sup>. Consequently, this occurrence - that is of airing out dirty laundry to the broader, non-observant community would be considered a *chilul Hashem*. In other words, (some might interpret this to mean that) bringing *get* refusal (or other Jewish abuses) into the realm of the broader, non-religious, normative order or to the attention of the state’s regulating bodies such as police, child welfare agencies, or judicial systems would be considered a desecration of G-d’s name and the ethical/moral ideals God has set, bringing substantial shame on the self and the community. While not all religious Jews ascribe to the notion of *chilul Hashem* when it comes to abuses such as these, some do contend that reporting *get* refusal or

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<sup>734</sup> Carol Goodman-Kaufmann, *Sins of Omission*, xvii.

<sup>735</sup> Michael Salamon, *Abuse in the Jewish Community: Religious and Communal Factors that Undermine the Apprehension of Offenders and the Treatment of Victims* (New York, NY: Urim Publications, 2011), 52-54.

<sup>736</sup> Michael Salamon, *Abuse in the Jewish Community* (New York, NY: Urim Publications, 2011).

<sup>737</sup> *Ibid*, 59-60.



other abuses to state regulating bodies brings shame to the entire community<sup>738</sup> and may impact one's impression of Jews and Jewish behaviour.

*Mesira*, to turn over or give up to authorities, is similar to *chilul Hashem*. It is a dictate forbidding Jews from turning over or reporting crimes of a Jew to non-rabbinic or civil authorities largely due to fear of punishment without due process or cause (which again, has recurred historically, and is likely not a concept unique to Judaism alone)<sup>739</sup>. Considered to be a negative act of betrayal, informing state regulating bodies is more about Jews turning in and turning on other Jews<sup>740</sup> rather than the consideration of the ramifications if abusive Jews are *not* turned in to the appropriate authorities (backed by the force of the state). In light of the significant risk of *not* turning in abusive individuals, particularly husbands who have abused their wives (and children), leading rabbis have stated that the law prohibiting *mesira* no longer applies<sup>741</sup>.

Reliance on *da'at Torah*, or the knowledge of Torah, is a concept that dictates that well-learned rabbinic leaders should be sought out to inform all life-impacting decisions based on their superior knowledge and values<sup>742</sup>. This concept is based on the presumption that the individual rabbi consulted has studied so intensively that he has the insight and wisdom to handle what is being asked of him, while still being comfortable with the limitations of his own knowledge so as to consult other authorities. *Da'at Torah* is relied upon by some (most often the ultra Orthodox/hasidic) to make decisions about their private family lives. Women often seek advice regarding the decision to leave an abusive husband and/or to fight for a *get* or to accept the abuse. In fact, as my interviews illustrated, a number of women interviewed described

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<sup>738</sup> Ibid.

<sup>739</sup> Carol Goodman-Kaufmann, *Sins of Omission*, 76.

<sup>740</sup> Michael Salamon, *Abuse in the Jewish Community*, 52.

<sup>741</sup> Ibid, 54.

<sup>742</sup> Ibid, 68.

seeking out rabbinic approval before making the choice to leave abusive marriages and start fighting for the *get* (particularly Torontonians interviewed). Consequently, the notion of *da'at Torah* may have a significant impact on the abuses Jewish women endure.

The concept of *lashon hara* is prominent in Judaism and underpins the lexicon addressed here, making it another tool to feed and support the abuse associated with *get* refusal. *Lashon hara*, or evil tongue is the prohibition against derogatory speech or gossip about another person in *halakha*<sup>743</sup>. This concept has been manipulated and is often used to prevent people who witness or experience abuse from speaking out, almost guilt-tripping them into silence and shaming them for breaking the prohibition if they choose to speak out<sup>744</sup>. Consequently the concept of *lashon hara*, along with *mesira*, *chilul Hashem* and *da'at Torah* all have the potential to compound one another and buttress a husband's abusive power while simultaneously blinding communities and rabbis to a husband's abuses through their reliance on and adherence to these concepts.

We have examined here the lexicon within Judaism that when manipulated, impacts domestic abuses such as *get* refusal, as well as some of the marked aspects all types of religious women come up against when negotiating and deliberating how and if to act on their domestic abuses. This analysis addressed the interface between religion and domestic violence by considering the litany of concepts which often bolster the abuser's pattern of control and power and yet which reinforce this interconnection between religion and domestic abuse in general, and Judaism and *get* refusal in particular. Many of the concepts discussed slip quickly into religious,

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<sup>743</sup> Ibid, 56.

<sup>744</sup> In fact, this term has emerged when I have spoken on a number of occasions, including my own synagogue (the largest Orthodox synagogue in Canada). One woman once admonished that I should not speak about *get* refusal in public due to *lashon hara* and I rebutted that in fact I see it as my duty and obligation (as an Orthodox Jew and woman) to speak up about abuses and injustices that occur particularly within our community in line with the Biblical obligation of "*tzedek tzedek tirdof*", "justice justice you shall pursue", Deuteronomy 16:20.

socio-cultural rationales for the perpetuation of *get* refusal. The consequences of these phrases are significant. Forgiving an abuser because of *teshuva*, staying in an abusive marriage in order to be perceived as an *eshet chayil* or because of the wife's responsibility of *shalom bayit* or because not doing so would be a *shandeh* and might impact a family's standing or a child's marriage prospects must be revealed and discussed openly as enabling and perpetuating abuse. Moreover, wanting to avoid the prohibitions of *mesira*, *lashon hara*, or *chilul Hashem* must not come at the expense of bolstering a husband's abusive capacities through the guise of revered religious observance. These concepts by default absolve the husband of responsibility for his actions, placing all the blame, shame and guilt on the wife alone.

By challenging the misuse, misinterpretation, and manipulation of the concepts by men, and at times rabbis, *batei din* and even entire communities, as I begin to do here, I expose the latent risks to Jewish women. Indeed, for women, their "Jewish identity provides an additional set of 'tools' for her partner to use as part of a pattern of abuse" as is the case with *get* refusal<sup>745</sup>. In fact, Alison Cares, in her study speaking with Jewish victims of domestic abuse, found that 70% of the women she interviews felt that their abuse was intimately connected to their Judaism, and this is reflected in my primary research as well<sup>746</sup>. However, the remedy here is not to eliminate Jewish observance, *halakhot* of marriage and divorce, or even the Jewish lexicon altogether. On the contrary, and as was illustrated by their narratives, women still see the importance of their religious identity and communal, socio-cultural and religious norms in their lives, which often include some or all of the precepts discussed above. Domestic abuse is challenging for religious women due in part to the "denial of existence of problems by community, expectations to line up culturally and or theologically, based on idealism, and efforts

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<sup>745</sup> Alison C. Cares and Gretchen R. Cusick, "Risks and Opportunities of Faith and Culture", 433.

<sup>746</sup> Ibid, 434.

to avoid disapproval”<sup>747</sup>. This culturally nuanced complexity all religious women face complicates Jewish women’s decisions when faced with *get* refusal. Women want the right to divorce *and* to remain a part of their religious communities. *Mesuravot get* should not have to face a choice between remaining in their religious communities and in limbo, or gaining freedom, but losing their friends, families, and core systems of meaning, placing them outside their social fabric<sup>748</sup>. Ultimately, it is crucial to recognize that there are significant implications both socially and legally for women when identifying *get* refusal as a form of domestic abuse. Framing the phenomenon in a way that provides a context which both the social and legal worlds can understand, rather than dismissing *get* refusal as (only) a religious issue, or one to brush under the rug, is a significant step toward preventing the abuse of *get* refusal and validating the experiences of women.

### **Get as Negotiated**

In addition to the varied representations and the e-shaming movement now associated with *get* refusal, as well as the often veiled connection between domestic abuse and Judaism, aspects of which were exposed above, the final often-concealed aspect of *get* refusal examined in this chapter which further underscores *get* refusal as a form of domestic abuse is the unspoken disproportional impact of *get* refusal on women due to the uninterrogated normative cultural assumption that a *get* can be negotiated. My research illustrates that the terminology and language that are prevalent in a culture are not the only mechanisms abusive men manipulate in order exert their control over their spouse. Framing the *get* as an asset that can be negotiated

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<sup>747</sup> Irene Sevcik, Michael Rothery, and Nancy Nason-Clark. *Finding their Voices* Report to Faithlink and Resolve, (2010): 1-63, vi.

<sup>748</sup> Dr. David Pelcovitz, “Running Head: The Psychological Correlates of Being an ‘*Aguna*’,” (unpublished manuscript, used with permission).

along with other assets, rather than as a separate release that is disconnected from civil divorce negotiations is a tactical move that has somehow become standard practice for those looking to have power over their spouse, as the narratives have revealed<sup>749</sup>. Thus *get* refusal as a site of domestic abuse is bolstered as well by abusive men manipulating a woman's right to receive a *get* unconditionally within Judaism. It is troubling that a husband's refusal to grant a *get* has come to be normatively recognized as his free-will, his prerogative, or his bargaining chip, and not a gross domestic abuse violation which controls the psychological, social, *halakhic*/legal, and sexual destiny of this spouse. One woman accurately articulated, "A *religious right is not one of the things you deal with in court. Court is for 1) custody and 2) assets*"<sup>750</sup>, describing her frustration with the negotiation of her *get* as opposed to the *get* being given freely at *beit din* prior to any divorce proceedings in civil court. In reality, should communities shift their normative thinking, rather than perpetuate the norm that a *get* can be leveraged, the disproportionate abusive impact on women when faced with *get* refusal would begin to alleviate. It is untenable that there exists a notion that a *get* must come at a price that can be negotiated or used as a bargaining chip, as numerous *mesuravot get* and *aguna* advocates have described<sup>751</sup>. The dominant discourse about 'get-giving' must change so that it is no longer misused by men as a tool to further abuse their wives. I would argue as ORA, and other advocacy groups contend, that in the interests of gender equality, it must become normative that the *get* is unconditional and that it is given and accepted first, before and separate from civil bargaining. It should not come during civil negotiations and thus (perhaps inevitably) be used as leverage for more favourable concessions, as the *mesuravot get* interviewed enumerated. The stories of *mesuravot*

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<sup>749</sup> S.H. October 29, 2013; P.L. August 13, 2014; J.S. January 19, 2014; L.I. May 23, 2014; R.W. May 26, 2014.

<sup>750</sup> S.H. October 29, 2013.

<sup>751</sup> Personal conversations with Jeremy Stern, ORA; Rachel Levmore, leading rabbinic advocate in Israel; Sharon Shore, partner at Epstein Cole, Toronto; among others.

have demonstrated a cultural norm that has somehow developed- and that is, that a *get* is negotiable, that a husband may wait and negotiate all other matters such as custody, access, alimony and division of assets before granting a *get*, resulting in a disproportionate gendered impact to the detriment of women, reinforcing the abuse that is *get* refusal. Waiting until after the negotiation of the terms in civil proceedings opens the door for *get* extortion; implying that if a woman grants her husband favourable terms, he will grant her a *get*. If a woman (at any level of observance), is refused a *get*, her husband has the ability, power, and control to turn her into a *persona non grata*; no man concerned with *halakha* will date her, and she becomes segregated from her community, unable to move on with her life and freely exit her dead marriage.

In order to alleviate some of the gendered and abusive impacts of *get* refusal, Jewish communities might develop a new hegemonic discourse<sup>752</sup>. As the stories of *get* refusal have shown, women would likely benefit if the default normative principle might regress to its intended biblical origin- that a *get* must be given and accepted unconditionally, and swiftly (and apart from any civil matters). Perhaps the unequal impact and abuse women face would diminish if there was a concerted effort to rid communities of the notion that “inducements” or even “bribery” are acceptable requirements in exchange for a *get*, a notion whose origins can be traced back to the 12<sup>th</sup> century but was not a common tactic until the last 50 years or so<sup>753</sup> (and if communities are using the *get* as a bargaining chip by relying on the 12<sup>th</sup> century precedent, perhaps the alternate remedies such as *kiddushei ta'ut* and *hafka'ot*, discussed in early chapters of this study, and which also date back ought to be equally embraced rather than resisted, as one

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<sup>752</sup> Concurrently, I acknowledge that even if there are cultural shifts that lead to behavioural change, domestic violence and *get* refusal may persist. As students of gender violence we know all too well about the persistence of abuse.

<sup>753</sup> Bernard Jackson, “Agunah: A Manchester Analysis: Draft Final report of the Agunah Research Unit,” (Liverpool, UK: Deborah Charles Publications, University of Manchester, 2009): 1–211, 12-13.

woman suggested<sup>754</sup>). *Mesuravot get* expressed that ridding the *get* of its bargaining power could alleviate much of the abusive power men exert in their manipulation of divorce negotiations. This struggle is a perfect example of juggling between Jewish women's right to religion and their claims for equality in their right to divorce. As one *mesurevet get* asserted, "it's all too easy for a civil judge to view this *right* for a woman as a man's asset and enable the negotiation or rather extortion of a *get* for other legitimate civil matters in return like custody and other assets"<sup>755</sup>. To reiterate, changing the cultural norm about *get*-giving could alleviate one aspect of the abuse women suffer through the refusal of a *get* for *all* women by disabling men to manipulate the act of giving the *get* as a point of negotiation (whereas the rabbinic will to embrace alternative remedies could always only alleviate the gendered impact of *siruv get* for *some* women- those who feel a *get* is not required). There will always be some women who will hold out for a *get* because it is their will and right. As one woman maintained, "The bottom line is, when communities cease to tolerate wives being extorted, the problem will cease to exist"<sup>756</sup>. Thus changing the conception of a *get*'s bargaining power which is manipulated by *get* refusers, and unearthing it as an abusive tactic must thus be a part of the methods to alleviate the gendered impact of *siruv get*.

## **Conclusion**

I conducted often concealed analyses in this chapter regarding the diverse representations of *get* refusal (whether it be through images, wanted ads, or e-shaming) or discussions about aspects of culture which have become abusive tactics when manipulated by perpetrators of abuse to rationalize or support their behaviour. While these components of *get* refusal may have

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<sup>754</sup> D.D. October 24, 2013.

<sup>755</sup> S.H. October 29, 2013.

<sup>756</sup> R.W., May 26, 2014.

seemed at first glance to be disjointed, in reality they are connected more deeply. They are all facets of *get* refusal which have been all but ignored in both the socio-legal and *get*-refusal literatures, and even by Jewish and feminist scholars. In reality however, the analysis of the visual representations and the shift toward ‘e-shaming’ underscores that *get* refusal is a form of domestic violence that is supported by normative cultural assumptions and terminology. Thus, not only have these facets all gone unexplored, but my exploration of one of these facets lead me to the (re)affirmation of the (need for the) other. In other words, my analysis of the visual representations of *get* refusal and the use of social media further exposed the profundity of the abuse of *get* refusal. Conversely, framing and understanding *get* refusal as a site of domestic abuse reaffirms the need to employ ‘e-shaming’.

This chapter has explicitly considered and analyzed the images associated with *get* refusal (and how they portrayed women as slaves), the use of social media by *mesuravot get* to assert their agency, and has investigated of the use of social media in galvanizing *kherem*<sup>757</sup>, or ‘e-shaming’. Furthermore, and by exploring both the normative lexicon and the normative presumption that a *get* can be negotiated that exist in Judaism and which are aspects of culture that are exploited by abusive men, there has been an examination of *get* refusal as a site of domestic abuse. Revealing the covert elements of *get* refusal that lie latent but indeed impact all the diverse patches or stories forming the patchwork quilt (considered earlier) and discussing them here, furthers and deepens the plural objectives of this research by empowering women, voicing their void, and considering the extent to which (internal) religious social norms have

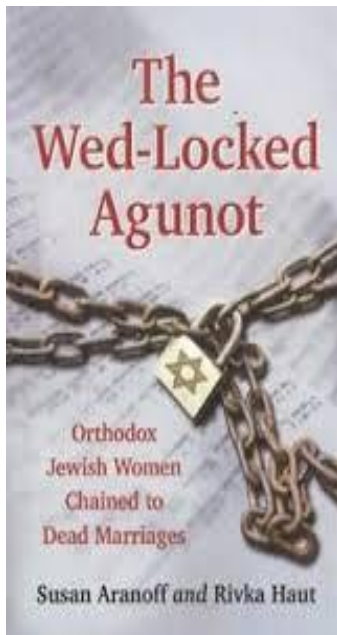
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<sup>757</sup> *Kherem* is the most severe form of excommunication Judaism. In the instances of *get* refusal, it is a traditional method of persuasion employing shaming, ostracism, and even excommunication or banishment. Rabbeinu Tam, one of the greatest Tosafist medieval rabbis created this sanction known as “*harchakot d’Rabeinu Tam*”, or the distancing of our rabbi, Tam. The sanction stated that although one cannot force a husband, one should place an obligation on the public and on the authorities to avoid all contact with the man until a *get* is granted including not doing him any favours, not conducting business with him, and not even circumcising or burying his children until he divorces his wife.



been impacted by state legal reforms (thereby also demonstrating the potentially transformative power of grassroots efforts to impact both social and legal change). In fact, reflecting on the analyses above, it seems that internal religious social norms have not been impacted by legal reforms in expected ways (so as to halt *get* refusal altogether). Indeed, culture is a more forceful and potent factor than those who argued for legal reform would have it. I argue, if the social norms *had* been impacted by the legal reforms in a way which resolved or stopped the phenomenon of *get* refusal, these strong threads, these prevailing discourses underlying *get* refusal (varied representations, men distorting the lexicon to buttress Jewish abuse, and the normative theory that a *get* is negotiable) would begin to dissipate, and yet, they remain strong in both New York and Toronto, as my research has demonstrated.

Images 1.1-1.9





הקואליציה הבינלאומית  
לזכויות העגונה ומסורבת הגט

ICAR- International Coalition of Agunot Rights



Images 2.1-2.3



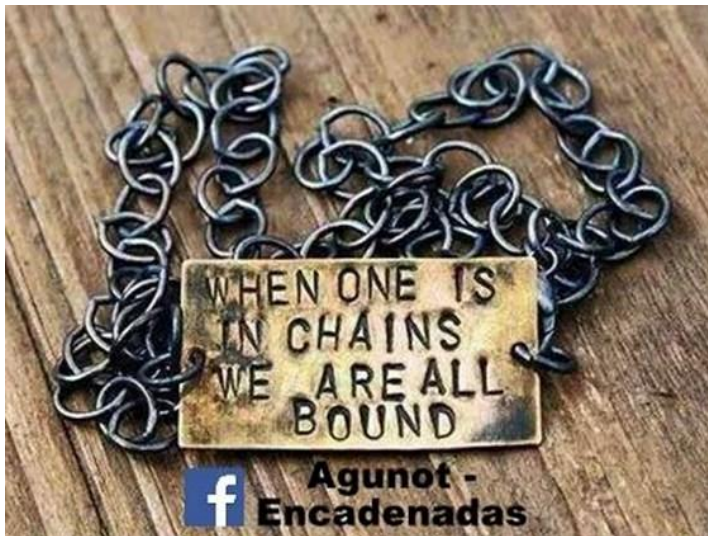
<http://agunahandherget.com>

Images 3.1-3.8



Pin, widely available at rallies



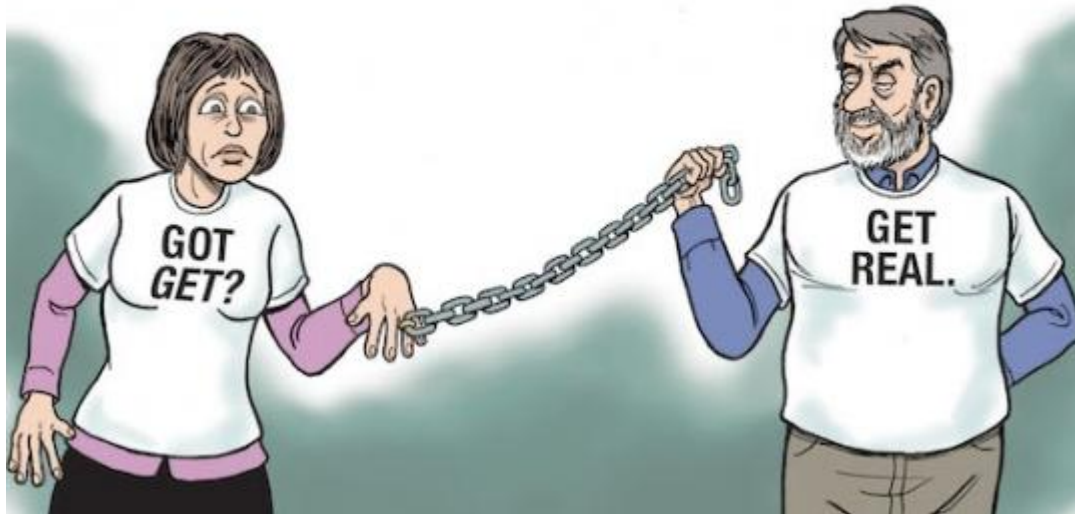


From an Aguna support group in Argentina



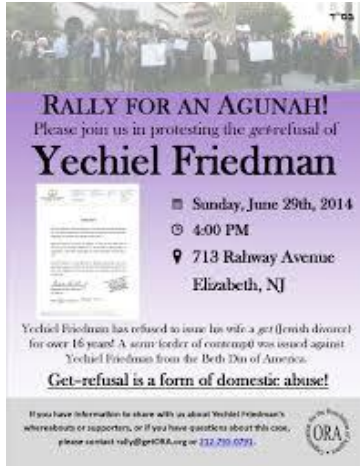
“Chained to her ring against her will”

## 12 or 30 or 5 or Whatever Years a Slave



<http://www.agunot-campaign.org.uk/>

Images 4.1-4.14



**RALLY FOR AN AGUNAH!**  
Please join us in protesting the get-refusal of  
**Yechiel Friedman**

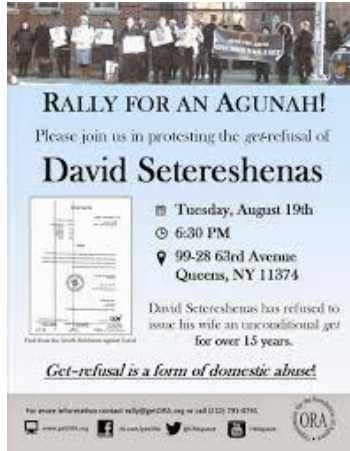
**Sunday, June 29th, 2014**  
4:00 PM  
713 Rahway Avenue  
Elizabeth, NJ

Yechiel Friedman has refused to issue his wife a get (Jewish divorce) for over 16 years! A semi-leader of contempt was issued against Yechiel Friedman from the Beth Din of America.

**Get-refusal is a form of domestic abuse!**

If you have information to share with us about Yechiel Friedman's whereabouts or supporters, or if you have questions about this case, please contact rally@getORA.org or 212.755.0793.

ORA  
The Organization for the Resolution of Agunot



**RALLY FOR AN AGUNAH!**  
Please join us in protesting the get-refusal of  
**David Setereshenas**

**Tuesday, August 19th**  
6:30 PM  
99-28 63rd Avenue  
Queens, NY 11374

David Setereshenas has refused to issue his wife an unconditional get for over 15 years.

**Get-refusal is a form of domestic abuse!**

For more information contact rally@getORA.org or call 212.755.0793.

ORA  
The Organization for the Resolution of Agunot



**L.A. Community Rally**



**Protest Meir Kin's refusal to give his wife a valid Get.**

356 N. Poinsettia Place  
(between Oakland Ave. and Beverly Blvd.)  
Taanit Esther, Monday, March 9th  
5:00-6:00pm

For more details: Rally@MeirKin.com  
212.755.0793  
www.MeirKin.com

This rally is sponsored by  
The Organization for the Resolution of Agunot



**RALLY FOR AN AGUNAH**

Please join us in protesting the Get-refusal of:  
**MOSHE STERN**



**Friday, June 26**  
10:00PM  
1169 51st Street  
Brooklyn, NY 11223  
www.getORA.org/moshe-stern

**MOSHE HAS REFUSED TO ISSUE HIS WIFE A GET FOR OVER 19 YEARS!**

**GET-REFUSAL IS A FORM OF DOMESTIC ABUSE.**

ORA  
This rally is being organized by the Organization for the Resolution of Agunot (ORA).  
For more information: rally@getORA.org



# THREE RALLIES FOR AGUNOT

DECEMBER 25 11:00AM-1:00PM



Join us in protesting the Get-refusal of:

**MOSHE STERN**  
 11:00AM  
 1169 51st Street  
 Brooklyn, NY 11223  
[getORA.org/moshe-stern](http://getORA.org/moshe-stern)

**YECHIEL FRIEDMAN**  
 11:45AM  
 1131 48th Street  
 Brooklyn, NY 11219  
[getORA.org/yechiel-friedman](http://getORA.org/yechiel-friedman)

**KURT FLASCHER**  
 12:30PM  
 1017 44th Street  
 Brooklyn, NY 11219  
[getORA.org/kurt-flascher](http://getORA.org/kurt-flascher)

**GET-REFUSAL IS A FORM OF DOMESTIC ABUSE.**  
 For more information: [rally@getORA.org](mailto:rally@getORA.org) or call (212) 795-0791.

RALLY PROTESTING THE GET-REFUSAL OF:

# ELI SHUR

GET-REFUSAL IS DOMESTIC ABUSE.

11-8-15 | 11:30AM

CORNER OF N. BROMFIELD RD. & FAR HILLS AVE.  
 DAYTON, OHIO

TO LEARN MORE: [WWW.FREEDINA.COM](http://WWW.FREEDINA.COM)

ORA

INITIATIVE OF THE ORGANIZATION FOR THE RESOLUTION OF AGUNIM | RALLY@GETORA.ORG | 212-795-0791 | WWW.GETORA.ORG



Subway advertisement for Congressman's Aide





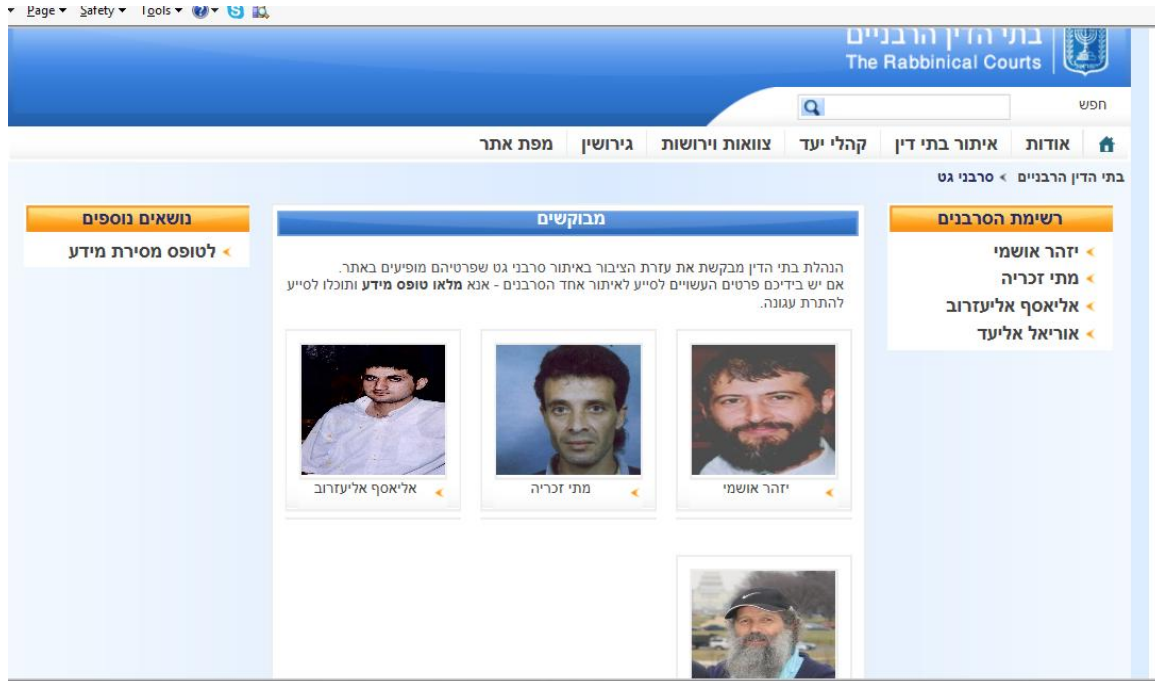


Images 5.1-5.3

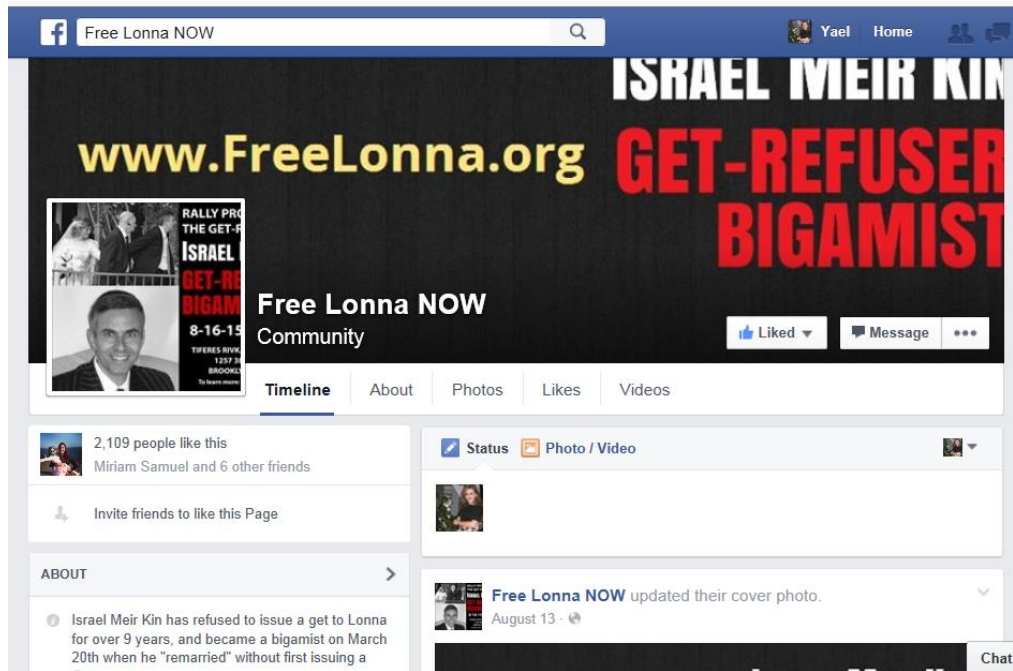
SERUV LISTING
<p>The names listed below are <i>Mesarev Ledin</i> or have <i>Harkhakot D'Rabbeinu Tam</i>.            A <i>Beth Din</i> has issued a <i>seruv</i> against each person listed for a) withholding a <i>Get</i> upon being ordered to grant one, b) for refusing to appear before <i>Beth Din</i> in matters pertaining to a <i>Get</i>, c) for otherwise failing to follow the order of a <i>Beth Din</i> in matters pertaining to a <i>Get</i>. For the <i>Halacha</i>t regarding how one should treat a person who is <i>Mesarev Ledin</i>, please consult a competent Orthodox rabbi.</p>
<p><b>KURT SHMUEL FLASCHER</b> of Brooklyn, New York, issued by Bet Din of Elizabeth, September 2002</p>
<p><b>JACOB MOSES BINSON</b> of Montreal, Canada, issued by Bet Din Zedek of Montreal in August 2005</p>
<p><b>SHIMON KNOPFLER</b> of Brooklyn, New York, issued by Beth Din of America, March 2009</p>
<p><b>STEVEN SCHER</b> of Roanoke, Virginia, issued by Bet Din of America, November 2009</p>
<p><b>MEIR KIN</b> of Los Angeles, California, issued by Rabbi Hershel Schachter, Rabbi Nachum Sauer, and Rabbi Avrohom Union, June 2010</p>
<p><b>FARHAD GHOLIAN</b> of Brooklyn, New York, issued by Beth Din of America, November 2010</p>
<p><b>CHANOCH LEBOVIC</b> of Washington Heights/Toronto/Brooklyn, issued by Beth Din Zedek, Kallel Avreichim March 2011</p>
<p><b>ALBERT KATANOV</b> of Phoenix, Arizona, issued by Beth Din of America, November 2011</p>
<p><b>AZRIEL MADMONI</b> of Kew Gardens, New York, issued by Beth Din of America, January 2012</p>
<p><b>JUTE DAVID KESTLER</b> of Fairlawn, New Jersey, issued by Beth Din of America, March 2012</p>
<p><b>YEHUDA SEBBAG</b> of Montreal, Canada, issued by Beth Din of Montreal, July 2012</p>
<p><b>YECHIEL FRIEDMAN</b> of Elizabeth, New Jersey, issued by Beth Din of America, August 2013.</p>
<p><b>DAVID NAHMANNY</b> of Brooklyn, New York, issued by Beth Din of America, June 2012</p>



<http://rbc.gov.il/Wanted/Pages/default.aspx>



Images 6.1-6.5





**Free Gital: Tell Avrohom Meir Weiss to Give His Wife a "Get"**

13,917 likes · 18 talking about this

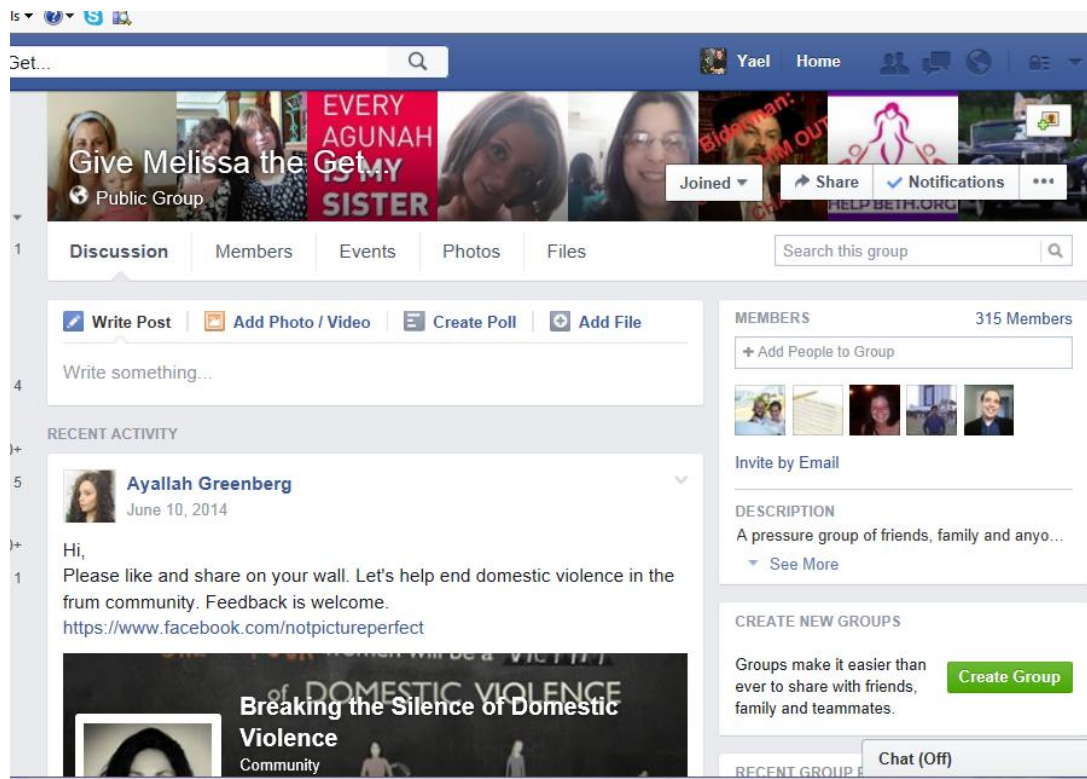
Community  
Spread the word: Tell Avrohom Meir Weiss to free his wife and give her a Get (Jewish document of divorce)! Please LIKE us and help us Free Gital!

About – Suggest an Edit

Like Follow Message

13,917 Likes

Photos Likes



Get...

Yael Home

**Give Melissa the Get**

Public Group

EVERY AGUNAH IS MY SISTER

Joined Share Notifications

Discussion Members Events Photos Files

Search this group

Write Post Add Photo / Video Create Poll Add File

Write something...

RECENT ACTIVITY

**Ayallah Greenberg**  
June 10, 2014

Hi,  
Please like and share on your wall. Let's help end domestic violence in the frum community. Feedback is welcome.  
<https://www.facebook.com/notpictureperfect>

**Breaking the Silence of Domestic Violence**  
Community

MEMBERS 315 Members

+ Add People to Group

Invite by Email

DESCRIPTION  
A pressure group of friends, family and any...  
See More

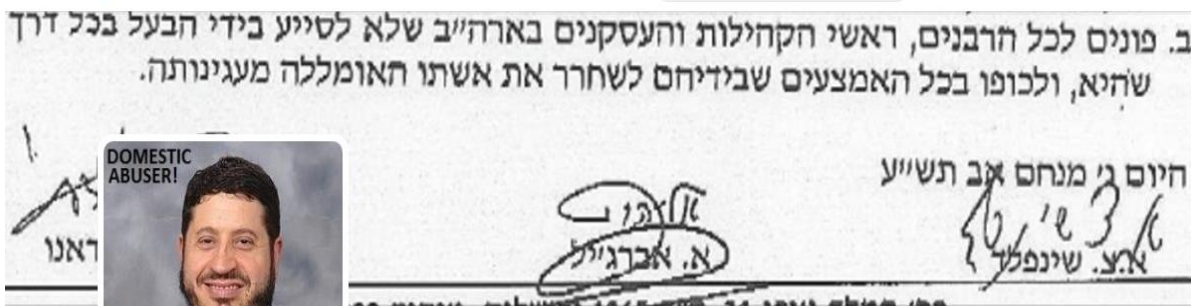
CREATE NEW GROUPS

Groups make it easier than ever to share with friends, family and teammates. **Create Group**

Chat (Off)



➔ WATCH THE VIDEO



TWEETS 11 FOLLOWERS 34 LIKES 1

Follow

Eli Shur - Abuser

@Eli\_Shur\_

Eli Shur refuses to grant his wife a Jewish divorce, thereby trapping her and preventing her from moving on with her life. - Help stop his domestic abuse!

Dayton, OH

Tweets Tweets & replies Photos & videos

Eli Shur - Abuser Retweeted

ORA @ORAgunot · Nov 5  
 THIS SUNDAY-join us in Dayton OH as we protest Eli Shur (aka Dovid Porat)'s refusal to issue Adina a Get! #freadina



Image 7

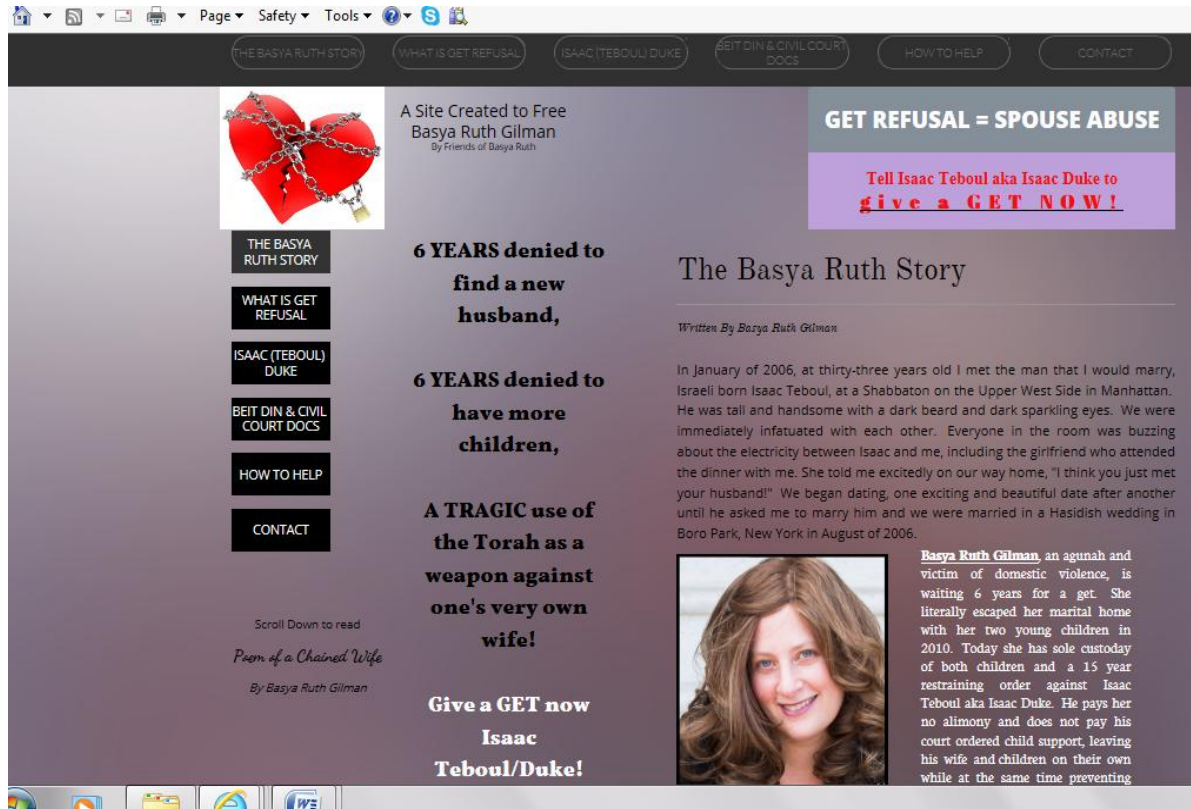


The Jewish Daily Forward, Forward Association Inc. (The Dorot Jewish Division, The New York Public Library, Astor, Lenox, and Tilden Foundations)


Image 8 (top right corner)



Image 9





**The "Refuser" George Yitzchak Dees**




George Yitzchak Dees, currently in San Antonio, Texas, has been identified as the man who is refusing to provide financial support for his wife and children. He is demanding \$40,000 from Rachael Weinfield, a single mom of three teenage sons. The couple was married 10/18/09, separated 6/25/13.

George Yitzchak Dees is the son of a wealthy family and has a high level of education. He is currently in San Antonio, Texas, and is refusing to provide financial support for his wife and children. He is demanding \$40,000 from Rachael Weinfield, a single mom of three teenage sons. The couple was married 10/18/09, separated 6/25/13.

**Tippy Bar Yadin** - owner of Meirose Stores  
 married to Dr. Heritage, brother-in-law of George Yitzchak Dees "The Refuser"

The "Frisky Couple" Tippy Bar Yadin and Dr. Heritage at their wedding February 2011 at Congregation Rodeph



The Bar Yadin Family (L to R: Lol, Tippy, Reuben, Michael) Owners of Meirose Stores who have been assisting George with housing and obtaining employment during his stay in San Antonio.

For more information "Get Abuse" contact:  
**THE ORGANIZATION FOR THE RESOLUTION OF AGUNOT**  
 114 West 11th Street, Suite 120, New York, NY 10011 • (212) 799-0776 • info@ora.org • www.ora.org

‘Image’ 11

My body it did not hurt when you hit my head, but my soul my self it was as if dead  
I had wished that you loved me, but you chose to scare me instead  
Wine bottles you threw at me,  
my ankles bled,  
Finally there was no choice and I fled.

The way of the tyrant is like this;  
when all gets too much  
out of the blue comes the kiss  
To make it seem that all is just fine,  
Sweet and charming you are for a time  
Around and around it goes like this  
Did you know what you were doing  
Or were you oblivious?

Someone had hurt you when you were a boy  
And robbed you of all that we could have shared in joy  
Our son , our daughter so precious and sweet  
For their sake I'll remember when we did first meet  
For sure there were reasons for us to be  
I thank you and pray that you might understand me

Though we've been apart for so long, your grip your grasp you hang on  
You think that it's you who chains me here,  
You still try to torment me but I overcame my fear  
The King is My Father, He will set me free, you can never have any hold on me.  
~ B.R.G., 2014

Image 12

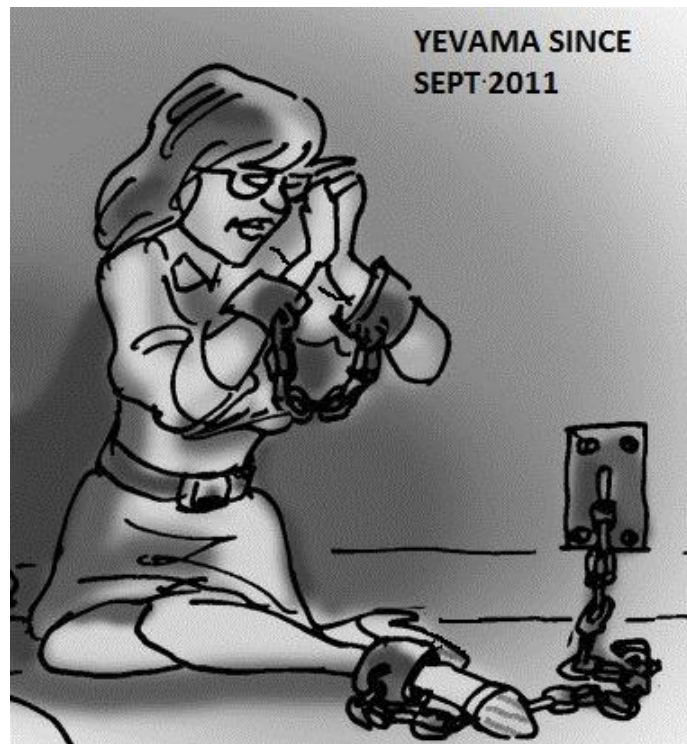




Image 13



“Donated by Rachel, anticipating her *get* from Yitzchak Dees”

## **Chapter Seven - Toronto and New York**

*We dated and met in Brooklyn (I had moved there from Israel to get married. I was very determined; I left Israel with three suitcases).*

*He wasn't great but I married him anyway. He was controlling and if I'm honest, he made me cry at our wedding. The next day, after wedding, he made me drive to return my dress, which was rented, because but because I had had a car accident just recently, I really didn't want to drive and he forced me.*

*Already that day I wanted Hashem to give me strength to divorce him. I actually remember thinking that.*

*My family didn't want me to get married to him but I was stubborn. He was controlling; there was verbal abuse and he didn't take care of me. There was no money to support me and he called me fat, stupid. I was studying for a BA and he said 'so what if you have a BA degree, that doesn't make you smart', and things like that. I started to believe what he was saying. I became completely dependent on him and quit. All my bold confidence and independence that I came to America with shrank and disappeared.*

*Now he really wants me back but then he had ignored me, he didn't support me, and abused me for no reason.*

*He has a mean personality and eventually I found out he also cheated.*

*After our baby (son) was born I decided I wanted a divorce but he said only the civil and that he wouldn't give me a get. I managed to leave the house with a garbage bag of clothes...*

*I wanted to start the process with a beit din but 3 rabbis said 'shalom bayit' first and sent me back... I finally met a random rabbi not affiliated with any beit din who said he was willing to do seruvim for \$700- he did them but nothing else and then disappeared. I lost the \$700, it was a scam.*

*Then my husband had paid off six lawyers so as not to defend me and he had a friend who was friends with our judge. Eventually I complained to the district attorney, and eventually, I got a new judge who was indeed more favourable.*

*I was an aguna for four years- roughly from the ages 27-30 ish (which are key years) and he didn't want anything. He made no real demands; but there was lots and lots of court, including an order of protection.*

*He squeezed my blood; I was so skinny I couldn't eat. He had said multiple times 'until I die you won't see a get'. I felt in a jail in an open world.*

*In the end, the civil and get were at same time, through beit din- there was his civil agreement prepared at beit din and I signed it despite it being extremely unfavorable to me. I would have signed anything- even to clean his bathroom everyday- I just wanted to be free.*

*I believe everything is for a reason...*

*My father, a very religious man had come to me and allowed me to date while I was an aguna. He said he understood, and that it was okay if I wanted to, but I couldn't. I was still religious, I was still a believer.*

*My husband was manic. He took bulbs out of lights in my room when I had moved to the basement, before I finally moved out. He had turned off the hot water in the house every time I showered. It took a while until I figured it out. I have trauma from marriage. I'm afraid to get married again even though I want to.*

*I have full custody but right now he has all the decision making powers regarding their school, health, etcetera. I also can't leave New York (to go home to Israel to see my family). I didn't get anything- not support, alimony, no house or anything in it. Nothing was in the agreement I signed.*

*A day after I got my get I went to the corner store to buy milk and I was struck by how beautiful a day it was. I was desensitized before, but once I got my life back, I saw how beautiful life could be...*

*Now I think that prenuptial agreements are a must. It has to be as natural as the ketuba. It has to be with the ketuba- and if you ask me- there should also be a ready 'get' and an agreed upon time frame, like a year and a half to show the couple really tried and then you can use the ready 'get'.*

*At secular court I felt more confident, more heard, there are ways to try to get under a husband's skin and annoy him, pressure him through secular court in order to get some power back for religious court/ get dealings. Secular court gave me hope and confidence, but at the end it's really only a miracle. If you ask me, it wasn't the secular in the end; it was a miracle. People have to sit with secular court and explain the issue, especially when it's only the woman who wants a get. Secular courts and judges don't always get it.*

*I was very strong with emuna- people used to come give me chizuk and they'd tell me that I give more to them.*

*Now I compartmentalize rabbanim vs. rabbanut. Some rabbis felt my pain but couldn't help me- if they belonged to larger rabbinic organizations or groups and they'd lose their status, and/or 'lose face' if they'd come out and help me. Rabbanim could find a 'petach' if they wanted to be creative and open it up and help but it's not okay for them to open up halakha too much.*

*Ultimately the solution must come from Halakha but in the meantime also prenuptial agreements and pre-made 'gets' are good.*

*Every woman has to ask herself before she gets married, "Can I divorce him?" - A woman's dedication and commitment to family is innate and internal – a husband has to work on it...*

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*The differences between New York and Toronto are about more than just how they treat or deal with agunot and more than to do with the size of the communities, Toronto's Jewish community being smaller, or the niceness and propriety of Canadians over the Americans and their abrasiveness and antagonism. Rather, this is about how men treat women in our communities, therein lies the difference*

*We were married about six years until the breakdown of the marriage. I owned a home before I got married, and had a great job, but I gave it all up for a family. I had a nanny, I never worked, it looked like I had the best life- and at the beginning I did. I had weekly manicures, the works, and no one would suspect that with all that, I was being controlled, and things were being withheld. Money was allotted for certain things and sometimes I had no money for groceries, or no money for a particular week.*

*My husband can now get aliyahs in shul and can give kiddishes, but my rabbi won't support me. Now I'm all alone, with four kids, and he doesn't even pay child support.*

*I never thought I could live like this- in a two bedroom apartment. I used to feel bad for people who lived like I'm living now. Though now I understand it's not so bad, it's not important. I rather live like this than live in a big house with a nanny but be living with him like I used to...*

*I get help from private individuals- since there are no organizations to help and I'm always worried because there is only so long individual people will be willing to help. Plus, they still see me with nice things because I still try to sustain as much as I can a certain lifestyle for my kids, what they are used to. But in reality, my mother buys my kids and me clothes, my brother just bought me a new car- I couldn't do any of it on my own.*

*Looking back, I'd never marry my husband now, and I worry about repeating my mistakes as I start to date... I'm so cautious.*

*None of the rabbonim understand. They don't have a grasp of the issues that arise in a marriage. They think that the causes for problems are all simple, like I don't know how to cook dinner properly. They have no idea about control, about withholding...*

*I knew I needed to get approval from some rabbis before leaving; I couldn't just decide to leave on my own. I needed permission and affirmation before acting because I had four young kids, my youngest was only 9 months old and I was going to walk away from a marriage and break the*

*family. I spoke to our therapist, Dr. Gerber, Rav Pamensky, and my personal rabbi, they all told me to leave.*

*Three times, Rabbis Ochs and Shochet sent me home without a get simply because my husband said the wrong word or the right word the wrong way. They were so strict and he knew how to use and manipulate their stringency to his benefit- he was himself a smart lawyer. My own stepmother, as a result of her own difficulties securing a get, dissuaded me from leaving and encouraged me to try to work things out further.*

*I was struck by how everyone gave the man so much control- my own family, the rabbis, everyone.*

*But, honestly, at that point, I wasn't even thinking about a get, I didn't even care about it yet. All I thought was that it would be better to be alone and an aguna than with him. I did know that he went around telling everyone that he'd never give me a get. And so the amazing thing was that I was an aguna, but in a sense I sort of didn't even feel it. I knew subconsciously, in my heart that I would get the get when I needed it.*

*I was in denial, or too overwhelmed with all the changes to realize I needed one for over a year, until 2 miracles happened when I needed them to: 1- I won sole custody, and 2- I got my get. Everything else is dragging along slowly in the courts.*

*I won sole custody because he decided on a whim he was moving to Montreal and so I ran to the courts, to Judge Kaufman in Newmarket courts who is amazing and I got it right away. It was a nes – I never expected a get. I had called rabbi Shochet for a get when my husband left to suddenly move to Montreal. My Lubavitch rabbi was called because my husband had told a Lubavitch rabbi in Montreal that he was a single guy without kids and the rabbi in Montreal had his doubts. All the stars just aligned. I went to an emergency-convened beit din and when he dropped the get into my hands it was the most amazing feeling....He wanted to go for lunch after, that's how an unstable a personality he is.*

*He then went back a few months later to try and reverse the get. I freaked out, called Rabbi Ochs and he said that while they are not giving it much credence, everyone deserves their day in court, and they are going to hear what he has to say about perhaps being forced into granting get. I was Skyped into to that session and was asked many questions.*

*Later that day I called Rabbi Ochs to follow up and he told me the get was kosher, and not to worry, but I told him about my concerns, and how this might haunt me again in the future if my ex decides to try and take it back again and he assured me, it was all done, never to be revisited.*

*Today, my outlook has totally changed because of what I've been through.*

*He manipulates, and lies, and cheats, and people still give him, and all the men like him, the time of day; this was an eye-opener.*

*We were not civilly married, we only married under chuppa and we were common law partners and so I did try to use civil law as a threat but it didn't work for me.*

*I wonder if there is a propensity in Lubavitch for get refusal? Because they are 'too accepting' because they don't want to turn anyone away... It's more about not losing a Jewish soul- so if they turn a man away from shul, that's a super negative thing (though they're not thinking about the potential for a woman's soul to leave Judaism because she feels abandoned, or of the potential children she may be able to bring into world if not chained to her marriage). They think if they push men away they will lose them. This could be important in terms of potential communal sanctions against recalcitrant men- cherem.*

*The converse may also be true, I wonder. Maybe there is less occurrence of get refusal in the FFB- frum from birth communities?*

*Anyway, I believe the rabbis, not the civil laws, have to give a voice to women. They should not stand idly behind the men. How the women feel is how men should be meant to feel- trapped and alone. Men should be meant to feel trapped and alone. Men don't care about any laws, not Jewish, not civil unless maybe they would be handcuffed- until then, they don't care about the law.*

*It should be same within beit din, just like in civil court- that without a get, your word in the community or the court means nothing.*

*The rabbis and men like to be applauded for building yeshivas, not for helping women.*

*A friend of mine is in the same situation. She told me that she was being seriously, physically abused and was asking for a get from her husband. He says to her 'you'll be in a wheelchair or dead before I ever give you a get'. He threatens her so severely and incessantly that she'll never get a get and she believes him. She went back to live under the same roof as her abusive husband, who throws furniture at her from across the room. I speak to her every day to check on her, though I never ask her about her husband. I see her sometimes, black and blue, and so can the rabbis see it. If the rabbis would stand up against domestic abuse, women wouldn't have to live in fear; they wouldn't have to go back into abusive marriages because they are left no other choice, without a get!*

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*My rabbi was awesome- and had insisted on the prenup when I told him I was engaged.*

*At the time, I thought I was signing it for 'other women', as a way to help break the social stigma. That said, I did cross off the optional part of the prenup which grants permission to the beit din also to arbitrate custody and other such matters.*

*I was in my mid to late thirties when I finally got married, and have come to a modern form of Orthodoxy or even 'conservadoxy' relatively recently to that time.*

*Anyway, I ended up filing for divorce after just nine months of marriage. I admitted to myself that there were problems before and after the marriage although my parents seemed well aware.*

*There were some symptoms of his being dysfunctional. He had no job, he owed back taxes...*

*Once we were married, he used religion against me quite a bit. For example, I felt strongly about mikva attendance and I went, although there was no sex going on between us. Ironically, he claimed I was never religious enough for him although he was not religious either.*

*When my husband said he won't give me a get my rabbi gave me a flyer about ORA and I started to go to the Beit Din of America. They issued hazmanot and helped in other ways but he was clever and agreed to show up after the 3<sup>rd</sup> hazmana so as to avoid public seruv.*

*ORA, as well as some rabbis that ORA sent me to, who were affiliated with Yeshiva University (YU), were very good support. They also assigned me a great toen (rabbinic court advocate). The beit din spoke to me for hours at a time. They really heard me.*

*I had paid for everything; all the debts he racked up. Then he said he wanted our marriage to work and I said, 'of course he does! Because I'm funding him!' I re-furnished our apartment, paid for his health insurance. He could have lived like that forever!*

*I remember at the end of the "trial" day, the rabbis told us that there was a fee for the day. I don't remember how much. I remember them saying that each of us owed 1/2. I was so relieved. It was the first monetary obligation that was not put 100% on me. I had a check book and wrote my check then. My husband said he'd have to pay in the future because he had no method of payment with him. I appreciated that the Beth Din did not look to me for full payment. Until that moment, we were considered married and I was responsible for him financially. Of course, I remained responsible for many of his expenses until the civil divorce was settled because we were still civilly married.*

*The rabbis were nice and friendly and I believe what got him to give the get was pressure from the entire situation- that ORA and my rabbis put on him and through family. ORA made it an issue to his family.*

*That said, I did decide that if the religion wasn't going to work for me and get me through this, I would have just walked away from it.*

*In the end, mine was one of the first prenups tested in beit din. He tried to ask me for one million dollars and said he'd not give the get unless I paid it. I wound up paying \$40,000.*

*But still feel that the prenuptial agreement was enormously helpful. It really put the beit din in to action.*

*On the matter of his extortion, it was the religious system that helped. It was a religious issue, the get wasn't an asset that we had to split or negotiate in civil court and I didn't want to.*

*There is always a risk with a civil judge who doesn't know religion and its nuances and so it's all too easy for a civil judge to view this right for a woman as a man's asset and enable the negotiation; that is, extortion of a get for other legitimate civil matters in return- custody etcetera. So if a judge was trying to rule fairly and equally, and considers a get as an asset for a woman, she will have to pay a price for the get in the civil structure of equal bargaining power. It's a religious issue, and right of a women & shouldn't be caught up in issues dealt with in civil court*

*I think the best solution is ideally from the beit din/rabbis. And, if it was halakhically possible, for beit din to equalize things, or for rabbis to find a way to issue a get without husbands' approval. Religion relying on civil law is enormously problematic.*

The narratives here signal some of the discrepancies between New York and Toronto which will be elaborated upon in the chapter. In particular, these narratives highlight some of the divergences regarding the roles and behaviours of *batei din*. While one narrative highlights a negative experience with a *beit din* that was separate from the Beth Din of America's network, that same participant clearly distinguishes between *rabbanim* and *rabbanut*, that is, individual rabbis and the institution of the rabbinate. She indicates that while she had negative perceptions and experiences with 'the institution', the *batei din* she had been attempting to work with, she nonetheless resisted painting all rabbis with the same brush.

Another participant, herself, makes a comparison between New York and Toronto in the narrative she shared, having lived in both locales. She seems to indicate, based on her personal knowledge, as well as observations made based on friends' experiences of *get* refusal, that generally speaking, New York might offer better mechanisms for positively navigating *get* refusal when compared with Toronto. She also elaborates on her experiences within the Toronto context and implies that in New York issues around *get* refusal, domestic abuse in particular, are acknowledged and managed more appropriately



The final participant in this series actually indicates that her experiences both with individual rabbis and *batei din* were quite positive. Despite the abuse she faced, including extortionate demands subsumed in her husband's refusal to grant a *get*, the participant nonetheless describes very encouraging interactions. Thus the narratives opening this chapter gesture to the inconsistencies between New York and Toronto concerning *get* refusal, elaborated upon in the coming chapter.

In this chapter, divided into two large sections, I develop the conclusions emerging from this study. First, I assess the differences between the sites of analysis, New York and Toronto, and subsequently, I elaborate more broadly on the lessons learned. This assessment will highlight the comparative nature of this project, and more importantly, it will underscore aspects surrounding *get* refusal that have been successful and that ought to be celebrated and proliferated, as well as shortcomings and malfunctions that ought to be acknowledged and corrected. Here, in this comparative analysis, I bring to bear earlier explorations of diverse literatures and approaches, I build on and extend the debates, I assess policy recommendations, proposed remedies, and most essentially I incorporate *mesuravot get*'s experiences all in order to address the lingering queries; To what extent are New York and Toronto distinct or similar regarding *get* refusal? How and why might the connections between these two locales be significant on the issue of *get* refusal? What impacts might this have and/or to what extent might this be noteworthy? While these queries are not the primary focus of this project, these remaining questions do weave in and out of earlier analyses, and in particular are highlighted repeatedly throughout women's narratives. Thus, this analysis, focusing on the relationship between New

York and Toronto is intertwined with the findings and significance of this study and is based heavily on the primary data collected –mainly from women refused a *get* but also additional stakeholders such as rabbis, judges, activists/advocates, and others. This analysis is also informed by my own observations at communities at rallies, workshops, film screenings, educational community panels, school visits, and even personal interactions with stakeholders, community leaders, and media (the goal of my analysis is not to be condemnatory, rather simply to relay internal facts). This examination illustrates that each of these major Jewish centres serves as a beacon- either the guiding light or the flare signal- to Jewish communities beyond their borders. In other words, what goes on here, matters; it has a wide a deep impact. Moreover, borrowing and adapting the analogy of Mnookin and Kornhauser’s notable work, ‘In the Shadows of the Law’<sup>758</sup>, to ‘In the Shadows of Legal Pluralism’, enables a nuanced consideration of the conclusions and lessons emerging from this research.

### **Difference, Divergence: Remedies, Support, Character**

Despite the enduring connections between New York and Toronto, when it comes to the phenomenon of *get* refusal (upon which I elaborate at length in the early chapters of this study), I argue there are marked distinctions between the two locales. This section will elaborate and explore some of the essential inconsistencies. Namely I will explore inconsistent remedies to *get* refusal such as inconsistent use of traditional *halakhic* protocol by *batei din* and the inconsistent use of prenuptial agreements inconsistencies regarding available services such as those offered by Jewish organizations dedicated to helping women refused a *get* or to framing *get* refusal as domestic abuse, inconsistent media representation such as the use of media in educating and

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<sup>758</sup> Robert H. Mnookin and Lewis Kornhauser, “Bargaining in the Shadow of the Law: The Case of Divorce,” *Yale Law Journal* 88, (1978-1979): 950-997.

shaming, and perhaps even inconsistent community characters (among the mainstream/ modern Orthodox) such as tight-knit and concentrated versus spread out and more transparent.

Ultimately, and unlike in New York<sup>759</sup>, perhaps the most significant aspect that aides in the continuation of *get* refusal in Toronto is the Toronto *Beit Din*'s failure to employ the non-contentious *halakhic* remedies within their arsenal (and their lack of transparency regarding their inaction and the impact of it). As I explained in chapter two, rabbinic courts have a specific protocol when individuals seek their intervention on the matter of dissolving a marital contract. If a spouse refuses to appear before the *beit din*, first the court issues up to three *hazmanot* or summonses to appear, at that point, if the spouse still refuses to appear before the *beit din*, a *hatra'at seruv* is issued or a warning of a forthcoming issuance of a contempt order, and finally if the spouse continues to ignore these summons, a *seruv* is issued, an order of contempt for refusing to arrive at *beit din* (and begin negotiating in good faith). This official protocol is vital because it is only at the point of issuing a *seruv* that the recalcitrant spouse becomes 'officially' recalcitrant in the eyes of *halakha* (regardless of how much time has elapsed from his initial refusal to grant the *get*). Moreover, a *seruv* serves as a prerequisite for a *kherem* to be issued against the recalcitrant spouse by the *beit din* and for the community to exert its pressure. Thus a *seruv* is imperative for communal ostracism and shaming (as well as e-shaming) to commence within the confines of Jewish legal and moral codes of conduct. In conjunction with this, and perhaps the principle reason why issuing *seruvim* is so imperative, is because only after a *seruv* is in place does a woman get the *halakhic* designation of an '*aguna*' (again, regardless of how much time has elapsed since her spouse's initial refusal to grant the *get*). To clarify, even if a

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<sup>759</sup> This is not a sweeping contention. There are certainly rogue *batei din* in New York that likewise do not follow protocol, however generally, and as was illustrated by the narratives of women from New York, the Beth Din of America (BDA), the 'mainstream Orthodox' and largest rabbinical court in America serving affiliated and unaffiliated Jews does employ this protocol and is quite transparent about their procedures.

wife is refused a *get* by her husband for years, if the *beit din* has not issued a *seruv*, the wife is ‘technically’ not considered to be an ‘official’ *aguna*. Thus, these well-established mechanisms available to *batei din* ought to act as the first-line of defense for potential *agunot*, and *batei din* should, without reservation, employ these protocols in all cases and in a timely manner. Moreover, it is not uncommon in some cases that these traditional *halakhic* mechanisms may be enough to exact a *get*.

Thus, I argue it is all the more problematic that the Toronto *Beit Din* does not employ these basic *halakhic* procedures. My primary data illustrates that the Toronto *Beit Din* fails to issue *hazmanot* and *seruvim*. Each research participant from Toronto described this phenomenon repeatedly over the course of the time I spent interviewing<sup>760</sup>. One woman described the *Av Beit Din* or head of court’s answer when she requested he issue a *hazmana* to her husband by saying, “*when he’s ready, he’ll come*”<sup>761</sup> and many others simply stated matter-of-factly over the course of our interviews, “*they had never even issued any hazmanot, and no seruvim*”<sup>762</sup>. Other stakeholders such as lawyers and others in Toronto confirmed this with one advocate saying “*This beit din is at least 50% of the problem in getting a woman her get in Toronto, and that’s a very modest estimate*”<sup>763</sup>. Moreover, this troubling reality in Toronto was known by Jeremy Stern, Executive Director of New York-based ORA who in an interview with me expressed his deep concern regarding the Toronto *Beit Din*’s lack of action, “*The purpose of issuing a seruv is to take the case out of the zone of ‘he- said she-said’ and into the zone of objective recalcitrance. Thus by not issuing seruvim, the Toronto Beit Din only serves to exacerbate antagonism and*

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<sup>760</sup> In particular, interviews with B.F.; J.D.; P.L.; D.R.; S.M; M.G.; C.S.; E.L.; M.S. among others; and this disturbing trend was echoed as well in my Master’s research, though the focus of that project was different.

<sup>761</sup> B.F. June 14, 2014.

<sup>762</sup> C.S. August 17, 2014.

<sup>763</sup> Anonymous advocate from <http://agunahandherget.com/>.

*perpetuate a stalemate*” wherein women remain married against their will<sup>764</sup>. That said, there are few if any consequences in terms of enforcement outside of Toronto regarding the failure of the Toronto *Beit Din* to follow protocol<sup>765</sup>. One example of the Beth Din of America facilitating and encouraging *gittin* versus the Toronto *Beit Din*’s approach can be seen even in their convening of sessions. While the Beth Din of America has convened emergency sessions in the middle of the night and across the greater New York area according to the recalcitrant husband’s will in order to facilitate *gittin* particularly in contentious cases<sup>766</sup>, in contrast, in Toronto, the *beit din* has cancelled sessions, rescheduled, and delayed sessions, rather than convening according to the sensitive needs of *agunot* and thereby enabling refusers and undermining their own legitimacy as a respectable and professional legal/*halakhic* entity<sup>767</sup>.

Perhaps most egregious, in 2012 at a panel held at the BAYT, the largest Orthodox synagogue in Canada, Rabbi Vale, the public face and voice of the Toronto *Beit Din* acknowledged (rather than denied) on the record that indeed the *beit din* does not follow well-established traditional protocols<sup>768</sup>. The event in and of itself was very significant because it was the first public event in over 20 years that saw Orthodox rabbis openly acknowledging the persistence of *get* refusal in Toronto rather than the common misconception that the *get* laws had

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<sup>764</sup> Interview with Jeremy Stern, June 29, 2014.

<sup>765</sup> Although there have been some consequences in terms of the Toronto *Beit Din*’s reputation, according to expert (rabbinic and advocate) contacts in New York and Boston. Yet, this has not impacted the Toronto *Beit Din*’s behaviour or actions in any way.

<sup>766</sup> Personal interviews with members of the Beth Din of America, Jeremy Stern and other advocates, as well as a number of women refused a *get*.

<sup>767</sup> Personal interviews with rabbis, advocates, as well as a number of women refused a *get*.

<sup>768</sup> Rabbi Asher Vale, Director of the *Beis Din of the Vaad Harabonim* of Toronto, *The Plight of the Agunah in Our Community: Bridging Gaps Between Rabbinic, Academy, and Community*, (panel discussion with Rabbi Daniel Korobkin, Yael Machtinger, Sharon Shore and Rabbi Asher Vale, Beth Avraham Yoseph of Toronto Congregation, Thornhill, ON, April 29, 2012),

[http://koshertube.com/videos/index.php?option=com\\_seyretandtask=videodirectlinkandItemid=4andid=11072](http://koshertube.com/videos/index.php?option=com_seyretandtask=videodirectlinkandItemid=4andid=11072).

all but solved the phenomenon<sup>769</sup>. However, the night prior to the event the rabbi of the synagogue, Rabbi Daniel Korobkin, who was to moderate the panel which included Rabbi Vale, (Orthodox) attorney and partner at Epstein Cole, Sharon Shore, and myself, was called to an emergency meeting by the *beit din* who strongly encouraged him to cancel the event the following evening. Shore and I hypothesized that the *beit din* was concerned about our remarks (as women) however the *beit din* was actually incredibly concerned with what Rabbi Vale might say (being that he had not secured their permission or approval to participate in this event). The event proceeded and as it turned out, the *beit din* was correct to be concerned about Rabbi Vale's participation because, as I indicated, he did acknowledge on record and in front of a large and rowdy (mostly Orthodox) crowd that *seruvim* are not issued in Toronto. During the question period, an audience member asked why the *beit din* does not issue *hazmanot* and *seruvim*. The crowd of over 200 attendees cheered on the audience member for being so gutsy so as to directly ask the pointed question and Rabbi Vale responded, 'we do not issue *hazmanot* or *seruvim* when we know the husband will not show up to *beit din*. The reason we don't issue them because if we do and they do not come, that is disrespectful of the *beit din* and that is a disrespect we cannot tolerate'<sup>770</sup>. This alarming admission indicates that the *beit din* of Toronto is more interested in its powerful status as a regulating institution than doing justice, and women are the ultimate beneficiaries of this distorted approach<sup>771</sup>. To be clear, the rabbinic court of justice in Toronto is admittedly more concerned with the way it perceives itself than with the abuse women face as a

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<sup>769</sup>The previous rabbi of the synagogue, who retired two years prior, refused to discuss the matter with me. In fact when I called him his response was, "Yael, you know I love you and your family but I can't discuss this with you. You should talk to (attorney John Syrtash). This was a rabbi who sat on the *Beit Din's gittin* or divorce panel.

<sup>770</sup> Rabbi Asher Vale, Director of the *Beis Din of the Vaad Harabonim* of Toronto, *The Plight of the Agunah in Our Community: Bridging Gaps Between Rabbinate, Academy, and Community*, (panel discussion with Rabbi Daniel Korobkin, Yael Machtinger, Sharon Shore and Rabbi Asher Vale, Beth Avraham Yoseph of Toronto Congregation, Thornhill, ON, April 29, 2012), [http://koshertube.com/videos/index.php?option=com\\_seyretandtask=videodirectlinkandItemid=4andid=11072](http://koshertube.com/videos/index.php?option=com_seyretandtask=videodirectlinkandItemid=4andid=11072).

<sup>771</sup> A power play which I will contend the *beit din* feels it must make due to the stripping of much of its powers by the removal of religious arbitration in Ontario.

result of *get* refusal. I argue that what the *beit din* actually achieves is the reverse of what it intends. By allowing an individual man to be more powerful than the *beit din*, and thus in a sense more powerful than the entire institution and what it represents, the *beit din* is actually enabling and even perpetuating the disrespect men have for the courts and their judges, allowing themselves to be used and manipulated as pawns in husbands' abusive habits. Moreover, not only is the *beit din* then helping to accomplish the antithesis of what they would like, they are contributing to significant harms to women by perpetuating *get* refusal and sending the message to men that a *get* can be negotiated. The *beit din* through their official policy of inaction is also tacitly approving of the domestic abuses being perpetrated by recalcitrant husbands rather than supporting women who are attempting to remove themselves (and at times their children) from abusive relationships. It is clear from the women's experiences and stories of *get* refusal that the Toronto *Beit Din* should rethink their priorities for they are serving no one but abusive men and harming women, rabbis of the *beit din*, and the entire institution of the *beit din* and rabbinate more broadly.

Furthermore, I argue that the Toronto *Beit Din*'s lack of protocol which is reflected in my primary data and which was affirmed by the *beit din* themselves is a factor that makes Toronto distinct<sup>772</sup>. In fact, during a call I received from Executive Director of the Jewish Community Council of Montreal (*Rosh Va'ad Ha'ir*), Rabbi Emmanuel, we discussed the creative use of the *get* laws in that jurisdiction, the issues with the proposed Canadian prenup, and the fact that the Montreal *beit din* does issue *hazmanot*. When asked about the protocol of the Toronto *beit din*, he too affirmed, "*there's totally, totally no leadership, there no guts there. None of the individual rabbis have any guts to support a woman. Unfortunately, the beit din is not formalized at all, it's*

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<sup>772</sup> At least when compared to the largest (Orthodox) umbrella organization of the Beth Din of America which issues *gittin* to couples from across denominations. There do exist in New York some smaller (at times rogue or corrupt courts) who similarly do not follow protocol, enabling *get* abuse and extortion.

*not structured at all. It's a free for all*<sup>773</sup>. Moreover, and in contrast to what Torontonians women reported, the New York women I interviewed who experienced *get* refusal reported that the Beth Din of America did issue *hazmanot* and eventually, *seruvim* as well<sup>774</sup>. Although a couple of women indicated they pressured the court to issue these summons in a timely fashion or that they were their own best advocates, there were no reports of the *beit din* refusing to issue a *hazmana* or *seruv* altogether from the New York participants. This distinction is significant.

The passive approach of the Toronto *Beit Din* also contributes to the widespread fallacy that there are no *agunot* in Toronto, another difference between New York and Toronto that I have discussed throughout the study and will elaborate on further, below. Briefly, the *beit din*'s avoidance of protocol in their refusal to issue *seruvim* sends the message to the community that there are no *agunot* in Toronto when in fact there are women refused a *get* who are simply prevented from 'benefiting' from the 'aguna' designation in law due to the *beit din*. In other words, there are women refused a *get* in Toronto however the community is not aware because a *seruv* is never issued and this gives the impression that because there are not *seruvim*, there must not be any *agunot*. This passivity or lack of transparency is a problematic and recurring theme with the Toronto *Beit Din*, as this research demonstrates.

Another aspect that aides in the perpetuation of *get* refusal in Toronto which is inconsistent with approaches to remedies for *get* refusal in New York is the *beit din*'s position on prenuptial agreements. I elaborated on the problems with prenuptial agreements in the Toronto

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<sup>773</sup> Personal conversation with Executive Director of Jewish Community Council of Montreal/ *Rosh Va'ad Ha'ir Montreal*, Rabbi Saul Emmanuel, November 22, 2017, Toronto.

<sup>774</sup> In particular, interviews with S.Z.; D.E.; B.R.G.; J.S.; P.B.; D.D.; C.G.; L.G., among others.

Some men agreed to go to a more conservative or not widely accepted *beit din* after receiving *hazmanot* from the Beth Din of America but before a *seruv* so as to trap wife and even *beit din* itself which does not like to step on another *beit din*'s toes. Some men agree to show up after third *hazmana* and then begin not showing up again thus some *batei din* begin the entire *hazmana* process from the beginning. One woman explained, "by requesting a change in *beit din* to halt *hazmana* and *seruv* process he one-upped me and them because this way I was not even deemed an *aguna* and his name couldn't even be in the press- but I was still without a *get* for years" D.E. November 5, 2013.



context both legally (due to the necessity to sign an arbitration agreement, among other aspects) and *hashkafically* (due to the *beit din*'s disapproval of the premise) significantly in chapter two. The gap is nonetheless important to reiterate here. While in New York (and in Israel) the prenuptial agreement is slowly becoming normative, in Toronto, prenuptial agreements are not yet a part of the normative communal discourse, thereby acting as a contrasting factor between the two centres (as I explained in chapter two).

A further inconsistency exists between Toronto and New York regarding their divergent reactions to the state regulation employing *get* laws. The approach taken by the Toronto *Beit Din* subsequent to the state intervention aides in the perpetuation of *get* refusal in Toronto and significantly diverges from approaches taken in New York subsequent to the state intervention. Interestingly, in both locales, the enactment of the *get* laws did not achieve its intended goals which were to all but eradicate *get* refusal. There instead emerged other, perhaps unforeseen effects, as I have discussed elsewhere throughout this study. What I want to stress here is that while both sets of laws were to some degree unfulfilled, in Toronto there remains a harmful impression that the laws *were* successful, that the Toronto *Beit Din* *does* endorse them, and thus there are virtually no more *agunot*; while in New York, there is widespread acknowledgement that the laws were flawed and that *get* refusal persists. These contradictory views have had significant impact on the nature of *get* refusal in each locale.

In Toronto, silence has been the principal characteristic of the *beit din*'s retracting their initial support. The community at large is unaware and still believes the *get* laws are an effective remedy. This has not been the case in New York. On the contrary, in New York it seems the difficulties surrounding the legislation were widely debated, are publicly known, and to some extent, are acknowledged. Thus, the transparent dialogue in New York, while still eliminating

one avenue of alleviation for many women, has at least prompted some rabbis to attempt alternative remedies, such as prenuptial agreements. Whereas, in Toronto due to the fact that there exists the perception that the regulation was so successful it ‘solved the *aguna* problem’<sup>775</sup>, rabbis have absolved themselves for alternative remedies, and the rabbinic (and even communal) dialogue has by and large been stagnant.

There are also inconsistencies regarding available services for women refused a *get* in Toronto and New York. For example, while there are numerous Jewish organizations dedicated to helping Jewish women who experience domestic abuse, and in particular who are refused a *get* in New York, no such organization exists in Toronto. I acknowledge that the proliferation of these services in New York from across all denominations (with a increasing number of Jewish women’s domestic abuse organizations being Ultra Orthodox or *Hasidic*)<sup>776</sup> may well be due in part to the demographics discussed at the outset of this chapter, nonetheless, the lack of support for Jewish women in Toronto requires an explanation beyond numbers or population size. In other words, it seems natural that New York should have a greater variety of support organizations for women simply due to the fact that there are over two million Jews in the greater New York area. However, it seems odd that with over two hundred thousand Jews in the greater Toronto area, there are no Jewish organizations dedicated specifically to Jewish women, and none that acknowledge the persistence of *get* refusal or its manifestation as a type of domestic abuse especially being that my research illustrates that *get* refusal in particular, and domestic abuse more broadly, certainly and significantly do persist in Toronto (in the Jewish, and Orthodox communities).

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<sup>775</sup> John Syrtash, on numerous occasions.

<sup>776</sup> In particular I can note Sister to Sister, Project Sarah, Shalom Task Force, The Rachel Coalition, among many, many others in the greater New York area, and across denomination.

Here specifically we might compare the principle organization which focuses on *agunot* in New York, ORA, and the only organization in Toronto which is funded largely by Jewish bodies, but which no longer serves only the Jewish population, Act to End Violence Against Women (AEVAW). Although I have discussed both organizations at points throughout the study, and in particular in chapter five, I have not yet done a comparative analysis and particularly on the approaches they take to *get* refusal. While AEVAW goes to great lengths to avoid discussing *get* refusal publicly thus all but denying that *agunot* exist in Toronto,<sup>777</sup> ORA's entire mandate is to resolve instances of *agunot*. Their purpose is even in their name, the Organization for the Resolution of Agunot; they reflect their mandate proudly. In fact, in a bold move, (being that AEVAW "rebranded" and changed their name from Jewish Women International Canada "to more accurately reflect our work in the VAW sector"<sup>778</sup> and because they service few Orthodox women<sup>779</sup>) AEVAW held a series of events in synagogues across Toronto and across denominations during November 2016 to discuss domestic violence in the Jewish community. This was a bold move because the organization had until this point rarely (if ever) publicly acknowledged domestic violence in Orthodox communities despite the fact that while there is more shame and fewer resources in religious communities (not only Jewish ones), the rate of violence is actually the same as in non-religious communities<sup>780</sup>. The challenge arose however when *get* refusal went unmentioned by AEVAW at each of these events, despite detailed descriptions of diverse types of domestic violence. This is in stark contrast to ORA, whose

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<sup>777</sup> I do have two sources who indicated they received some legal help through the organization, though specifically not on the matter of the *get*. One woman said she felt used by the organization when they utilized her story without consent in a large newspaper feature. M.S.

<sup>778</sup> <http://www.acttoendvaw.org/wordpress/>.

<sup>779</sup> Personal conversation with AEVAW Executive Director, Penny Krowitz, March 2014, Toronto.

<sup>780</sup> Robin Fretwell Wilson, "The Perils of Privatized Marriage," *Marriage and Divorce in a Multi-Cultural Context: Considering the Boundaries of Civil Law and Religion*, ed. Joel A. Nichols (Cambridge, UK: Cambridge University Press, 2011), 253-283, 269; Nancy Nason-Clark, "When Terror Strikes at Home: The Interface Between Religion and Domestic Violence," *Journal for the Scientific Study of Religion* 43, no. 3 (2004): 303-310, 303-304.

policy frames *get* refusal as a form of domestic abuse; “ORA believes that the protracted refusal to issue or receive a *get* is a form of domestic abuse which must never be tolerated. ORA seeks to foster a Jewish community in which a *get* is never used as a weapon”<sup>781</sup>. This divergence is significant being that my own primary data reflects that every case of *get* refusal in New York and in Toronto was precipitated by some form of domestic abuse ranging from controlling behaviours to rape in marriage, with the refusal of the *get* acting as the final blow. Being that *get* refusal and domestic violence are intrinsically connected, as I discussed at greater length in the previous chapters, it is troubling that the only support organization which (in part) is directed toward Jewish women avoids discussing *get* refusal altogether. Troubled by this gap, I spoke with Miriam Navy, National Office Administrator and Legal Support Worker at AEVAW who explained the organization’s direct intent in avoiding the issue of *get* refusal. She explained that AEVAW had recently re-established a positive working relationship with the Toronto *Beit Din* and they could not ‘rock the boat’ or upset the fragile connection<sup>782</sup>. The *Beit Din* had recently begun to refer women to the support group and if they were perceived as being disturbing the détente they may sever the new positive status quo. Thus, similar to the *beit din* avoiding issuing *seruvim* which most callously impacts women, it seems AEVAW too follows the will of the *beit din*, and at the steep price of helping perhaps the most vulnerable women. By not acknowledging *get* refusal so they will not rattle the *beit din*, where does the loyalty of the organization lie and who is impacted most significantly? Again, in fall 2017, AEVAW held a few evenings of workshops about abuse in the Jewish community and again *get* refusal was raised, this time by a son of a panel member who had experienced abuse. Penny Krowitz, Executive Director, again sadly missed the opportunity to frame *get* refusal as a form of domestic abuse and went on to

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<sup>781</sup> <https://www.getora.org/about-us> .

<sup>782</sup> Personal conversation with AEVAW, Navy National Office Administrator and Legal Support Worker, Miriam Navy, June 2016, Toronto.

praise the Toronto *beit din* as a wonderful partner<sup>783</sup>. While ORA's strategy has been to approach *get* refusal as a form of domestic abuse (perhaps the first organization to do so), AEVAW seems to be taking the opposite approach, refusing to define *get* refusal as a form of domestic abuse (publicly at least) and women refused a *get* are most adversely affected by this contrast, seemingly with nowhere to turn for help in Toronto when faced with the abuse of *get* refusal. AEVAW does not (yet) engage in activities such as those ORA is preoccupied with such as rallying or picketing recalcitrant spouses and educating communities and high school students about the abuse of *get* refusal.

An additional area where there are inconsistencies between New York and Toronto is media representation of *get* refusal such as the use of media in educating and shaming. Again although I have addressed media representations in earlier chapters, I have not done so by way of comparison. While major news media publications in New York do publicize the list of *seruvim* or orders of contempt, in Toronto (and across the nation), *The Canadian Jewish News* does not do so. Moreover, the issue of *get* refusal is often covered in Jewish papers in New York across denomination. To name but one example, I recently saw an article in the *Hasidic* enclave of Boro Park in Brooklyn that had an in-depth feature in *The Boro Park Buzz*<sup>784</sup>. By contrast, *The Canadian Jewish News*, the primary Jewish paper across Canada publishes stories on *get* refusal only on occasion<sup>785</sup>. While the press is independent and beyond the influence of outside factors, their intermittent coverage of *get* refusal may also perhaps be attributed at least in part to the Toronto *Beit Din*. I would argue that if *seruvim* would be issued, the paper would be enabled to

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<sup>783</sup> AEVAW Talk, "Behind Closed Doors", November 14, 2017, Toronto.

<sup>784</sup> Malky Schwartz, "The Plight of Agunos," *Boro Park Buzz* 1, no. 7, Sunday, October 27, 2013.

<sup>785</sup> And often at my urging. For example, while in New York many Jewish papers have at least one story covering International Agunah Day which is marked on the Fast of Esther each year, *The Canadian Jewish News* marks the day when I send in an article myself.

take a more forthright approach, engaging in shaming and more regular coverage of this persistent issue.

In addition to differences regarding *batei din*'s approaches to *get* refusal remedies, differences regarding support organizations, and differences regarding media representations, perhaps the most salient and yet most intangible and amorphous difference between Toronto and New York emerges when considering the differences between the communal characters of Jewish communities of New York and Toronto at large. I argue that inconsistent community characters (generally speaking) contribute to the contrasts that emerge on the issue of *get* refusal between the largest and most diverse Jewish centres in North America. My primary data and personal experience as a community member in both locations indicate that while the broader New York Jewish community tends to have a more transparent, open-minded and tolerant nature, the broader Toronto Jewish community tends to have a more opaque, narrow-minded, and insular nature; there exist diverging customs and cultures. These are, of course, generalizations, and not representative of every sub-community in each locale, but they do encapsulate the wide-ranging characters of communities-at-large. The reasons and significance of these nebulous characterizations are likely plural and complex. Rather than attempting to offer comprehensive approaches, I will offer salient ones pertinent to this case study on *get* refusal.

To elaborate on the matter of Toronto being close-knit and insular, in Toronto particularly (compared to New York), there is a 'small-town' feel where often many people know each other despite different synagogue affiliation, school or camp attendance, and in some cases, level of observance. There are many overlapping networks which intersect. Simultaneously, there is also a strong culture of avoiding or denying discussing 'bad' things (within the Orthodox segments of the community in particular) such as divorce, domestic abuse,

mental health problems, addictions, suicide, and to some extent, homosexuality, among other matters<sup>786</sup>. Compounding all this, there is also a strong and dominant rabbinic authority in the *Vaad Harabonim* of Toronto who have gone so far as to publicly berate more mainstream or open-minded Orthodox rabbis for their tolerance or permissiveness on certain matters. A mild example would include the *Vaad's* treatment of Rabbi Daniel Korobkin of the BAYT, the largest Modern Orthodox Synagogue in Canada when they reprimanded him for permitting quinoa on Passover a few years ago<sup>787</sup>. A more serious example would include Rabbis from the Toronto *Beit Din* writing a letter to *The Jewish Tribune* in January 2014, critiquing Rabbi Jay Kelman and his educational organization, Torah in Motion, (which often attempts to openly discuss some of the unspoken issues mentioned above), when they held a panel on *agunot*. Yet, now that I have described one example of the insular nature that characterizes the community it becomes all the more important to understand how this temperament developed.

Perhaps the most significant reason for the differences in the characters of the Jewish communities in Toronto and New York can be explained by looking again at the historical make-up of each Jewish population. The Jewish population in Toronto from the time of the turn of the century through post World War II was “much more homogeneously Eastern European in background and with many more recent arrivals from Europe”<sup>788</sup> when compared with New York which may be one reason for the discrepancy in the nature of communities. While New York actually received many more immigrants from Eastern Europe than Toronto, the rate of immigrants proportionately was greater in Toronto<sup>789</sup>. As well, the immigrants to Toronto were

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<sup>786</sup> Though the tide has been slowly shifting within the last 2-3 years on many of these matters- particularly homosexuality and addictions with more rabbis openly addressing these issues, with the establishment of support groups, and with greater coverage in *The Canadian Jewish News*.

<sup>787</sup> Although quinoa on Passover was widely accepted by leading kosher authorities in New York.

<sup>788</sup> Stuart Schoenfeld, “The Jewish Religion in North America: Canadian and American Comparisons,” *Canadian Journal of Sociology* 3, no. 2 (1978): 209-231, 215.

<sup>789</sup> Stuart Schoenfeld, “The Jewish Religion in North America”, 215.

more numerous than those to New York “relative to the already settled Jewish population, reinforcing the more traditional, Eastern European orientation of Canadian Jewry”<sup>790</sup>. Moreover, because Jewish immigration began many decades prior in New York, they already had an established Reform Judaism that might influence the new, Orthodox arrivals whereas in Toronto, that did not yet exist to the same extent at the time of the mass immigration and thus the “identification with the Orthodox tradition is stronger”<sup>791</sup> and more recent in communal memory. The fact that the Toronto Jewish community was shaped so significantly by the Eastern European (mostly Orthodox) immigration and which is still not so far off in its group consciousness may explain the more insular and rigid nature of the community (and perhaps even its lack of resistance to the Toronto *Beit Din*) when compared to the nature of the broader Jewish community of New York. Coupled with that, there was a slower growth pattern and “rate of allegiance” in both Reform and Conservative Judaism in the community’s formative years<sup>792</sup> and the Reform Movement is more prevalent in the United States than in Canada still today. This history contributes to a shared “symbolic sociology” wherein a community-at-large may develop a “collective consciousness of the past” based on shared historical knowledge and/or “common referents”, as was elaborated in Carol Greenhouse’s study of the nature of religion and disputing in Hopewell<sup>793</sup>. Being that many Torontonians are first or second generation Canadians post Holocaust whereas in New York, you might find fifth or eighth generation American Jews, their collective consciousnesses of the past might diverge in significant ways. In Toronto, “the greater identification with Orthodoxy reflects the relatively homogenous origins of its Jews and the

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<sup>790</sup> Ibid.

<sup>791</sup> Ibid.

<sup>792</sup> Ibid, 218.

<sup>793</sup> Carol Greenhouse, *Praying for Justice: Faith, Order, and Community in an American Town* (Ithaca, NY: Cornell University Press, 1986). Especially chapter four, “Others Amongst Ourselves,” 142-181. Particularly 178.



proportionately greater number of post World War II immigrants from Eastern Europe”<sup>794</sup>.

Bolstering this collective consciousness of the past and in line with ‘the importance of place in culture’, as Greenhouse notes<sup>795</sup>, might be the Canadian policy of multiculturalism which is said to embrace a ‘mosaic’, allowing immigrants to hold on to their cultural heritage, whereas the American policy embraces the ‘melting pot’ where immigrants are expected to shed their cultural heritage and assume a primarily American identity<sup>796</sup>. Perhaps this begins to explain why and how the discrepancies regarding the nature of the communities developed. Stemming from Greenhouse’s study, I argue that consciousness of the past may be indicative of present narratives and approaches and indeed this resonates deeply with the divergent attitudes toward *get* refusal taken in Toronto and New York today<sup>797</sup>.

More recently, and what ultimately makes the legal landscape distinct from New York (and other locales) is the removal of religious arbitration in Ontario in 2005. Although I elaborated on the significance of this policy shift in chapter three, and to some extent throughout these pages, here I argue that the removal of religious arbitration was a significant factor that made Toronto divergent on the issue of *get* refusal and its approaches to the phenomenon. The removal of the power to arbitrate from the hands of the *beit din* was a deep blow to the confidence of the court and a threat to their authority within the community. The reason I argue this is because since this development, the *beit din* has acted desperate to hold on to whatever remaining power they wield, most often on the backs of the *mesuravot get* themselves, as I illustrated earlier. In fact, the *beit din* has such a deep desire to retain control of Jewish divorce that it has all but ‘gone underground’ in its mediation by actually continuing to recommend

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<sup>794</sup> Stuart Schoenfeld, “The Jewish Religion in North America”, 218.

<sup>795</sup> Carol Greenhouse, *Praying for Justice* (Ithaca, NY: Cornell University Press, 1986), 208.

<sup>796</sup> Carol Greenhouse, *Praying for Justice*, 228.

<sup>797</sup> *Ibid.*

highly that couples sign an agreement to determine *all* issues in *beit din*, much like the arbitration powers of which they were stripped<sup>798</sup>. In other words, much like the fear regarding Sharia tribunals going rogue with their decisions after the removal of religious arbitration, the Toronto *Beit Din* has in some sense gone into hiding, secretly arbitrating all matters emerging in divorce and compelling couples to sign an agreement to that effect. This power play may also be one of the factors contributing to the *beit din*'s retraction of their support of the *Divorce Act* as a viable remedy to *get* refusal- to ensure that women (and men) will have fewer avenues for redress and will be at the mercy of the powerful *beit din*<sup>799</sup>. In this way, although the precedent of the *Divorce Act* is significant, it remains largely unfulfilled because women who concern themselves with *halakha* or its ramifications on their children, will not avail themselves of the pluralist option when the *beit din* has precluded it. The fact that the Toronto *Beit Din* no longer supports a pluralist remedy it initially was a party to and yet does not publicly correct the record before the community thereby allowing the myth that the law has solved the problem of *agunot* to persist, speaks to the nature of the *beit din*, and perhaps even the community at large- it is

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<sup>798</sup> Sharon Shore, "Gender-Based Advantages and Disadvantages in the Halakhic and Secular Family Law Systems" (presentation at Hadassah-Brandeis Institute's workshop on "The Interaction between Religious Divorce Law and Secular Family Law: A Workshop on Practical Approaches" Brandeis University, Waltham, MA, May 17, 2017).

<sup>799</sup> There are potentially other factors for the *beit din*'s approach which emerged from conversations between scholars. 1) Rabbi Ochs, the *Av Beit Din*, or chief rabbi/judge of the court has a brother-in-law, Rabbi David J. Bleich, who is a scholar/professor in New York, at Cardozo Law School. Rabbi Bleich publicly came out sharply against the New York Get Laws and there are those who think that Rabbi Bleich's opinion on the NYGLs has influenced his brother-in-law, Rabbi Ochs' stance on the Canadian *Divorce Act* and perhaps this is one of the reasons the *beit din* retracted their support. This would be another illustration of the movement of ideas between New York and Toronto, but in a detrimental capacity. 2) John Syrtash, an Orthodox attorney in Toronto was one of the strong advocates for the *Divorce Act* and *Family Law Act* and argued for some time that the law was so successful it all but solved *get* refusal. In 2005, Syrtash was invited to Israel by Dr. Peretz Segel, senior legal advisor in the Justice Ministry at that time to share the successes of the legislation at a conference sponsored by the Rackman Center and the Israel Bar Association and indeed, Israel was considering adopting the laws. What emerged, however, was that "some halakhic issue need to be worked out before the Canadian method can be adopted [...] Rabbis in the Israeli Rabbinate must now determine whether the Canadian legislation constitutes coercion". Despite my attempts to follow the developments of this story, it is unclear whether perhaps the Toronto *Beit Din* felt it could no longer support the laws because the Israeli Rabbinical Court felt there might be coercive elements within it. It appears however entirely possible and so I make note of this interesting development here. Matthew Wagner, "Canada to the Rescue of Israel's Agunot," *Jerusalem Post*, September 25, 2009; Ron Csillag, "Israel Looks to Canada: Courts are Reconsidering Country's Divorce Laws," *Canadian Jewish News*, October 14, 2005.

opaque and insular to its own detriment. This stagnation also has the damaging effect of blocking every other remedy available to women- both pluralist and *halakhic*.

### **So What? - Or Why We Should Care That Toronto and New York Are Different**

I offer here some potential factors emerging from conversations between scholars.

What is very surprising about the current state of affairs regarding *get* refusal in Toronto is that the Toronto *Beit Din* continues to wield unchecked power without any transparency or accountability, but also without any resistance or challenges. In Toronto, silences persist despite sharp critique of the *beit din* from a diverse set of stakeholders, not only *mesuravot get*, and including a number of Orthodox rabbis who requested anonymity while expressing their exasperation in one-on-one meetings. In other contexts, a stalemate like the one on *get* refusal in Toronto might lead to grassroots efforts and yet, the status quo, which gives *mesuravot get* no support and gives more power to individual abusive men than to the *beit din* itself, persists. That the Toronto community is not resisting and that silences persist both about the lack of legal pluralist remedies despite their notable existence and the lack of *halakhic* remedies may be viewed by some as dysfunctional (Indeed, what does this say about how deeply the nature of the community runs through it). Furthermore, another surprising element is that the Toronto *Beit Din* is not seeking (religious) remedies to problems arising around *get* refusal's persistence which is what might be expected when legal challenges arise in religious communities and yet, the *beit din* has not only precluded the pluralist remedies by not promoting state law to solve a religious problem, but I would argue, they have precluded *halakhic* remedies as well by not promoting religious law to solve the problem. This fact- that a religious body is not interested in solving a problem in its midst, helping its own community- not with its own laws or with others' is rather surprising. As Sharon Shore, partner at Epstein Cole (one of Toronto's largest family law firms)

has said, “*the rule when working with the Toronto Beit Din is that there are no rules when working with the Toronto Beit Din...there are no rules of evidence, no transparency, no training, no consistency, no rules of appointment...*”<sup>800</sup>. Consequently, and based on my primary data, I would argue that the *beit din* is contributing to the persistence of *get* refusal in this context which can also be read as the *beit din* is contributing to the persistence of domestic abuse.

Torontonian women are at risk- this is social justice concern for us all. Consistency and legitimacy of the *Beit Din*, and *halakhic* interpretations are all delegitimizing entire system. Individual abusive men have become more powerful than entire communities and women refused a *get* have become, by default, the least powerful of all, unable to forum shop- without help from legal pluralist remedies, without help from community, and without help from *beit din*. Moreover, in this silent vacuum, and without the ability to forum shop or turn to grassroots community movements, domestic abuse is given fertile ground to persist allowing men to manipulate religion to bolster their maltreatment. Again, and as this study began, remember that what happens in Toronto, the largest and most diverse Jewish centre in Canada has potentially wide and deep ramifications and influence .

On the other hand, it is also important to note that the state must not assume that problems emerging in religious contexts can not necessarily be solved by regulating religion. The lesson that remains is that women must have choice- with religion as viable and state pluralist remedies as equally viable. All types of women may find themselves *agunot* and so it is important for the state to acknowledge, despite common assumptions about who might go to religious forum, such as *batei din*, that diverse women must have diverse options.

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<sup>800</sup> Sharon Shore, personal conversations with author.

## In the Shadows of Legal Pluralism - Some Thoughts

Reflecting on this project, there are some conclusions which I anticipated at the outset, before any data was collected, before any stories were shared. There are also some conclusions I have reached that have come as a surprise: some which I should have perhaps foreseen and that in hindsight are obvious; and there are yet other conclusions which still continue to surprise me every time I consider them.

For example: I anticipated that despite the legal pluralist remedies for *get* refusal, normative religious behaviours would endure, and indeed the gap between legal and social realities persists albeit perhaps in previously unforeseen ways, such as strategically using one venue or one's voice to exact the desired outcome, the *get* (embracing critical legal pluralism, though women do not frame it or name it as such). I did not anticipate that I would find such a glaring correlation between domestic abuse and *get* refusal, although now in retrospect, I think, of course, the link is palpable. Finally, I am surprised and amazed, even today, after spending so much time with my participants, my data, and these pages, by the strength, conviction and diversity of the women refused a *get*. Although they go through something exceptional, they are far from monolithic or homogenous. As a consequence, women's wants and needs are diverse, and yet quite often, their religious convictions and their spiritual connections are fierce, and as such, there are times when neither the rabbinic institutions, nor the state institutions, nor the feminist ones really capture the best interests of *mesuravot get*. In a sense, it is only the women themselves, through their narratives, who are really able to enlighten us with their nuanced complexities, harnessing transformative social and legal change by way of storytelling (and thus also in the tradition of critical legal pluralism).

## Conclusions

My doctoral research was driven by these interrelated and nuanced set of questions, among others: Have changes to state legal systems elicited changes to religious/Jewish legal orders? Have they impacted changes to religious (or ritual) social norms or behaviours? What have been the consequences of this, if any? Why have there been gaps between law reform and social behaviour in Toronto regarding *get* refusal *different* from similar legally plural communities (such as New York)? What have been the socio-legal impacts of those differences? How have these messy entanglements been experienced and navigated by women from within the religious culture and how have they been perceived by the culture and communities, and have there been distinctions between Toronto and New York?

At its most fundamental level, this study has explored *get* refusal in Toronto and New York. I argued that there is a gap between legal regulation and social behaviour regarding *get* refusal and despite state regulation or civil legal remedies to solve *get* refusal, the phenomenon persists, and in Toronto particularly, there have been further unintended consequences. Perhaps unexpectedly, culture continues to be a dominant force in the lives of women and they insist on a *get* even when they do not observe other religious aspects of the culture and rabbis often resist foreign legal remedies to internal problems, although they supported certain foreign remedies initially. Thus, while legal pluralist solutions are the most promising, to date, and while there is a long history of commensurability or reciprocity between state and Jewish legal orders, they have not had their intended result<sup>801</sup>. Concentrating on the narratives of women in the tradition of feminist legal research and critical legal pluralism, and using elements of oral history and

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<sup>801</sup> Sally Falk Moore, "Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study," *Law and Society Review* 7, no. 1 (1972): 719-746, 744.

ethnography to achieve a ‘thick description’<sup>802</sup> of the realities of *get* refusal along with fresh analyses of existing theoretical contributions, I explored this and the other multiple layers of analysis weaving the plural threads of the goals and objectives together, making this study distinctive. Some of these threads run deeper than others, are more complex and entwined.

I have concluded that legal remedies -both religious/*halakhic* and state- are not working as intended, including the *get* laws. In addition, and particularly in Toronto, *batei din* do not work for women. I have also found that pre-nuptial agreements have great potential to remedy *get* refusal and change the social consciousness around *get* refusal as abuse and extortion (although they will never be an exhaustive solution), but they too have some problems, particularly in Toronto (both legal/external and social/internal). Community reactions and activism can work and has worked in many cases, particularly when adapted to include ‘e-shaming’, and this remedy is the most traditional and least controversial but there is a void in Toronto (perhaps ironically since this is a remedy that would be very effective). The narratives of women refused a *get* not only lead to the aforementioned findings regarding the existing remedies, they also highlighted a number of findings regarding the women themselves. In particular, the women illustrated that *get* refusal impacts all types of Jewish women, and at all levels of observance, not just Orthodox. Coupled with that, all types of women want a *halakhic* divorce- a *get*- and not alternatives thus there must be an understanding that alternative solutions will never be the viable solution. They may work for some, but will never work for all<sup>803</sup>.

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<sup>802</sup> Carol Weisbrod, *Butterfly, The Bride: Essays on Law, Narrative, and the Family* (Ann Arbor, MI: University of Michigan Press, 1999); Susan Sage Heinzelman and Zipporah Batshaw Wiseman, *Representing Women: Law, Literature, and Feminism* (Durham, NC: Duke University Press, 1994); Clifford Geertz, *The Interpretation of Cultures: Selected Essays* (New York, NY: Basic Books, 1973); 3-30.

<sup>803</sup> The Conservative movement also sees itself as following *halakha* even though their responses to certain questions of *halakha* are different. In a Conservative context, the terms remain the same: a man is the one who issues a *get* - so the problem of *get* refusal exists there, too. And although this was not reflected in the experiences of my participants, who were from a broad cross-section of the Jewish population, it is likely that for some women who see themselves as committed Conservative Jews, bound by *halakha* as the Conservative movement adjudicates it,

Another finding is the centrality of domestic violence in the lives of *mesuravot get*. *Get* refusal is symptomatic of other abuse.

Thus, my research illuminates a number of broad and theoretical insights for the nexus of law and religion, gender and religion, women's storytelling and critical legal pluralism. This study instinctively responds to the initial claim that the phenomenon of *get* refusal no longer exists and discredits that misconception, but the persistence of *get* refusal in and of itself is not really that which is surprising. Thus my research takes the next steps: revealing interactions, experiences and narratives from the most central characters, the *mesuravot get* themselves<sup>804</sup>. And it is based on their narratives that I make the following summative contentions:

As the narratives illustrated, along with a critical legal pluralist approach, women's relationship to faith and thus also their relationship to law is complex and multifaceted. Each plays a role in seeking a particular solution to *get* refusal over another for each individual woman. There is no one relationship, and so to, there is no one solution. In fact, to some, the tensions between women's relationships to faith and their relationships to law might seem to be knotted or tangled. However, I argue, based on my interviews with women refused a *get*, that women can be non-religious and want or demand a *get* while other women can be ultra religious\ *kharedi* and demand equality in divorce. Although these women's desires may seem diametrically opposed and not necessarily able to coincide, in reality, the feminist principle of choice, the innate human desire for freedom and agency, and the liberal democratic principle of respect for differences (and in Canada, the policy of multiculturalism) should actually enable

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obtaining a *get* is important, but for some, a valid Conservative *get* does the job. Similarly, for some Reform women, a civil divorce may suffice being that in 1869 the Reform movement voted to accept civil divorce alone as dissolving a marriage, though this was not reflected in my study which illustrated that women across all denominations demanded a *get*.

<sup>804</sup> Buttressed by the narratives of other stakeholders such as rabbis, *dayanim*, judges, attorneys, activists, advocates, scholars, and others.



appreciation and facilitation of both these strands. Religious observance or piety and equality in divorce are threads that are able to, and may in fact, run parallel to one another without tensions of necessary entanglement<sup>805</sup>. In chapter five I shared narratives from women who highlighted these enmeshments through a critical legal pluralist approach which illustrates women's roles as diverse legal agents influenced by and influencing law- both state and religious. For example, one *haredi* woman felt going to the United Nations was a great idea, whereas one unaffiliated woman found it to be highly inappropriate to publicize her husband's recalcitrance in public and yet felt she needed a *get* - the Jewish divorce- to have closure and move on with her secular life. I also included narratives from women who indicated that along with their decreased respect for individual rabbis and/or rabbinic institutions, such as *batei din*, their faith in G-d and desire for spirituality actually increased.

Nonetheless, despite articulating stronger relationships to G-d and faith, and despite the insistence that a *get* (rather than an alternative remedy) is their right and that the *get* will serve to sever spiritual, legal, and/or personal ties with a spouse to whom they want no connection, that does not necessarily mean women are going to accept rabbis', *dayanim*'s or *beit din*'s approaches, as the narratives demonstrate. To reiterate, rights and religion are not necessarily entwined; they can function in tandem as important concerns for women, contrary to what may be popular belief- that they are dysfunctionally bound and that women must choose one over the other. Women have a simultaneous entitlement both to the right to divorce and the right to religion. Furthermore, women's relationship with their faith, or women's Orthodox observance

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<sup>805</sup> I have cited this contention earlier in this study to Angela Campbell, "Bountiful's Plural Marriages," *International Journal of Law in Context* 6, no. 4 (2010): 343-361; Norma Baumel Joseph, "Agunot and the Powers that Be" (presentation at JOFA- Jewish Orthodox Feminist Alliance Conference, *Choosing Limits/Limiting Choices: Women's Status and Religious Life*, Brandeis University, Waltham, MA, March 13-14, 2005); Sumi Madhok, Anne Phillips and Kalpana Wilson, eds., *Gender Agency, and Coercion* (London, UK: Palgrave Macmillan Press: 2013); Rebecca Johnson, *Taxing Choices: The Intersection of Class, Gender, Parenthood, and Law* (Vancouver, BC: UBC Press: 2013).

itself are not determinative; there are plural factors converging which may result in the outcome of *get* refusal- gender, place, class, among others as I elaborated at various points throughout this analysis.

There exists the reality that divorce is on the rise both in the general population, and within Jewish communities as well, including in the Orthodox and ultra Orthodox communities. Furthermore, there has been a gradual shift in normative ideologies even within religious communities that divorce is better than bad marriage. Simultaneously, there are instances where the *beit din* may work against women's agency, options, and ability to forum shop in order to achieve her best and most equal divorce by supplying only one option- or even no options in (smaller) communities. These elements set the stage for abusive men to refuse a *get* to their wives, enabling recalcitrance and *get* extortion<sup>806</sup>. For example, this study illustrated that the Toronto *Beit Din* has precluded the possibility of women employing the civil legal amendments for their benefit, and as was intended, to prevent the abuse of *get* refusal. Moreover, the Toronto *beit din* is not functioning legitimately or transparently and in so doing, is preventing women from forum shopping while concurrently anchoring women not only to their abusive recalcitrant spouse refusing the *get*, but also to the intransigent *beit din*, refusing not only to look outside itself for remedies, but which refuses to look inside itself for remedies, thereby enabling an injustice in its midst to endure. In a sense, it is not the persistence of the abuse of *get* refusal which is in and of itself noteworthy. Abuse, after all, is a normative characteristic of conjugal relationships; power and violence in intimate relationships will be deployed, just as in all relationships, Jewish or not. Rather what *is* noteworthy is the leadership's reluctance to mend the gash in the fabric of its society.

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<sup>806</sup> And perpetuating the harmful notion that a *get* is a male's asset to be negotiated in divorce proceedings rather than a *halakhic* or even religious/spiritual requirement that ought to be executed well ahead of and completely separate from regular divorce proceedings.

These contentions are some of the theoretical contributions I make in these pages about faith and law as well as rights and religion as a result of this study investigating women's experiences of *get* refusal in New York and Toronto. In these ways, I am contributing to broader discussions about law and religion.

### **From 'In the Shadows of the Law' to 'In the Shadows of Legal Pluralism'**

In their celebrated work, "Bargaining in the Shadow of the Law: The Case of Divorce", Robert Mnookin and Lewis Kornhauser argue that divorcing couples are influenced by the mere existence of law and its potential power even when they bargain using "private ordering", outside the court room and without a judge<sup>807</sup> (an argument echoed in the works of both Carol Greenhouse and Sally Engle Merry<sup>808</sup>). In essence, they examine how the law on the books impacts the law in action or put another way, the gap between law (in the 'official' legal sphere) and reality or the experiences of people who are influenced by the existence of law outside the courts but are not affected by the letter of the law in direct reach of the courts. I argue that there are important contributions emerging from Mnookin and Kornhauser's study that may be adapted and appropriately applied here, to my investigation of women's experiences of *get* refusal which has them navigating between plural legal systems. Similar to my arguments regarding the impact of legal regulation on normative religious behavior, Mnookin and Kornhauser argue that the law itself, while not directly at play in a particular, private negotiation,

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<sup>807</sup>Robert H. Mnookin and Lewis Kornhauser, "Bargaining in the Shadow of the Law: The Case of Divorce," *Yale Law Journal* 88, (1978-1979), 951.

<sup>808</sup> Carol Greenhouse, *Praying for Justice: Faith, Order, and Community in an American Town* (Ithaca, NY: Cornell University Press, 1989); Sally Engle Merry, *Getting Justice and Getting Even: Legal Consciousness Among Working Class Americans* (Chicago, IL: University of Chicago Press, 1990). Especially chapter three, "Legal Consciousness and Types of Problems," 37-63.

Both authors elaborate that if there is social proximity, such as amongst neighbors, people will not appeal to the courts, often because they do not feel it is 'theirs'. Therefore, smaller, more tight-knit communities are less likely to go outside themselves for legal remedies or solutions (although these contexts are not primarily focused on domestic settings).

may nonetheless take on a significant, albeit clandestine role. In other words, although laws may not have their intended impacts, they may indeed have impacts on and in negotiations that were unexpected and which may result in favourable or unfavourable outcomes, even when not officially invoked. Of course, and unlike Mnookin and Kornhauser argue, custom – or religion – and social and communal pressures also play a role as I illustrate below.

Thus, the role of law, or I would argue more accurately for this study, the potential positive role of legal pluralism is in the shadows, often lurking behind the scenes. We should stretch Mnookin and Kornhauser’s analogy, to an ‘in the shadows of legal pluralism’ model, beyond simply an ‘in the shadows of the law’ model. This does not mean that individual laws, particular legal remedies, and/or entire legal systems are not important. On the contrary, they are “inescapably relevant”<sup>809</sup>. In a sense, legal pluralism or pluralist remedies are silently impacting actions and attitudes of individuals (both in Toronto and New York, both men and women). Thus the mere existence of law or legal pluralism (approaches and/or solutions) may affect peoples’ actions or attitudes even when there’s no direct invocation of legal pluralist solutions. It is simply the threat or looming imposition (of *get* laws, or prenuptial agreements, etcetera) that elicits particular actions or reactions. I argue that all this, then, occurs in ‘the shadows of legal pluralism’.

While Mnookin and Kornhauser argue that, “divorcing parents do not bargain in a vacuum... they bargain in the shadow of the law”<sup>810</sup>, I would contend in this context that women seeking a *get* are similarly not bargaining in a vacuum. They are bargaining in the shadow of legal pluralism. And, although women are not always able to successfully invoke a pluralist remedy when negotiating a *get*, often the threat of the remedy might positively achieve the

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<sup>809</sup> Robert H. Mnookin and Lewis Kornhauser, “Bargaining in the Shadow of the Law,” *Yale Law Journal* 88, (1978-1979): 951.

<sup>810</sup> *Ibid*, 968.

desired result, that is, might exact a *get*. There are also instances, however, where women remain in the dark, unable to step out of the shadow. For example, attorneys I interviewed noted cases where simply the threat of invoking the *get* laws, the *Divorce Act*, (against the *beit din*'s will) in the Toronto context was enough to induce an otherwise recalcitrant husband to begin *get* negotiations even when the attorney had no intention of actually invoking the *get* laws because they were aware that the Toronto *Beit Din* would nullify a *get* executed as a result of the civil law. Others in the New York context described instances where the prenuptial agreement was either incorrectly executed or where the second page with the signatures and notarization was missing altogether, but nonetheless, they pressured husbands or their representation on the issue of the *get* with, “well I have a prenup in front of me that I am prepared to take to a judge if your client doesn't give her a *get*”<sup>811</sup>. These are but two examples of women strategically navigating plural legal systems in the shadow of legal pluralism and examples of women as legal agents with transformative capacity and legal knowledge (in line with critical legal pluralism).

Similarly, for Mnookin and Kornhauser, bargaining upon divorce breakdown is strategic; it is about balancing risks and probabilities, about trying to anticipate where one will have a more favourable outcome: in private ordering, or in court. When playing in the shadow of the law, you play a game of ‘what if’. Much like women navigating legal systems in search for a *get*. For women seeking a *get*, bargaining is far more complex because, at the outset, they must leverage their freedom simply in order to level the deck. In other words, women refused a *get*, while bargaining in the shadow of legal pluralism are not necessarily always able to choose which venue suits their civil interests, or where they might have better odds regarding custody or

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<sup>811</sup> Esther Schonfeld, “Legal And Halakhic Responses To Attempts To Use The Get As A Bargaining Chip In Civil Divorce And To Get Refusal” (presentation at Hadassah-Brandeis Institute’s workshop on “The Interaction between Religious Divorce Law and Secular Family Law: A Workshop on Practical Approaches” Brandeis University, Waltham, MA, May 17, 2017).

access. Rather, they are already at a detriment, having to negotiate something that should be separate from, prior to, and without the conditions of regular divorce negotiations- the *get*.

That said, as the narratives illustrate through a lens of critical legal pluralism, examining how individuals or groups treat law, some women *are* strategically choosing their venues (though there may be added stakes and pressures for religious women seeking a *get*); they *are* forum shopping quite deliberately at times, and this is in-line with Mnookin and Kornhauser's findings. The article argues that people take their chances in private ordering, hedging their bets about what the law would do if one used it. Thus it informs one's strategic moves when functioning in the shadows, before actually invoking the law itself. In this 'shadow of the law' model, the law does not directly determine the outcome with its reach, because it is not necessarily being used yet (like *get* laws) and yet, it still may significantly impact the achieved results. In fact, as Mnookin and Kornhauser argue, "...how people bargain in the shadow of the law provides us with a rich understanding of how the legal system affects behavior and allows for a more realistic appraisal of the consequences..."<sup>812</sup> but I would push even further and contend that in the shadows of legal pluralism we also get a rich understanding of how individual women effect legal knowledge and legal changes reciprocally and in line with critical legal pluralism).

In the Toronto context, the *Divorce Act* and *Family Law Act* reforms were legal pluralist remedies to the phenomenon of *get* refusal. The *Arbitration Act* reform was another response to the fact of religion in the public sphere needing regulation. In the New York context the amendments to the *Domestic Relations Law* and the adoption of *halakhic* prenuptial agreements further serve as pluralist remedies to *get* refusal in that jurisdiction. In both cases, I use legal pluralism as i) a socio-legal method, ii) a description of reality, and iii) a policy approach (in

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<sup>812</sup> Ibid, 997.

other words I view legal pluralism simultaneously as descriptive, prescriptive, and normative). That said, although there is a pluralist reality with laws and remedies available ‘on the books’, are they actually being implemented and employed? I have argued, and the narratives have bolstered this argument and shown that in fact, there seems to be a gap between the legal realities and social realities, between the law’s intentions and individuals’ and/or communal normative behaviours that persist (which takes me back to my initial questions at the outset of this study). I argue here that this reality too places us ‘in the shadows of legal pluralism’.

It is not only individuals who are in the shadows of legal pluralism due to the gap between the law’s intentions and the normative behaviours and realities that persist. Communities at large, including organizations are also ‘in the dark’ at times, and in particular in the Canadian context. At times, they are acting as though the *get* laws expunged any trace of *get* refusal and that there is no need for support organizations or mechanisms to aide women being abused by the refusal of a *get* or the extortionate demands made in exchange for a *get*, in the name of religion or piety.

Moreover, it is not only individuals and communities in the shadow of legal pluralism, *batei din* as well are either functioning or dysfunctioning in the shadows of legal pluralism. In the Toronto context in particular, the Toronto *Beit Din* is not using any of the mechanisms at their disposal whereas in the New York context, despite the challenges with the New York *get* laws, the Beth Din of America has attempted to circumvent those challenges by endorsing another pluralist option and mandating it as widely as possible, and that is the *halakhic* prenuptial agreement. This powerful remedy serves to tie individuals, rabbis, attorneys, and *batei din* inextricably to both civil and *halakhic* mechanisms, the archetype of a legal pluralist approach.

In conclusion, this research, with the voices of women refused a *get*, has illustrated that the convergence of legal systems or the reality of legal pluralism has the power to shape perceptions and behaviours even when not being directly invoked. While this chapter has developed a number of conclusions, weaving the multiple threads of analysis together, the coming chapter goes one step further, incorporating these enmeshments into policy recommendations and final calls to action.



## **Chapter Eight/ Conclusion - Policy for Piety**

*It has not been a perfect marriage in general. There was some abuse, but I weakened...*

*Eventually, it got out of control with the abuse- of both me and the three kids. The house went into foreclosure and we were on food stamps.*

*I went to the Beit Din of America and spoke to Rabbi W a few times. Rabbi W sent three hazmanot but no seruv because my husband's not a part of a community.*

*But, my husband is in denial and wants to get back together even though I have a restraining order that is still in effect til this day against him.*

*Rabbi W's advice was to get the civil divorce first in order to threaten my husband and send him the message that I am serious and that there is no hope for reconciliation.*

*Let's be honest here-guys have all the power- women have nothing. Now I have my civil divorce and a restraining order but even so, it's all up to him. I did what they wanted- I got my civil but I'm... I have no leverage in my demand for a get. It's very frustrating. It's hard, there should be some sort of rule that if you have a restraining order in place it should guarantee a get...*

*We separated in February 2012, I got my civil divorce April 23<sup>rd</sup> of this year (2014) but I've been asking for my get for years and there's no sign of it.*

*Are the rabbis helpful? Not really- I'll be honest with you. First thing they asked me about was a prenuptial agreement – ridiculous! Because in 1989, when I got married, there were no prenuptial agreements!*

*The truth of the matter is- it's all in his hands. He emails me all the time.*

*I did it all myself, without a lawyer and I'm proud of myself. I got the restraining order, I went to a \$399 "do your own divorce" and then in the middle I filed all kinds of motions- but he filed for bankruptcy which is a federal case and supersedes all civil matters and so I've definitely been my own best advocate. Beit din doesn't do anything alone- on its own. ORA is better but their hands are tied much of the time.*

*It's horrible to be a woman. Basically, you are being held hostage.*

*In my situation a prenuptial agreement would have done nothing-because he has no money to pay maintenance even if a civil court would have enforced the contract. What can they do if he's broke?*

*I shouldn't say this, but the best solution would be if my husband would just die.*

*He thinks he's the martyr. I think he sincerely believes he's been wronged. I don't believe he's just pretending to play role of martyr. I think he really believes everyone is against him like the rabbis, etcetra. He thinks he's being wronged by this situation.*

*I think a get tied to secular law is fantastic because secular law is more powerful. Otherwise, it can be ineffective, outdated, and unfair to women. A woman is tied and the only person that can undo you is your husband so you can wait until he decides to untie you or you can wait until he dies- whichever comes first.*

*There is no solution- everything is in the men's hands but you (women) are screwed and there's no point to annulment if you can't move on within the community.*

*Rabbis are just human. I'm indifferent to them now. I have no opinion of them. I'm still a believer; this hasn't turned me off of religion, not at all. I send my kids to yeshiva day school. It's about my husband, not about religion.*

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*I'm sitting in my office, February 26, 2007. At the appointed time, I put on my coat, walk down six flights of stairs and out into a beautiful winter day. I get into my car and drive five minutes to the appointed place. I arrive alone, It didn't occur to me to bring anyone with me, and I'm glad I didn't.*

*Walking through deep snow, I enter the white building. The shul has a timelessness about it, as though suspended in the first half of the 20<sup>th</sup> century. I am enveloped in dim but warm wood tones, and am directed into the Beit Midrash, where I take a seat by a long table. I am surrounded by thousands of years' worth of books, of teachings, of life.*

*I am here to close off 18 years of marriage, to walk out of the bonds I myself built, beginning with my encircling, carefully, deliberately, seven times, my chuppa. My new place in the world. I feel my ancestors here, watching. I feel wisps of my marriage swirling about, with the dust motes. I'm not sure what I feel; sad but also determined as I recognize the forward direction I am taking. Certainly, this is one of those moments I'll remember for the rest of my life. The three rabbis of the Bet Din come in, take their seats opposite me. One older, one middle-aged, one younger. All in black robes, black hats. Two others, the witnesses, stand behind them. Rabbi O., with the sad eyes and benevolent face, begins the age-old protocol, reading carefully but quickly in a tired mumble. I hear, repeatedly, my name, and those of my father, my imminently-ex husband, his father. I am bade stand, and I do. I stand straight and strong, ready to be given back the reins of my life. As I do not understand most of the words – other than the names – I can only contemplate their historic weight, and the direction they now turn me. Only the word 'grusha' – divorced – makes me flinch.*

*The word literally means 'thrown out, expelled', and is brutal. I stiffen and stand taller. I may be that, but after all, I have come here specifically to acquire it, and will carry that word on my back as I walk my own path, and create a new place in the world. I look past the shelves of books, through the windows. The sky is clear and blue, snow is falling.*

*As directed, I extend my hands – oh, remove my rings: the simple gold and moonstone I bought myself as a teenager on one hand, and my engagement diamond set in Bubby’s engagement ring on the other. As I do every day, I connect to their significances, and remind myself of Bubby’s life, of how she came to have this ring altogether, of all it represents. This awareness is always there, conscious. These are the touchstones.*

*I cup my hands to receive the parchment being dropped by the proxy. The rabbi said my husband felt uncomfortable being in the room with me. A fact about which I was previously unaware. A man of my parents’ generation, round-faced, beardless; he looks like he lives here in the Bet Midrash. His open white shirt is threadbare and grey. His suit is dull, as is his old hat. He looks very tired, bored really, certainly not mindful that I will remember him and his momentary significance for the rest of my life. He does what he is here to do, speaks my name as though he knows what it means, and the parchment falls into my outstretched palms. I close my hands as instructed, then tuck the parchment, this blueprint for the rest of my life, under my arm and stride away from the assembled rabbis. I turn, come back to them and hand the Get to Rabbi O. More words, more reiteration of my name and the others.....and it is done.*

*Rabbi O hands me a paper representing the parchment he will now slice and file, and gently tells me I am now a divorced woman in the eyes of the Bet Din, and all Judaism. He wishes me Mazal.*

*Somewhat dazed, I leave this place and step outside, into the bright day with soft snow falling silently. I contemplate my wings, then get into my car, drive five minutes up Bathurst Street, climb six flights of stairs, and slide back into my office chair by the computer.*

*An hour has elapsed.*

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### The Agunah (A Poem)

C. K.

She sits alone in the back of the *shul*,  
Preferring to *daven*, not talk,  
For all she has left is her faith,  
Her belief in *HaShem* is her Rock.

She has tried to obtain her freedom,  
Years of abuse have made her mind set,  
Her marriage has become like a cancer,  
To survive, she must obtain a *get*.

Her husband refuses to release her,  
Control was always his game,  
He will not let her get on with living,  
He will try to put her to shame.

Although she has turned to his *Rabbayim*,  
They refuse to get involved,

“Try harder to make him happy”, they say,  
“And your problems will all be resolved!”

They say for *shalom bayis*,  
That she should bear it, not react,  
That for the sake of her young children,  
Her marriage should remain intact.

He says that I’m stupid and lazy,  
When things fail, it’s always my fault,  
He smacks me when he’s angry,  
Should I just shrug off the assault?

My son heard it all and he watches,  
The next day I get a call from his school,  
“Your son hit one of this playmates,  
And he called his *Rebbi* a fool”!

My daughter had become very quiet,  
She no longer invites friends to our house,  
She looks at me with angry pity,  
To her I am a spineless mouse.

The rabbis shrug their shoulders,  
The answer is not a divorce,  
Her husband is a respected *baal bais*,  
They are saving her from a life of remorse.

The weeks have turned into months,  
The months have evolved into years,  
Trapped by her community’s indifference,  
She’s left with nothing but tears.

The *Agunah* sits alone in the back of her *shul*,  
Preferring to *daven*, not talk,  
For all she has left is her faith,  
Her trust in *HaShem* is her rock.

The narratives here, and throughout this study are not identical or consistent, and yet, they are all alike in their conviction. Sometimes women illustrate their conviction in bold ways, but sometimes in subtle, unconventional ways. Both types of narratives contribute to (at times incremental) transformations from within (reflecting a critical legal pluralist approach). All the narratives also reflect what I conclude here: that women refused a *get* are diverse. What unites them is their demanding a *get* as a right, and at times, some have to navigate that with their right

to religion (or to be free from religion, while still making a religious legal claim). The narratives also collectively reflect that just like there exists tremendous diversity amongst the identities of *mesuravot get*, so too there is diversity amongst the preferred best solutions of *mesuravot get*. Their relationships both with faith and with law are multifaceted

### **Policy for Piety**

In *Politics of Piety: The Islamic Revival and the Feminist Subject*<sup>813</sup>, Saba Mahmood conducts a study of women/piety movement in Egypt that focuses on listening to the ‘other’, the religious women, in order to shatter stereotypes that liberals and feminists impose on the Muslim world<sup>814</sup>. The study cuts across typical identity markers such as age and class, and finds that all types of women are embracing piety, also known as the mosque movement. The study further demonstrates that although these women, in a sense are not radically shattering the patriarchy other’s see in their lives, they are nonetheless making bold (and even feminist) changes from within (although the women themselves may not accept or embrace such conceptualizations). Thus, Mahmood also argues for broader conception of women’s political and religious agency (by those outsiders, reading ideas of freedom, agency and choice onto the women themselves). In the context of this study, I would likewise argue for broader conception of women’s legal and religious agency (by others including liberals and feminists, as Mahmood does). Extending Mahmood’s contributions to align with this study, I would contend that similarly, women actively and tactically navigating plural legal systems in their quest for a *get*, rather than accepting alternative remedies is their way of taking bold steps from within (while avoiding

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<sup>813</sup> Saba Mahmood, *Politics of Piety: The Islamic Revival and the Feminist Subject* (Princeton, NJ: Princeton University Press, 2005).

<sup>814</sup> Saba Mahmood, *Politics of Piety* (Princeton, NJ: Princeton University Press, 2005).

shattering the totality of the system as some might view as preferred). It is also in line with critical legal pluralism which individuals, in this case, women refused a *get*, as makers of legal norms and as potentially transformative law-makers (even if they do not necessarily read themselves this way).

Rather than reinterpreting and appropriating scripture and traditions to challenge discrimination against women that would change the foundation of the religion to which pious women ascribe (in our context that could be understood as abolishing *halakhic* marriage altogether, as some feminists suggest), the women of the mosque movement avoid politics altogether (to their minds) and focus instead on cultivating an embodied practice of personal piety that to others, seems to bow to patriarchal logic of fundamentalist Islam although in reality, through their piety and the resurgence of the mosque movement they are in fact changing normative roles and ideas from within, (much like the evolution of the prenuptial agreement movement within *halakha*, and particularly like the power of sharing women's narratives and experiences of *get* refusal). Both the women in Mahmood's study and in my own, are women who in some ways subscribe to cultural and religious norms rather than subverting them and this is their form of agency (despite the complexity this poses to liberal understandings of equality, multiculturalism, agency, or feminism<sup>815</sup>). Indeed, this nuanced understanding contradicts standard assumptions that views religious women as (especially) suppressed and as an alternative, argues that women choose their conditions at times. Mahmood illustrates that women's agency does not equate with conscious resistance necessarily. Again, this is in line with critical legal pluralism which, in this study, would also see women as active and normative law-makers through their choices (whether to avail themselves of law, to go public with shaming,

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<sup>815</sup> In fact, Mahmood contends that religious women are thus restricted by feminists. Saba Mahmood, *Politics of Piety*, 10.

among other choices). Women asserting their agency, even when directed at religious practice are not automatically engaging in purposeful political decisions or revolutionary actions and yet may still challenge normative ideas about pious Muslim, or in this case, Jewish women<sup>816</sup> and how they view and interact with law.

In light of Mahmood's important and sensitive contributions in *Politics of Piety* and my own critical analysis both from 'outside in' and 'inside out' throughout this study, I would like to end this study with a few policy recommendations based on my findings:

- 1) Women faced with the abuse of *get* refusal are diverse and although this study has drawn some conclusions based on the women who participated and shared their stories, communities and scholars alike must give safe and encouraging space for diverse women to make diverse choices and share diverse experiences of *get* refusal and the remedies they choose to pursue<sup>817</sup>. It is important to acknowledge that despite common assumptions about who avails themselves of *beit din*, or religious tribunals in general, that it is not just the pious, or the Orthodox. Women must have choice with religion as viable. There must be a grab bag of solutions available for women. The factors that lead to *get* refusal are plural and thus the remedies as well ought to be plural. For example, and as I illustrated in chapter six, 'e-shaming' may not exact a *get* in all cases, and may not work for all women, but it works for some women, and it exacts a *get* in some cases, so too with any number of remedies. While the women of this study by and large demanded a *halakhic get*, rather than any alternative, where women feel alternatives are sufficient or appropriate they must not be made to feel like pariahs within their communities<sup>818</sup>.

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<sup>816</sup> Ibid, 8, citing Lila Abu-Lughod.

<sup>817</sup> Certainly there are limitations with this diversity, but ultimately, women will benefit with this approach.

<sup>818</sup> For example, the recent and well-known case of the *aguna* from Tzfat/Safed saw a woman attain a *get zikui*, an alternative type of *get*, elaborated in chapter two, by an innovative ruling of the Tzfat *beit din* led by Rabbi Uriel

Ultimately, we must respect and give deference to the voices and experiences of women faced with *get* refusal and take cues from them directly, without imposing upon them ideas regarding best solutions. In particular, individual women's narratives are rich sources for real insight and innovative action and, by extension, collective action by women and their supporters can have significant impact on individual and institutional behaviour and attitudes within religious communities; for example, in their legal demands for their right to religion and their right to divorce (picking up on lessons from Mahmood's study).

- 2) As a community, we have settled - perhaps uncomfortably (though not always)- into the reality that the *aguna* problem is one to be managed, not solved. This is not moral nor is it *halakhic*. The Torah teaches us, "*tzedek, tzedek tirdof*", "justice, justice you shall pursue"<sup>819</sup> and settling with the status quo is simply unacceptable. We must challenge the notion that a *get* is negotiable. The *get* must be given prior to and separate from any and all divorce proceedings and negotiations, both in the American and Canadian contexts. This is a vital and perhaps most practical policy advice I can give. Alongside that recommendation, *batei din* must follow *halakhic* protocol, no matter the cost to their personal or collective self-image; they must issue *hazmanot* and then issue and widely publicize *seruvim*. Communities, schools, support organizations, rabbis, and individuals likewise have a responsibility to talk openly about the persistence of *get* refusal, they must educate their children to give and accept the *get* promptly

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Lavi. The 34-year-old woman's husband was in a permanent vegetative after a motorcycle accident nine years ago. In 2014, after intense investigation with doctors, the *beit din* issued the *get* on behalf of the husband, determining that he could not fulfill any of his marital obligations, and because "he would agree and desire to give it himself if he could". The *beit din* was careful to cite *halakhic* precedent in making what they knew would be a controversial ruling, referring to two of the most authoritative *halakhic rabbis* and *poskim* Rabbi Avraham Yeshaya Karelitz (Hazon Ish) and Rabbi Tzvi Pesach Frank. Indeed, the ruling caused outrage among the chief rabbi of Israel and the Ultra Orthodox world and in 2016 a third party challenged the ruling at the Central Rabbinical Court in Jerusalem. Ultimately, in 2017, the Supreme Court of Israel (civil/secular) ruled against the third-party intervention to challenge the Tzfat court's ruling and it was upheld, opening the door and minds of many, even if just a crack. Jeremy Sharon, "Defeat for Chief Rabbi Yosef in High Court Ruling on 'Agunah from Safed'," *Jerusalem Post*, March 30, 2017, <http://www.jpost.com/Israel-News/Defeat-for-Chief-Rabbi-Yosef-in-High-Court-ruling-on-Agunah-from-Safed-485647>.

<sup>819</sup> Deuteronomy 16:20.



and unconditionally, and they must pressure and demand that recalcitrant husbands, rabbis, and *batei din* do the right thing- issue a *get*, stand up to corrupt courts, and follow *halakhic* protocol. They must also support *mesuravot get* and their children; they must make them feel welcome in the community, at synagogue, and at events, and do the opposite for the recalcitrant spouse. So many of the participants in this study simply wanted their child to have someone to go to shul with on Shabbat.

- 3) The state should not assume that (socio-legal) tensions can be abated by regulating religion. As I illustrated throughout the study, with a particular focus on the literature of legal pluralism and law and religion in chapter three and discussions around state intervention in religious matters, such as the removal of religious arbitration or the enactment of *get* laws, regulation may not always have the intended impact. In other words, *get* refusal continues as a phenomenon in New York and Toronto, and is not easily ‘corrected’ in a straightforward way by legislative initiatives. In addition, the dynamic or relationship between state and religious law in a particular jurisdiction can be fruitfully examined to understand why religious legal mechanisms might resist, or provide a counterweight to, state intervention in religious communities. I also want to reiterate that religion or women’s piety is not the cause of the abuse of *get* refusal (and this is a theoretical outcome of this study that can be applied more broadly in other contexts).

Coupled with this, there must be an ethos of legal pluralism embedded in the approaches to *get* refusal. It is so important for people dealing with *aguna* issues to not only understand the *halakha*, but to also understand the relationship between the courts- rabbinic and civil- and how to navigate them. At a conference at Brandeis University on May 17, 2017, a large delegation of family law attorneys from New York, as well as some from Boston and Toronto all expressed that both lawyers and judges are not sufficiently familiarized with and proficient in

the *get* laws and the intricacies of Jewish divorce, including use of the *get* as an extortionate tool by recalcitrant husbands by framing it as a negotiable asset (and in the American context many are not familiar enough with the *halakhic* prenuptial agreement). There is a dynamic relationship between law and religion. Legal regulation may impact religious social norms and religious social norms may impact legal regulations as in the case of Jewish divorce in Toronto and New York; it is not one direction. I capture this (often unexpected) dynamic through the stories of women.

- 4) Perhaps the most critical policy outcome that emerges from my findings is the centrality of domestic abuse in the lives of *mesuravot get*. Moreover, not only is *get* refusal often precipitated by other types of domestic abuse, but (Torontonians) women are often enduring these abuses without a network of support. Woman after woman illustrated that *get* refusal is symptomatic of other abuses endured during a marriage. Abuses range from emotional and psychological abuses, to financial and spiritual abuses, and even to physical and sexual abuses in some cases. Furthermore, along with the gradual shift in normative ideologies, even within religious communities, that divorce is better than bad marriage, there has also come the shift that communities, even religious ones, may acknowledge the existence of domestic abuse. What remains missing is the link (at least in the Toronto context, less so in the New York context). I contend that just as communities are hard pressed to ignore domestic abuse, so too they should not ignore *get* refusal. Refusal of a *get* ought to be purposefully and strategically framed and understood as one potential abuse of a number of abuses that individuals may come to endure in unhealthy marriages (and support groups must understand this as well). Refusal of a *get* is often the final vestige of control. While I come to this conclusion at points throughout this study, it is most palpable in chapter five, where I conduct a close analysis of the narratives,

themes and language of *mesuravot get*. Women expressed that in a sense, *get* refusal is harder to endure than physical violence, because once you are able to remove yourself from the environment of physical abuse, it stops; but the abuse of *get* refusal is more difficult because it follows you everywhere. It ties you down and only one person has the ability to release the knot. You cannot un-tether yourself. That said, this study demonstrates that in fact, remedying the abuse that is *get* refusal is not going to come about by changing *halakha* or Jewish law. On the contrary, and echoing lessons from Mahmood's study in light of women for whom religion has meaning, the problem of power and violence in intimate relationships will be deployed, just as it is in all abusive conjugal relationships, Jewish or not. The problem of abuse cuts across all identity markers. There are bad people, some of them are men who happen to be religious, and these bad individuals use whatever tools they have at their disposal to bolster them in their abuse; sometimes, that includes religion. The best way to combat manipulation or subversion of religion is for religious institutions such as schools, synagogues, support groups, and *batei din* as well as individual rabbis and community members to acknowledge both the phenomenon (of distorting religion) and its intrinsic connection: refusal of a *get* is abuse. The intra-marriage dynamic of power imbalance and abuse is as important to understanding the persistence of *get* refusal as are the actions of religious authorities and institutions; or in other words, the marriage-community-state dynamic, including how community structures may contribute to the invisibility and/or persistence of domestic abuse. Refusal of a *get* is abuse in that it ties one down, prevents them from moving on with their lives, impedes them from finding happiness, and completely controls their future. Making this link also casts the recalcitrant husband as abuser thereby making him unwelcome within the community, and enabling the community to rally around the *mesurevet get*, rather than letting her get lost in the shadows.

It is my hope that this study has illuminated the complexity around the persistence of *siruv get*, particularly in today's modern contexts. Bringing together diverse literatures, methodologies, and theoretical contributions for the first time, I built on and extended the existing debates, placing the women refused a *get* centre stage embracing critical legal pluralism and developing an innovative religious feminist approach in order to highlight the entanglements at the nexus of law, religion, gender, and the power of storytelling.

### מי שברך להתרת עגונות ומסרבות גט

מי שברך אבותינו אברהם יצחק ויעקב ואמותינו שרה רבקה רחל ולאה, הוא יזכר ויפקד לטובה את כל נשות ישראל העגונות ומסרבות הגט, ויעזר ויגן ויושיע להן, ויוציא ממסגר נפשן לחיותן כהיום הזה.

האל-ל העונה בעת צרה, הפודה ומציל בכל עת צוקה, הוא יענה את הנשים הצוררות אלמנות חיות וישמע קול צעקתן, ויבטל וישנה לטוב את מחשבת הבעלים המסרבים לתת לנשותיהם גט, כי הוא אל-ל-הי כל בשר, הממנו יפלא כל דבר. אחיותינו בנות ישראל הנתונות בצרה ובשבונה - המקום ירחם עליהן, ויוציאן מצרה לרוחה ומאפלה לאורה.

האל-ל המוציא אסירים בכושרות, יתן בלב דיגי ישראל רוח חכמה ובינה, רוח עצה וגבורה, רוח דעת ויראת ה' להתיר את כל הנשים העגונות ומסרבות הגט מכבליהן, להקים שכינה מעפרה, שכל המתיר עגונה אחת כאלו בנה אחת מחרבות ירושלים העליונה. ויקים בהן מקרא שכתוב: "יקראני ואענהו עמו אנכי בצרה אחלצהו ואכבדהו".

מלך מלכי המלכים עמנו לימינו, ירים את קרנו, יעלה להן ארוכה ומרפא, ולא יהיו להן עוד נשאת ושבר. ויזכו לבנות בתים נאמנים בישראל. בעבור שכל הקהל הקדוש הזה מתפלל עליהן, השתא בעגלא ובזמן קריב, ונאמר אמן.

### Prayer for Agunot and Mesuravot Get

He Who Blessed our forefathers Abraham, Isaac and Jacob, and our foremothers Sarah, Rebekah, Rachel and Leah, may He remember and consider favorably all the women who are agunot and who are denied a writ of divorce (mesuravot get), help, shield and save them, and release them from their confinement to grant them a new life this day.

God who answers in times of trouble, who redeems and rescues in times of woe, may He answer the women who are bound in living widowhood, hear their outcries, and nullify the intentions of those husbands who refuse to give their wives a writ of divorce. For He is the God of all flesh, nothing is too wondrous for Him Our sisters, the daughters of Israel, who are in distress and bondage, may the Omnipresent One have mercy upon them, and deliver them from distress to relief, and from darkness to light.

May God who releases prisoners from their chains, place in the hearts of the judges of Israel the spirit of wisdom and insight, the spirit of counsel and valor, the spirit of devotion and fear of God, that they may free from their fetters all the agunot and women who have been refused a writ of divorce by their husbands, so that the Divine Presence will rise from her dust since whoever frees one agunah it is as though he built one of the ruins of supernal Jerusalem. And may the biblical verse be fulfilled in them, "And call upon Me on a day of distress, I will rescue you and you will honor Me" (Psalms 50, 15).

May the King of Kings stand at their side, exalt them, bring them recovery and healing, and may they endure no more despair and broken heartedness. And may they merit to establish faithful homes in Israel. Because this entire holy congregations praying on their behalf; now, speedily, and at a near time, and let us say, Amen.

Yael Levine, "Mi She-Berakh' Prayer for Agunot", *The Jerusalem Post*, March 16, 2016.

Yael Levine holds a PhD from the Talmud Department of Bar-Ilan University and is known for creating special prayers specifically to mark events in Jewish women's lives. Along with this prayer on behalf of *agunot* she has composed prayers for women to recite for the rebuilding of the Holy Temple in Jerusalem, prayers before and after immersing in the *mikvah* (ritual bath), as well as, a prayer to recite in memory of women murdered by their spouses. It is noteworthy that Levine herself intended for the prayers to be recited by women across the religious spectrum, not only for the Orthodox. The prayer is based upon biblical, Talmudic, and *midrashic* sources and is recited in some congregations on the Fast of Esther, which marks International Agunah Day (being that Esther – related to the word 'hidden' in Hebrew- 'hid her words' or was kept silent and because she was in a marriage against her will).

It is fitting to end with a prayer written for women by a woman being that it signals so many imperative aspects of this study. Just as Levine shapes liturgy, women refused a *get* also illustrated the power to shape social and legal outcomes by using their voices and sharing their stories and experiences. Moreover, just as Levine's prayers are to be recited by a cross section of Jewish women, so too does *get* refusal impact a cross section of Jewish women- neither are solely for the Orthodox. *Mi sheberach* prayers are said on behalf of those needing healing- physical and spiritual and indeed, this is also my prayer for all women who have experienced the abuse of *get* refusal.

It seems to me that the entire study might be characterized as a socio-legal version of the "prayers for agunot". Socio-legal scholars, particularly those who engage in qualitative research such as that embodied by this exploration, are uniquely situated to listen to subjects, translate stories into examples of human agency to create and live by norms, and reflect on the dynamic of interaction between formal and informal rules and governance. We can adopt a particular goal-

driven stance (here, to fight *get* refusal), but in the end our work - similar to a prayer perhaps - is by nature suggestive, hopeful and most effective when it encourages individual and collaborative action. We aim to look at things in a “different” way, to inspire legal actors to better understand actions and consequences, to accept and work with many intersecting bodies of norms. And we understand that there is no set authority with the power to bring about the change we see as necessary. The power, and obligation, is within us all.

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## Appendix A: Glossary

**Abishter et helfen (Yiddish)** - G-d will help

**A galeriye of fashfandene mener (Yiddish)** - a gallery of vanished or missing men or husbands

**Aguna/h, agunot/s, agun/agunim, aginut/iggun** - a woman who is chained, bound, or anchored to her marriage; *agunot* is the plural; *agun/agunim* is a man or men, plural, *iggun* and/or *aginut* is the general phenomenon

**Akkum** - courts governed by idolatrous peoples

**Aliyot la'Torah** - an honorary prayer on the anniversary of the death of a relative or one's *bar mitzvah* or other happy occasion

**Ashkenazi/c** - Eastern European

**Av beit din** - literally 'Father', or head of *beit din*

**Baal bais** – literally 'home owner', implying respected community member

**Ba'al teshuva/h, ba'alei teshuva** - literally 'master of repentance'; description of the return of secular Jews to religious Judaism.

**Bar Kochba/ Kokhba** - Son of Kochba; Jewish leader who led revolt against the Romans, approximately 132 C.E.

**Bar Mitzva/h** - literally 'son of commandment'; the ceremony celebrating a boy's transition to manhood, often by chanting from the Torah

**Barukh Hashem** – literally 'Bless the name of G-d', but also 'Thank G-d', a common reply when asked 'how are you?'

**Bat Mitzva/h** - literally 'daughter of commandment'; the ceremony celebrating a girl's transition to womanhood, at times by chanting from the Torah

**Bet din, beit din, beis din, batei din** - literally 'house of law', court of Jewish law or rabbinic court, *batei din* is the plural

**Beit Din of the Rabbanut Ha'Rashit** - Rabbinic Court of the Central or Chief Rabbinat of Israel

**Beit Din L'Inyanei Agunot** - Beit Din for Agunah Issues

**Beit Midrash** - House of learning, Jewish study hall

**Biah** - sexual connection/intercourse

**Bintl briv (Yiddish)** - bundle of letters

**Bubby (Yiddish)** - grandmother

**Bukhari** - from the region of Bukhara, or central Asia, culturally has similarities to Russian/Islamic cultures

**Chachamim/ hakhamin, chacham/hakham** - well-versed Torah scholars or scholar, singular

**Chalitzah/h , khalitzah/h, halitzah/h** - under the biblical system of levirate marriage known as yibbum, the process by which a childless widow and a brother of her deceased husband may avoid the duty to marry. The process involves the widow taking off a shoe of the brother (i.e. her brother-in-law) and making a declaration. Through this ceremony, the brother and any other brothers are released from the obligation of marrying the woman for the purpose of conceiving a child which would be considered the progeny of the deceased man. The ceremony of chalitzah makes the widow free to marry whomever she desires

**Charedi/haredi/ kharedi, charedim/haredim/kharedim** - strictly Orthodox or ultra-Orthodox individual or groups

**Chasid/hasid/ khasid, chasidim/hasidim/khasidim** - literally 'pious or pious ones'; referring to Jewish religious individual or sects

**Chatan/chasson/ khatan/khasson** - groom

**Cherem/herem** - ostracism, shunning, or excommunication

**Chesed/hesed** - act of loving-kindness

**C/hilul Hashem, c/hillul Hashem** - literally, the desecration of the 'Name' and refers to the 'major sin of denunciation'. This occurs when one publicly sins, and as a result makes the entire group, their beliefs, their G-d be seen in a negative and often shameful light

**C/hizuk** - strength

**chuppa/h, huppa/h** - marriage canopy

**Cohen** - a descendant of the priestly class

**Da'at/da'as torah/toyreh** - literally 'knowledge of Torah', dictates that well-learned rabbinic leaders should be sought out to inform all life-impacting decisions based on their superior knowledge and values

**Daven (Yiddish)** - pray

**Dayan, dayanim** - judge; judges

**Der forverts (Yiddish)** - *The Jewish Daily Forward*

**Dina d'malkhuta dina** - 'the law of the land (kingdom) is the law'; doctrine that was to become the basis for defining 'church-state' relations in Jewish law

**D'oraita (Aramaic)** - Biblically ordained or from the Torah

**D'rabbanan (Aramaic)** - rabbinically ordained or from the rabbis

**Ee efshar l'hachriach otta** - it is not possible to force her

**Eid, eidim** - witness, witnesses

**Eirusin** - also known as *kiddushin*, meaning engagement or betrothal

**Emuna/h** - faith

**Eshet Chayil** - literally 'woman of valour'; the ideal Jewish wife, encapsulating the ideal wife and mother

**Frum, frumer (Yiddish)** - religious, devout or being committed to the observance of Jewish law; more religious

**Geirim** - literally 'foreigners', term for converts to Judaism

**Ger** - also Gur, *Hasidic* dynasty originating from Ger, Poland, late 1700s

**Get meuseh** - forced or tainted *get*

**Get refusal** - Jewish divorce refusal

**Get/Gett/ghet, gittin** - Jewish writ of divorce; *gittin* is the plural

**Get al t'nai** - conditional *get*

**Get zikui** - annulling the marriage based on what is best for both parties, operating on the premise that divorce will benefit both wife and husband, whether he agrees or not

**Grusha** - divorced woman

**Hafka'a, hafka'at kiddushin, hafka'ot** - annulment; annulment of *kiddushin*; annulments-plural

**Halacha/halakha, halachot/halakhot** - literally 'the way on which one goes', or law or legal system; *halakhot* is plural; entire legal framework that, depending on how observant one is, governs every aspect of one's life and behaviour

**Halakhic / halkhically; halachic/halachically** - Jewish-legal; legally

**Harkhakot of Rabbenu Tam** - the distancing from the permitted use of force by Rambam/Maimonides, which was outlawed by Rabbi Tam

**Hashem** - literally 'the name', is used to refer to God, when avoiding God's more formal names

**Hashkafa/h, hashkafic** - religious- *halakhic* worldview

**Hatra'at seruv** - a letter of warning of the forthcoming issuance of a contempt order

**Hatzlacha/ hatzlakha raba/h** - lots of luck

**Hazmana, hazmanot** - an invitation, or in this context, a letter or summons to appear before *beit din*; summonses



**Heskem L’Kavod Hadadi** - Prenuptial Agreement for Mutual Respect

**Heter** - permission, approval or rabbinic ‘blessings’

**Heter mea rabbanim/rabbonim** - literally 'permission by one hundred rabbis'; one hundred Rabbis agree with a *Beit din* that a particular situation warrants an exemption to permit a man to remarry even though his wife refuses or is unable to accept a *get*

**IBD** - International Beit Din, led by Rabbi Simcha Krauss, which uses *halakhic* innovations or alternatives to ‘solve’ *get* refusal

**Iggun** - an anchor; phenomenon of anchoring a spouse to an unwanted marriage by refusing a *get*

**Isura/h** - forbidden or religious matters

**Kaddish** - required prayer said for the deceased

**Kalla/h** - bride

**Kava diyyun l'get** - judgement in favour of a *get*

**Kesef** - (exchange of) money

**Ketuba/h, kesuba/, ketubot** - a Jewish legal marriage contract, binding the marriage and ensuring maintenance and protection for the woman in case of mistreatment, neglect, or refusal of rights

**Kiddush/kiddish** - ceremony of prayer and blessing over wine

**Kiddushei ta’ut** - mistaken or fraudulent marriage which are transactions entered into with a flawed understanding/without full disclosure

**Kiddushim** - celebratory light luncheons after prayers

**Kiddushin** - also known as *eirusin*, sanctification or betrothal

**Kinyan** - formal act expressing (his) acceptance of the commitments; part of marriage Ceremony

**Kofin oto ad sheyomar rotzeh ani** - refers to whipping the recalcitrant husband until he says “I want to [give a *get*]”, also known as compelling a husband to want to give a *get*, or to recognize that giving a *get* and ‘doing the right thing’ was in fact deep down, what the husband had always wanted and intended to do before his evil impulse took over (Rambam)

**Kollel** - literally 'gathering' or 'collection'; an institute for (often) full-time, advanced study of the Talmud and rabbinic literature

**Lashon hara/h** - literally 'evil tongue'; *halakhic* term for derogatory speech or gossip about another person

**Leitwort (German)** - *milot manchot* in Hebrew, a literary tool describing repeated words that draw attention because of their repetition in a narrative cycle

**Lubavitch/er** - one who ascribes to the Orthodox Jewish, *Hasidic* movement of Lubavitch, originating in Belarus, late 1700s

**Machatunim/ makhhatunim (Yiddish)** - in-laws

**Mahr (Aramaic/Arabic)** - sum of money paid by groom to bride in Muslim marriages

**Maimonides** - also known as Rambam- Rabbi Moses son of Maimon; Talmudist, Halakhist, physician, philosopher and communal leader, 1135-1204 C.E.

**Mamona/h** - civil and fiscal matters

**Mamzer, mazerim, mamzerut** - illegitimate offspring, a status which bears severe consequences; *mamzerim* is plural; *mamzerut* is general phenomenon

**Mazal** - luck

**Mekach/mekakh ta'ut** - mistaken or fraudulent marriage which is a transaction entered into with a flawed understanding/without full disclosure

**Mekubalim** - spiritual counsellors

**Mesader kiddushin** - wedding officiant

**Mesarev l'din** - refusing to submit to judgement (to grant a *get*)

**Mesira/h** - to turn over or give up to authorities

**Mesurevet get, Mesuravot get** - woman refused a *get*; women refused a *get*, plural

**Meuseh** - forced or tainted *get*

**Midrash/ midrashic** - genre of rabbinic literature containing early interpretations and commentaries on the written and oral Torah as well as on non-legalistic rabbinic literature and occasionally Jewish law

**Mikva/h, mikve/h** - ritual bath

**Milot manchot** - *leitwords* (in German), a literary tool describing repeated words that draw attention because of their repetition in a narrative cycle

**Minyan** - quorum of ten men needed for prayer

**Mi Sheberach** – literally, ‘One who blesses’; a public prayer or blessing for an individual or group, most often recited in synagogue

**Mishna/h** - from the verb '*shanah*', or to study; it is the first major written redaction of the Jewish oral traditions known as the Oral Torah. It is also the first major work of Rabbinic literature. Redacted by Rabbi Judah around 200 C.E.

**Mitzvah** - a good deed done from religious duty

**Nebach/kh** - pity

**Nes** - miracle

**Neshama/h** – soul

**Nidda/h** - a woman during menstruation, who has not yet immersed in a *mikva*

**Nisuin** - marriage ceremony

**ORA** - Organization for the Resolution of Agunot, non-profit organization out of NY, advocating for the *get*

**Parnasa** - a living, livelihood

**Petach/kh** - small opening

**Qadi/khadi (Arabic)** - Sharia court judge

**Rabbenu Gershom** – ‘Our Rabbi, Gershom’, Known as ‘light of the exile’, a German Jewish rabbi and scholar, 960-1040 C.E.

**Rabbi, rebbi, rabbanim/rabbanim/rabbayim** - literally 'my master'; a teacher of Torah and/or communal leader who passes a test of rabbinic ordination; rabbanim is plural

**Rabbanut** - rabbinic establishment

**Rosh Va’ad Ha’ir** - Executive Director of the Jewish Community Council of a city

**Sarvan, sarvanim, sarvanut get** - recalcitrant husband/ male refuser of a *get*; recalcitrant husbands/ *get* refusers, plural; general phenomenon of *get* refusal

**Sefer krittut** - book of severance, biblical term for *get*

**Seruv, seruvim** - a contempt order, that declares the spouse to be (officially) ‘recalcitrant’ and subject to public ostracism and condemnation, calling upon the community to take appropriate action; contempt orders- plural

**Shabbat Shalom or Good Shabbos** - wish for a peaceful Sabbath; common Sabbath greeting

**Shadchanim/ shadkhanim; shadchan/shadkhan** - matchmakers; matchmaker

**Shakdu chachamim al takanot bnei yisrael** - sages had an urgent sense of concern regarding legal enactments or amendments for the daughters of Israel

**Shaliakh/shaliach** - representative

**Shalom/shlom bayit/s** - marital home characterized by peaceful and happy relationship between a wife and husband

**Shana/h Tova/h** - wish for a good year, common greeting around Jewish New Year

**Shanda/h / shande/h (Yiddish)** - a shame or disgrace

**Sheitel (Yiddish)** - wig

**Shelo l'halakha** - not to be taken seriously as *halakha* or *halakhically* permissible at this time

**Shiurim** - lessons on any Torah topic

**Shtar** - document

**Shtar berurin** - verification document; arbitration agreement

**Shul (Yiddish)** - synagogue

**Shulkhan arukh** - literally, the 'set table', Code of Jewish Law

**Simeon ben Shetakh** - Simon son of Shetakh, 120-40 B.C.E.

**Siruv get** - *get* or Jewish divorce refusal

**Sofer** - scribe

**Taharat Hamishpacha/h / Hamishpakha/h** - laws of family purity

**Takana/h** - a new legal precedent or amendment

**Talmidei chachamim/ hakhamin** - well-versed Torah scholars

**Talmud; bavli, yerushalmi** - instruction, learning from the verb '*lamad*', meaning to teach or study; an elucidation of the Mishnah and related Tannaitic writings that often ventures onto other subjects and expounds broadly on the Hebrew Bible.

**Tehillim** - psalms

**Teshuva/h** - literally 'return'; the concept of repentance in Judaism

**Tizku l'mitzvot** - may you (plural) merit to do more *mitzvot* or, good deeds

**Toen** - male rabbinic court advocate

**Toenet Halacha/halakha or Toenet Rabbani** - female rabbinic court advocate

**Tznius/t** - modest, or modestly, implying appropriateness in dress, and/or behaviour

**Vaad Harabonim of Toronto** - Toronto Board of Orthodox Rabbis

**Yad Hashem** - hand of G-d

**Yad L'Isha** - an Israeli Legal Aid Center and Hotline providing women imprisoned in hopeless marriages with the free legal representation they need to receive a Jewish divorce

**Yehareg v'al ya'avor** - let him be killed rather than transgress

**Yeshiva, yeshivot** - literally 'sitting'; a Jewish institution that focuses on the study of traditional religious texts, primarily the Talmud; *yeshivot* is the plural, meaning institutions for religious study

**Yevama** - A woman requiring chalitza/h , khalitza/h, halitza/h (see definition above)

**Yiddishe/h mameh** - based on the traditional, immigrant Jewish mother who puts husband's and children's needs before her own

**Yosef hatzadik** - Joseph the Righteous, one of the Biblical forefathers

**Zabla** - an acronym for *zeh borer lo echad*, which means each party is able to choose one of the *dayyanim* from a pool of rabbis with expertise in various fields of Jewish law and then the two together choose a third to complete the *beit din*. When using a *zabla* both parties must agree to be bound by the decision the *beit din* reaches

**Zekukim kesef tzaruf** - pure silver coins

## Appendix B: Standard *Ketuba* Text- Hebrew, followed by English

ב"ה

... בשבת ... לחדש ... שנת חמשת אלפים ושבע מאות ... לבריאת עולם למנין שאנו מנין כאן ... איך ... בן ... אמר לה להדהא ... בת ... הוי לי לאנתו כדת משה וישראל ואנא אפלה ואוקיר ואיזון ואפרנס יתיכי ליכי כהלכות גוברין יהודאין דפלחין ומוקרין וזנין ומפרנסין לנשיהון בקושטא ויהיבנא ליכי ... כסף זוזי ... דחזי ליכי ... ומזוניכי וכסותיכי וסיפוקיכי ומיעל לותיכי כאורח כל ארעא וצביאת מרת ... דא והות ליה לאנתו ודן נדוניא דהנעלת ליה מבי ... בין בכסף בין בזהב בין בתכשיטין במאני דלבושא בשמושי דירה ובשמושא דערסא הכל קבל עליו ... חתן דגן ב... זקוקים כסף צרוף וצבי ... חתן דגן והוסיף לה מן דיליה עוד ... זקוקים כסף צרוף אחרים כנגדן סך הכל ... זקוקים כסף צרוף וכך אמר ... חתן דגן אחריות שטר כתובתא דא נדוניא דן ותוספתא דא קבלית עלי ועל ירתי בתראי להתפרע מכל שפר ארג נכסין וקנינין דאית לי תחות כל שמיא דקנאי ודעתיד אנא למקני נכסין דאית להון אחריות ודלית להון אחריות כלהון יהון אחראין וערבאין לפרוע מנהון שטר כתובתא דא נדוניא דן ותוספתא דא מנאי ואפילו מן גלימא דעל כתפאי בחיי ובתר חיי מן יומא דגן ולעלם ואחריות וחומר שטר כתובתא דא נדוניא דן ותוספתא דא קבל עליו ... חתן דגן כחומר כל שטרי כתובות ותוספתות דנהגין בבנת ישראל העשוין כתיקון חכמינו ז"ל דלא כאסמכתא ודלא כטופסי דשטרי וקנינא מן ... בן ... חתן דגן למרת ... בת ... דא על כל מה דכתוב ומפורש לעיל במנא דכשר למקניא ביה הכל שריר וקים

נאום ...

נאום ...

On the [...] day of the week, the [...] day of the [Hebrew] month of [...], the year [...] after the creation of the world, according to the manner in which we count [dates] here in [...], the bridegroom [...] son of [...] said to this [...] daughter of [...], "Be my wife according to the law of Moses and Israel. I will work honor, feed and support you in the custom of Jewish men, who work, honor, feed, and support their wives faithfully. I will give you the settlement of [...] silver *zuzim*, which is due you according to [...] law, as well as your food, clothing, necessities of life, and conjugal needs, according to the universal custom."

Ms. [...] agreed, and became his wife. This dowry that she brought from her father's house, whether in silver, gold, jewelry, clothing, home furnishings, or bedding, Mr. [...], our bridegroom, accepts as being worth [...] silver pieces (*zekukim*).

Our bridegroom, Mr. [...] agreed, and of his own accord, added an additional [...] silver pieces (*zekukim*) paralleling the above. The entire amount is then [...] silver pieces (*zekukim*).

Mr. [...] our bridegroom made this declaration: "The obligation of this marriage contract (*ketubah*), this dowry, and this additional amount, I accept upon myself and upon my heirs after me. It can be paid from the entire best part of the property and possessions that I own under all the heavens, whether I own [this property] already, or will own it in the future. [It includes] both mortgageable property and non-mortgageable property. All of it shall be mortgaged and bound as security to pay this marriage contract, this dowry, and this additional amount. [it can be taken] from me, even from the shirt on my back, during my lifetime, and after my lifetime, from this day and forever."

And the surety for all the obligations of this marriage contract (*ketubah*), dowry and the additional sum has been assumed by [...] the said groom, with the full obligation dictated by all documents of *ketubot* and additional sums due every daughter of Israel, executed in accordance with the enactment of our Sages, of blessed memory. It is not to be regarded as an indecisive contractual obligation nor as a stereotyped form.

And we have completed the act of acquisition from Mr. [...] son of [...] our bridegroom, to Ms. [...] daughter of [...], regarding everything written and stated above, with an article that is fit for such a *kinyan*. And everything is valid and confirmed.

[...] son of [...] Witness

[...] son of [...] Witness

**Appendix C: Standard Get Text- Hebrew, followed by English**

ב \_\_\_\_\_ בשבת, ב \_\_\_\_\_ ימים לירח \_\_\_\_\_, שנת \_\_\_\_\_  
לבריאת עולם למנין שאנו מנין כאן ב \_\_\_\_\_ מתא דיתבא על נהר \_\_\_\_\_  
ועל מי מעינות, אנה \_\_\_\_\_ בן \_\_\_\_\_, העומד היום ב \_\_\_\_\_ מתא,  
דיתבא על נהר \_\_\_\_\_ ועל מי מעינות, צביתי ברעות נפשי  
בדלא אניסנא, ושבקית ופטריית ותרוכית יתיכי ליכי אנת אנתתי  
\_\_\_\_\_ בת \_\_\_\_\_ העומדת היום ב \_\_\_\_\_ מתא, דיתבא  
על נהר \_\_\_\_\_ ועל מי מעינות, דהוית אנתתי  
מן קדמת דנא וכדו פטריית ושבקית ותרוכית יתיכי ליכי דיתיהויין רשאה  
ושלטאה בנפשיכי למהך להתנסבא לכל גבר דיתצביין, ואנש לא ימחא  
בידיכי מן יומא דנן ולעלם, והרי את מותרת לכל אדם,  
ודן די יהוי ליכי מנאי ספר תרוכין ואגרת שבוקין וגט פטורין  
כדת משה וישראל.

פלוני בן פלוני עד

פלוני בן פלוני עד

On the \_\_\_\_\_ day of the week, the \_\_\_\_\_ day of the month of \_\_\_\_\_ in the year  
\_\_\_\_\_ after creation of the world, according to the calendaric calculations that we count here, in  
the city \_\_\_\_\_, which is situated on the \_\_\_\_\_ river, and situated near springs of water, I,  
\_\_\_\_\_ the son of \_\_\_\_\_, who today am present in the city \_\_\_\_\_, which is situated on  
the \_\_\_\_\_ river, and situated near springs of water, willingly consent, being under no duress, to  
release, discharge, and divorce you [to be] on your own, you, my wife \_\_\_\_\_, daughter of  
\_\_\_\_\_, who are today in the city of \_\_\_\_\_, which is situated on the \_\_\_\_\_ river, and  
situated near springs of water, who has hitherto been my wife. And now I do release, discharge, and  
divorce you [to be] on your own, so that you are permitted and have authority over yourself to go and  
marry any man you desire. No person may object against you from this day onward, and you are  
permitted to every man. This shall be for you from me a bill of dismissal, a letter of release, and a  
document of absolution, in accordance with the law of Moses and Israel.

\_\_\_\_\_ the son of \_\_\_\_\_ -- witness

\_\_\_\_\_ the son of \_\_\_\_\_ -- witness.



## Appendix D: Call for Participants- New York, followed by Toronto

From: Rabbi Jeremy Stern [REDACTED]  
To: "Yael CB Machtinger" <[REDACTED]>  
CC: "Keshet Starr" <[REDACTED]>  
Date: Tue, Oct 22, 2013, 15:55  
Subject: Research on Agunot

Dear Current and Former Agunot,

I hope this email finds you well. A PhD student at York University, Yael Machtinger, who is a friend of mine, is writing her doctoral dissertation on *agunot* in New York, Montreal, and Toronto. She is looking to interview current and former *agunot* and asked me to reach out to you to see if you would be interested in speaking with her. Your participation could greatly advance her research, which will hopefully assist in advancing our advocacy on behalf of *agunot*.

If you are interested in speaking with Yael, please email her at [REDACTED] or call her at [REDACTED]. I do not have any more information about her research than what I've shared with you, so please be in touch with her if you have any questions.

Thank you so much,

Jeremy

Rabbi Jeremy Stern  
Executive Director, Organization for the Resolution of Agunot (ORA)

[REDACTED]

ORA is the only nonprofit organization addressing the *agunah* crisis on a case-by-case basis worldwide.

# Call For Participants

## Looking to Interview Women Who Currently Are, or Who Were *Mesuravot Get* (refused a *get*)

I'm a *frum* (female), PhD Candidate in Socio-Legal Studies at York University.

My Dissertation focuses on *agunot* who are *mesuravot get* and as such I am looking to interview women who currently are, or who recently were *mesuravot get* in each of three Jewish centers: Toronto, Montreal, and New York.

My Dissertation Proposal has been approved by the Office of Research Ethics at York University and **confidentiality and anonymity are guaranteed**. My Master's thesis was called "Sounds of Silence: A Socio-Legal Exploration of *Siruv Get* and *Iggun* in Toronto" and I'm expanding on that initial project, which I completed four years ago.

The purpose of the research is empowerment; enabling women to be at the centre of scholarly socio-legal research, **in line with Halacha**. Participants will be asked to share stories and to answer semi-structured questions.

The research may give you and/or the community a voice; it may allow you to narrate your own remembered past and in that way it may be affirming and **beneficial to you and others**. Your participation may also elicit positive change to you personally, and/or to our communities.

Please feel free to call Yael Machtinger.

Confidential email: [REDACTED]

Great Community comes From Great Conversation

## Appendix E: Informed Consent Form

### Sounds of Silence Informed Consent Form/ Text for Verbal Consent Form

**Date:** Winter, 2014

**Working Title:** *Sounds of Silence: A Comparative Socio-Legal Examination of Get (Jewish divorce) Refusal*

**Researcher:**

Yael Chaya Bracha Machtinger, PhD Candidate

Division of Social Science, Faculty of Graduate Studies, Graduate Program in Socio-Legal Studies, York University [REDACTED].

**Purpose of the Research:**

This research project explores Jewish divorce refusal. It seems to be that refusal by husbands persists unacknowledged in Toronto's Jewish community, while in Montreal and New York the problem of *get* refusal is acknowledged, making Toronto distinct. Consequently, my doctoral research is driven by the question: Why is there a unique gap between law reform and social behaviour in Toronto regarding *get* (Jewish divorce) refusal different from other legally plural Jewish communities - Montreal and New York?

I will comparatively examine a classic socio-legal concern, the gap between law reform and law in action, grounded in an atypical case study and yet from a comparative perspective with the goal of contributing to women's historiography of marriage as well as examining the overlapping legal norms of Jewish and civil laws. In Canada, and Toronto particularly, society is not attuned to the intersection of secular, legal regulation and religious, social norms regarding *get* refusal. Accordingly, I will explore if in fact changes to secular law changed spousal behaviour in Toronto, compared to Montreal, and how amendments to the law changed behaviour of spouses in New York.

I will draw from contributions of both rabbinic and feminist research strands-actively engaging with Jewish Law and critically examining *get* refusal using feminist methods and methodologies placing women's narratives anchored to marriages against their will, at the centre of socio-legal analysis, accurately exposing Jewish women as active not chained. It is my hope that the project will bring about awareness, openness and conversation about *iggun* (Jewish divorce refusal) within and beyond the communities, allow for the self-narration of women, and contribute to the advancement of knowledge both within the field of socio-legal studies particularly, but also for intersections of law, culture, gender and religion generally.

**What You Will Be Asked to Do in the Research:**

You will be asked to engage in a open-ended interview questions used as a guide. The research methodology that will be used then is 'participant interview research design' which allows for greater flexibility because it relies on semi-structured discussion, giving you a voice. As such, while the time commitment will not be onerous, it may be flexible; 60-120 minutes. You should be aware that interviews may be digitally audio recorded and then transcribed and

analyzed by me unless you express otherwise. You should also be aware that the Dissertation that I will write, at the end of the research process, will be read and approved by my Dissertation committee and may eventually be published.

### **Risks and Discomforts:**

There are minimal risks to all participants. The subject matter is not taboo or deemed harmful or dangerous to discuss openly. On the contrary, you are encouraged to freely, and comfortably discuss the subject and create heightened awareness about it. In fact, there are many articles, books, and media outlets already discussing the issue openly.

The minimal risks include: i) talking about personal matters that might be painful; ii) expressing unpopular opinions.

Furthermore, because you have the option to withdraw at any time (and have the supplied data destroyed), and because all information participants supply will be secured and kept confidential and anonymous, there is minimal risk to privacy and harm, or discomfort.

**Should you experience any emotional distress, I will give you a list of support services for you to contact.**

### **Benefits of the Research and Benefits to You:**

The research may give you and/or the community a voice; it may allow you to narrate your own remembered past and in that way it may be affirming and beneficial.

Your participation may also elicit positive change to you personally, and/or to your communities. Participating in a project which may bring attention to the issue may also be a benefit to you.

### **Voluntary Participation and Withdrawal from the Study:**

Your participation in the study is completely voluntary and you may choose not to answer any questions, or to stop participating at any time, for any reason, if you so decide. If you decide to stop participating, your decision to stop participating, or to refuse to answer particular questions, will not affect your relationship with the researchers, York University, or any other group associated with this project either now, or in the future. Further, upon withdrawal from the study, all associated data collected will be immediately destroyed where possible.

### **Confidentiality and Anonymity:**

Unless you choose otherwise, all information you supply during the research will be held in confidence and anonymously, under a pseudonym and unless you specifically indicate your consent, your name will not appear in any report or publication of the research. Data will be collected through a digital audio recorder and/or handwritten notes. Your data will be safely stored in a locked facility and I will have access to this information. Moreover, all electronic data will be securely stored on a password protected computer. The data will be destroyed after the retention period of ten years. The data (hardcopy and electronic) will be destroyed after the retention period either by shredding and/or deleting computer files from computer, recycle bin and overwriting them. Confidentiality will be provided to the fullest extent possible by law.

### **Questions About the Research?**

If you have questions about the research in general or about your role in the study, please feel free to contact me, Yael Machtinger, by e-mail [REDACTED], my Dissertation Supervisor, Dr. Annie Bunting, either by telephone at [REDACTED] or by email [REDACTED], or my Graduate Program in Socio-Legal Studies either by telephone at [REDACTED] or by email [REDACTED]. This research has been reviewed by the Human Participants in Research Committee; York University's Ethics Review Board and conforms to the standards of the Canadian Tri-Council Research Ethics guidelines. If you have any questions about this process, or about your rights as a participant in the study, please contact the Sr. Manager and Policy Advisor for the Office of Research Ethics, 5<sup>th</sup> Floor, York Research Tower, York University telephone [REDACTED] or e-mail [REDACTED].

**Legal Rights and Signatures:**

I, \_\_\_\_\_, consent to participate in *Sounds of Silence* conducted by Yael Chaya Bracha Machtinger. I have understood the nature of this project and wish to participate. I am not waiving any of my legal rights by signing this form. My signature below indicates my consent.

**Signature** \_\_\_\_\_

**Date** \_\_\_\_\_ **2014**

Participant

**Signature** \_\_\_\_\_

**Date** \_\_\_\_\_ **2014**

Researcher

## Appendix F: Questionnaire

### Working 'Participant Interview Research Design' Questions

#### **A) Biographical Information:**

1. Name: \_\_\_\_\_
2. Age, circle one: 18- 20 20-30 30-40 40-50 50-60 60-70 70-80
3. Gender: \_\_\_\_\_
4. Occupation: \_\_\_\_\_
5. Where do you currently reside? **Circle ONE.** Toronto Montreal New York
6. How would you describe yourself religious affiliation? **Circle ONE.**  
Hasidic Ultra Orthodox Modern Orthodox Conservadox Conservative Reform  
Reconstructionist Egalitarian Pluralistic Other: \_\_\_\_\_

#### **B) General *Siruv Get* Questions:**

1. Do you know of a woman who is/was refused a *get* by her husband in Toronto/Montreal/ New York?
2. How do you know? Do you think your sources are reliable? Should you know as a member of the community?
3. A person who has been summoned to *beit din* (Jewish court) several times and fails to appear can be held in contempt of court. A *seruv* is a document that indicates such recalcitrance. Do you know if the woman refused a *get* has had a *seruv* issued in her case?
4. How do you know? Do you think your sources are reliable? Should you know as a member of the community?
5. Do you think there should be support of individuals whose spouses are trapping them in marriages? What sorts of support are you envisioning?
6. Would you use a secular/civil legal remedy or protection to ensure receipt of a *get* upon dissolution of marriage? What might some of these include?
7. How do you feel about secular/civil legal remedies or protections? What is your perception about them? Does your community discuss them? How?
8. To what degree might you say that secular/civil legal remedies or protections have changed religious norms or behaviour on the issue of *siruv get*? Please elaborate.
9. Do you believe that (secular, civil) legal amendments can change social behaviour? (religious behaviour?) Have they? Should they? (Or is there an ongoing gap between law reform and social action?)
10. Does *iggun* go both ways? (Can a wife refuse a *get* thereby trapping her husband?)
11. Let's take a hypothetical...What would you do if you were in the position of a *mesurevet get*?
12. What is your perception of such a woman? Of her husband?
13. Would you describe your experience as gendered? OR how did it feel to be a woman going through the *get* process?

#### **C) Legislation and Case Law:**

1. Are you aware of *iggun* protections in Toronto/Montreal/New York? What do they include?
2. Have you heard of/are you aware of the changes to the *Divorce Act*? *Family Law Act*? *Domestic Law Review*?
3. Have you ever heard of *Bruker v. Markowitz*, *Light v. Light*, or similar cases? Have you ever read the cases? Were they significant?

4. Are you familiar with the pre-nup movement? ORA? Or the recent Mellman Group Study by Barbara Zakheim which sought to quantify *agunot* in North America? Have you heard of Tamar Epstein or Gital Dodelson?
5. Have you/ do you pan to/ do you advise signing pre-nuptial agreements with the 'Aguna' clause that would be both *Halachically* and legally binding? Why or why not?
6. Are you aware of the 'Aguna Summit' that took place in New York in June 2013 and of the suggestions purposed there (both legal and *halachic*)?
7. What do you think the 'best solution' to *get* refusal is?

D) **Specific/Detailed Questions for Narratives of *Agunot*/Mesuravot *get* (past or present)**

Were issues around *siruv get* ever addressed or discussed **before** you got married? (I.E. was the phenomenon even acknowledged? Were the civil remedies discussed? Prenups?) What was said, when, by whom? (In high school? Seminary? *Kallah* class? Officiating rabbi?)

Were you ever advised, not to agree to a civil divorce before receiving your *get*?

1. Do you have your *get*? **Circle ONE.**    **YES**    **NO**    If yes, after how long? \_\_\_\_\_
2. Was a *siruv* issued?    **Circle ONE.**    **YES**    **NO**    If yes, after how long? \_\_\_\_\_
3. Where were you residing?
4. Who called the *Beit Din* (rabbinic court) for the first time?
5. How old were you? How long had you been married?
6. Who was your first point of contact within the *Beit Din*?
7. Were you directed elsewhere upon contacting this individual?
8. How did you describe your marital / separation situation?
9. At what point in the separation were you?
10. Were you asked about therapy / reconciliation?
11. Did you (have to) go for therapy?
12. Was the *get* process explained to you?
13. What process was outlined?
14. Where were you for initial contact with *Beit Din* (administrative meeting)?
15. Did you fill out any forms?
16. Did the rabbi/*dayan* (rabbinic court judge) ask about the details of your case?
17. What was the *seruv* process like?
18. At what point/ did you attain the status of an *aguna/mesurevet get*?
19. Did a rabbi/*dayan* speak with both parties before scheduling the *get* (divorce)?
20. How long before the *get* ceremony could be arranged?
21. Who were the attending *dayanim* (rabbinic court judges) at the ceremony?
22. Where was the ceremony held?
23. Were you told to bring anything with you?
24. What were you told to bring?
25. Were you told to bring anyone with you?
26. Who did you bring to the ceremony?
27. What was the process?
28. How long did it take?
29. Was it explained to you beforehand that you had to know all your names / nicknames?
30. Were there any complications by way of names?
31. Were there any couples having their ceremony performed while you were waiting? Were

there couples waiting to be seen after you?

32. Where did you wait?
33. With whom did you wait?
34. Was there financial payments cessation of property requested/required in exchange for giving a *get*? Did the *Beit Din* (or anyone else) advise you to give it? What did you ultimately decide to do?
35. Was there custody/access requested/required in exchange for giving a *get*? Did the *Beit Din* (or anyone else) advise you to give it? What did you ultimately decide to do?
36. Was there financial payments requested/required in exchange for giving a *get*? Did the *Beit Din* (or anyone else) advise you to give it? What did you ultimately decide to do?
37. Were (secular, legal) approaches to these types of extortionate demands ever discussed?
38. Was the *ptur* (release document) explained to you?
39. When was the *ptur* explained to you?
40. Was the importance of the *ptur* explained to you?
41. Did you have any issues obtaining the *ptur*?
42. What was the cost of the ceremony?
43. Who paid?
44. Was there resistance of payment by either party?
45. If so, how did the payment resistance affect obtaining the *ptur*?
46. Did the *Beit Din* keep your *ketuba* (marriage contract)?
47. If the *ketuba* was returned, under what circumstances?
48. What, if anything, were you told about *ketuba* money?
49. Did you have to ask about *ketuba* money?
50. Did you ask the *Beit Din* about civil procedure? AT WHAT POINT?
51. How were you told to go about the civil divorce process?
52. Were you told about the secular/civil legal amendments in place that may have impacted or expedited your *get*? When? By whom? (Do you know about the amendments? Have you heard of *Bruker v. Markovits*?)
53. What was the attitude with which the civil procedure was addressed by the *beit din/dayanim*?
54. Did you ask the *Beit Din* about prenups or postnups? AT WHAT POINT?
55. Had you heard of them previously? (Their acceptance/legitimacy by major Orthodox rabbis and rabbinic courts in the US and Israel discussed? Their successes like the *Light vs. Light* case? (speaking here of *halakhic* prenups or prenups with an *aguna* clause- secular prenups, religious in nature or with a religious clause included)
56. What was the attitude with which prenups were addressed?
57. Would you describe your experience as gendered? OR how did it feel to be a woman going through the *get* process?
58. What feelings were you left with toward the rabbinic court/ the *get* process?
59. What do you feel toward them now?
60. What do you think the 'best solution' to *get* refusal is?
61. Do you believe that (secular, civil) legal amendments can change social behaviour? (religious behaviour?) Have they? Should they? (or is there an ongoing gap between law reform and social action?)



## **Appendix G: Get Laws- New York, followed by Canada/Ontario**

### ***Domestic Relations Law 253: Removal of barriers to remarriage* (New York)**

1. This section applies only to a marriage solemnized in this state or in any other jurisdiction by a person specified in subdivision one of section eleven of this chapter.
2. Any party to a marriage defined in subdivision one of this section who commences a proceeding to annul the marriage or for a divorce must allege, in his or her verified complaint: (i) that, to the best of his or her knowledge, that he or she has taken or that he or she will take, prior to the entry of final judgment, all steps solely within his or her power to remove any barrier to the defendant's remarriage following the annulment or divorce; or (ii) that the defendant has waived in writing the requirements of this subdivision.
3. No final judgment of annulment or divorce shall thereafter be entered unless the plaintiff shall have filed and served a sworn statement: (i) that, to the best of his or her knowledge, he or she has, prior to the entry of such final judgment, taken all steps solely within his or her power to remove all barriers to the defendant's remarriage following the annulment or divorce; or (ii) that the defendant has waived in writing the requirements of this subdivision.
4. In any action for divorce based on subdivisions five and six of section one hundred seventy of this chapter in which the defendant enters a general appearance and does not contest the requested relief, no final judgment of annulment or divorce shall be entered unless both parties shall have filed and served sworn statements: (i) that he or she has, to the best of his or her knowledge, taken all steps solely within his or her power to remove all barriers to the other party's remarriage following the annulment or divorce; or (ii) that the other party has waived in writing the requirements of this subdivision.
5. The writing attesting to any waiver of the requirements of subdivision two, three or four of this section shall be filed with the court prior to the entry of a final judgment of annulment or divorce.
6. As used in the sworn statements prescribed by this section "barrier to remarriage" includes, without limitation, any religious or conscientious restraint or inhibition, of which the party required to make the verified statement is aware, that is imposed on a party to a marriage, under the principles held by the clergyman or minister who has solemnized the marriage, by reason of the other party's commission or withholding of any voluntary act. Nothing in this section shall be construed to require any party to consult with any clergyman or minister to determine whether there exists any such religious or conscientious restraint or inhibition. It shall not be deemed a "barrier to remarriage" within the meaning of this section if the restraint or inhibition cannot be removed by the party's voluntary act. Nor shall it be deemed a "barrier to remarriage" if the party must incur expenses in connection with removal of the restraint or inhibition and the other party refuses to provide reasonable reimbursement for such expenses. "All steps solely within his or her power" shall not be construed to include application to a marriage tribunal or other similar organization or agency of a religious

denomination which has authority to annul or dissolve a marriage under the rules of such denomination.

7. No final judgment of annulment or divorce shall be entered, notwithstanding the filing of the plaintiff's sworn statement prescribed by this section, if the clergyman or minister who has solemnized the marriage certifies, in a sworn statement, that he or she has solemnized the marriage and that, to his or her knowledge, the plaintiff has failed to take all steps solely within his or her power to remove all barriers to the defendant's remarriage following the annulment or divorce, provided that the said clergyman or minister is alive and available and competent to testify at the time when final judgment would be entered.

8. Any person who knowingly submits a false sworn statement under this section shall be guilty of making an apparently sworn false statement in the first degree and shall be punished in accordance with section 210.40 of the penal law.

9. Nothing in this section shall be construed to authorize any court to inquire into or determine any ecclesiastical or religious issue. The truth of any statement submitted pursuant to this section shall not be the subject of any judicial inquiry, except as provided in subdivision eight of this section.

### ***Domestic Relations Law 236B: Equitable Distribution, Maintenance, Child Support (Special controlling provisions; prior actions or proceedings; new actions or proceedings) (New York)***

#### **5. Disposition of property in certain matrimonial actions.**

h. In any decision made pursuant to this subdivision the court shall, where appropriate, consider the effect of a barrier to remarriage, as defined in subdivision six of section two hundred fifty-three of this article, on the factors enumerated in paragraph d of this subdivision.

#### **6. Post-divorce maintenance awards.**

o. In any decision made pursuant to this subdivision the court shall, where appropriate, consider the effect of a barrier to remarriage, as defined in subdivision six of section two hundred fifty-three of this article, on the factors enumerated in paragraph e of this subdivision. 6-a. Law revision commission study. a. The legislature hereby finds and declares it to be the policy of the state that it is necessary to achieve equitable outcomes when families divorce and it is important to ensure that the economic consequences of a divorce are fairly shared by divorcing couples. Serious concerns have been raised that the implementation of New York state's maintenance laws have not resulted in equitable results. Maintenance is often not granted and where it is granted, the results are inconsistent and unpredictable. This raises serious concerns about the ability of our current maintenance laws to achieve equitable and fair outcomes. The legislature further finds a comprehensive review

of the provisions of our state's maintenance laws should be undertaken. It has been thirty years since the legislature significantly reformed our state's divorce laws by enacting equitable distribution of marital property and introduced the concept of maintenance to replace alimony. Concerns that the implementation of our maintenance laws have not resulted in equitable results compel the need for a review of these laws.

### ***Divorce Act, R.S.C. 1985, c. 3 (2nd Supp) (Canada)***

**21.1 (1)** In this section, *spouse* has the meaning assigned by subsection 2(1) and includes a former spouse.

#### **Affidavit re removal of barriers to religious remarriage**

**(2)** In any proceedings under this Act, a spouse (in this section referred to as the “deponent”) may serve on the other spouse and file with the court an affidavit indicating

- **(a)** that the other spouse is the spouse of the deponent;
- **(b)** the date and place of the marriage, and the official character of the person who solemnized the marriage;
- **(c)** the nature of any barriers to the remarriage of the deponent within the deponent’s religion the removal of which is within the other spouse’s control;
- **(d)** where there are any barriers to the remarriage of the other spouse within the other spouse’s religion the removal of which is within the deponent’s control, that the deponent
  - **(i)** has removed those barriers, and the date and circumstances of that removal, or
  - **(ii)** has signified a willingness to remove those barriers, and the date and circumstances of that signification;
- **(e)** that the deponent has, in writing, requested the other spouse to remove all of the barriers to the remarriage of the deponent within the deponent’s religion the removal of which is within the other spouse’s control;
- **(f)** the date of the request described in paragraph (e); and
- **(g)** that the other spouse, despite the request described in paragraph (e), has failed to remove all of the barriers referred to in that paragraph.

#### **Powers of court where barriers not removed**

**(3)** Where a spouse who has been served with an affidavit under subsection (2) does not

- **(a)** within fifteen days after that affidavit is filed with the court or within such longer period as the court allows, serve on the deponent and file with the court an affidavit indicating that all of the barriers referred to in paragraph (2)(e) have been removed, and
- **(b)** satisfy the court, in any additional manner that the court may require, that all of the barriers referred to in paragraph (2)(e) have been removed,

the court may, subject to any terms that the court considers appropriate,

- (c) dismiss any application filed by that spouse under this Act, and
- (d) strike out any other pleadings and affidavits filed by that spouse under this Act.

### **Special case**

(4) Without limiting the generality of the court's discretion under subsection (3), the court may refuse to exercise its powers under paragraphs (3)(c) and (d) where a spouse who has been served with an affidavit under subsection (2)

- (a) within fifteen days after that affidavit is filed with the court or within such longer period as the court allows, serves on the deponent and files with the court an affidavit indicating genuine grounds of a religious or conscientious nature for refusing to remove the barriers referred to in paragraph (2)(e); and
- (b) satisfies the court, in any additional manner that the court may require, that the spouse has genuine grounds of a religious or conscientious nature for refusing to remove the barriers referred to in paragraph (2)(e).

### **Affidavits**

(5) For the purposes of this section, an affidavit filed with the court by a spouse must, in order to be valid, indicate the date on which it was served on the other spouse.

### **Where section does not apply**

(6) This section does not apply where the power to remove the barrier to religious remarriage lies with a religious body or official.

## ***Family Law Act, R.S.O. 1990, c. F.3 (Ontario)***

### ***Statement re removal of barriers to remarriage***

(4) A party to an application under section 7 (net family property), 10 (questions of title between spouses), 33 (support), 34 (powers of court) or 37 (variation) may serve on the other party and file with the court a statement, verified by oath or statutory declaration, indicating that,

- (a) the author of the statement has removed all barriers that are within his or her control and that would prevent the other spouse's remarriage within that spouse's faith; and
- (b) the other party has not done so, despite a request. R.S.O. 1990, c. F.3, s. 2 (4).

### ***Idem***

(5) Within ten days after service of the statement, or within such longer period as the court allows, the party served with a statement under subsection (4) shall serve on the other party and file with the court a statement, verified by oath or statutory declaration, indicating that the author of the statement has removed all barriers that are within his or her control and that would prevent the other spouse's remarriage within that spouse's faith. R.S.O. 1990, c. F.3, s. 2 (5).

***Dismissal, etc.***

(6) When a party fails to comply with subsection (5),

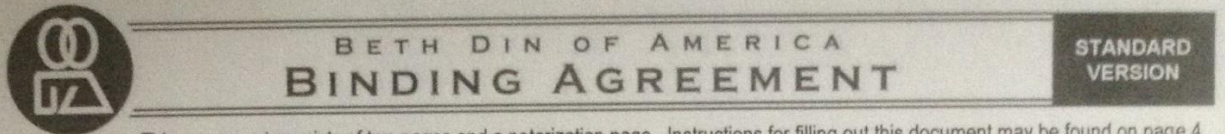
(a) if the party is an applicant, the proceeding may be dismissed;

(b) if the party is a respondent, the defence may be struck out. R.S.O. 1990, c. F.3, s. 2 (6).

***Exception***

(7) Subsections (5) and (6) do not apply to a party who does not claim costs or other relief in the proceeding. R.S.O. 1990, c. F.3, s. 2 (7).

**Appendix H: Prenuptial Agreements- United States, followed by Canada**



This agreement consists of two pages and a notarization page. Instructions for filling out this document may be found on page 4. It is important that the instructions be carefully read and followed in completing the form.

THIS AGREEMENT made on the \_\_\_\_\_ day of the month of \_\_\_\_\_  
 in the year 20\_\_\_\_\_, in the City/Town/Village of \_\_\_\_\_, State of \_\_\_\_\_  
 between Husband-to-Be: \_\_\_\_\_  
 residing at: \_\_\_\_\_  
 and Wife-to-Be: \_\_\_\_\_  
 residing at: \_\_\_\_\_

The parties, who intend to be married in the near future, hereby agree as follows:

- I. **Arbitration.** Should a dispute arise between the parties after they are married, so that they do not live together as husband and wife, they agree to submit to binding arbitration before the Beth Din of America (currently located at 305 Seventh Avenue, Suite 1201, New York, New York 10001; [www.bethdin.org](http://www.bethdin.org)), which shall have exclusive jurisdiction to decide all issues relating to a *get* (Jewish divorce), the *ketubah* and *tena'im* (Jewish premarital agreements) entered into by the Husband-to-Be and the Wife-to-Be, any issues and obligations arising from or in connection with this Agreement (including under paragraphs II, III and VI hereof) and any disputes relating to the enforceability, formation, conscionability, and validity of this Agreement (including any claims that all or any part of this Agreement is void or voidable) and the arbitrability of any disputes arising hereunder.

**SECTION II: Financial and Custody Issues. Paragraph II:A regarding additional financial issues is optional. Parties may select II:A(1), II:A(2) or II:A(3) (but not more than one of these paragraphs). Unless one of these options is chosen, the Beth Din of America will be without jurisdiction to address matters of general financial disputes between the parties. For more information, see the instructions.**

II:A(1). The parties agree that the Beth Din of America is authorized to decide all monetary disputes (including division of property and maintenance) that may arise between them. We choose to have paragraph II:A(1) apply to our arbitration agreement.

II:A(2). The parties agree that the Beth Din of America is authorized to decide all monetary disputes (including division of property and maintenance) that may arise between them based on principles of equitable distribution law customarily employed in the United States as found in the Uniform Marriage and Divorce Act. We choose to have paragraph II:A(2) apply to our arbitration agreement.

II:A(3). The parties agree that the Beth Din of America is authorized to decide all monetary disputes (including division of property and maintenance) that may arise between them based on principles of community property law customarily employed in the United States as found in the Uniform Marriage and Divorce Act. We choose to have paragraph II:A(3) apply to our arbitration agreement.

Signature of \_\_\_\_\_  
 Husband-to-Be  
 Signature of \_\_\_\_\_  
 Wife-to-Be

Signature of \_\_\_\_\_  
 Husband-to-Be  
 Signature of \_\_\_\_\_  
 Wife-to-Be

Signature of \_\_\_\_\_  
 Husband-to-Be  
 Signature of \_\_\_\_\_  
 Wife-to-Be

**SECTION II:B regarding parenting disputes is optional. Unless this option is chosen, the Beth Din of America will be without jurisdiction to address matters of parenting disputes between the parties. For more information, see the instructions.**

II:B. The parties agree that the Beth Din of America is authorized to decide all disputes, including child custody, child support, and visitation matters, as well as any other disputes that may arise between them.

**We choose to have Section II:B apply to our arbitration agreement.**

Signature of \_\_\_\_\_  
 Husband-to-Be  
 Signature of \_\_\_\_\_  
 Wife-to-Be

II:C. The Beth Din of America may consider the respective responsibilities of either or both of the parties for the end of the marriage, as an additional, but not exclusive, factor in determining the distribution of marital property and maintenance, should such a determination be authorized by paragraph II:A or paragraph II:B.



# BETH DIN OF AMERICA BINDING AGREEMENT

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III. Support Obligation. Husband-to-Be acknowledges that he recites and accepts the following:

*I hereby now (me'achshav) obligate myself to support my Wife-to-Be from the date that our domestic residence together shall cease for whatever reasons at the rate of \$150 per day (calculated as of the date of our marriage, adjusted annually by the Consumer Price Index--All Urban Consumers, as published by the US Department of Labor, Bureau of Labor Statistics) in lieu of my Jewish law obligation of support so long as the two of us remain married according to Jewish law, even if she has another source of income or earnings. Furthermore, I waive my halakhic rights to my wife's earnings for the period that she is entitled to the above-stipulated sum, and I recite that I shall be deemed to have repeated this waiver at the time of our wedding. I acknowledge that I have now (me'achshav) effected the above obligation by means of a kinyan (formal Jewish transaction) in an esteemed (chashuv) Beth Din as prescribed by Jewish law.*

However, this support obligation shall terminate if Wife-to-Be refuses to appear upon due notice before the Beth Din of America or in the event that Wife-to-Be fails to abide by the decision or recommendation of the Beth Din of America. Furthermore, Wife-to-Be waives her right to collect any portion of this support obligation attributable to the period preceding the date of her reasonable attempt to provide written notification to Husband-to-Be that she intends to collect the above sum. Said written notification must include Wife-to-Be's notarized signature. This support obligation under Jewish law is independent of any civil or state law obligation for spousal support, or any civil or state law imposed order for spousal support, and shall be determined only by the Beth Din of America.

- IV. Opportunity for Consultation. Each of the parties acknowledges that he or she has been given the opportunity prior to signing this Agreement to consult with his or her own rabbinic advisor and legal advisor. Each of the parties further acknowledges that he or she has been fully informed of the terms and basic effect of this Agreement as well as the rights and obligations he or she may be giving up by signing this Agreement. Each of the parties expressly waives, in connection with this Agreement, (i) any right to consult with his or her legal counsel to the extent they have not done so and (ii) any right to disclosure of the property or financial obligations of the other party beyond any disclosures that have been provided. The obligations and conditions contained herein are executed according to all legal and halakhic requirements.
- V. Governing Law. The decision of the Beth Din of America shall be made in accordance with Jewish law (*halakha*) or Beth Din ordered settlement in accordance with the principles of Jewish law (*peshara krova la-din*), except as specifically provided otherwise in this Agreement.
- VI. Rules, Default Judgment and Costs. The parties agree to appear in person before the Beth Din of America, at a location mutually convenient to the arbitrators and the parties, at the demand of the other party, to cooperate with the adjudication of the Beth Din of America in every way and manner, and to abide by the published Rules and Procedures of the Beth Din of America (available at [www.bethdin.org](http://www.bethdin.org)), which are in effect at the time of the arbitration. If either party fails to appear before the Beth Din of America upon reasonable notice, the Beth Din of America may issue its decision despite the defaulting party's failure to appear, and may impose costs and other penalties as legally permitted. Both parties obligate themselves to pay for the services of the Beth Din of America. Failure of either party to perform his or her obligations under this Agreement shall make that party liable for all costs, including reasonable attorney's fees, incurred by one side in order to obtain the other party's performance of the terms of this Agreement.
- VII. Jurisdiction; Enforceability. By execution and delivery of this Agreement, each party consents, for itself and in respect of its property, to the exclusive jurisdiction of the Beth Din of America with respect to the issues set forth in paragraph I. Each of the parties agrees that he or she will not commence any action or proceeding relating to such issues in any court, rabbinical court or arbitration forum other than the Beth Din of America. This Agreement constitutes a fully enforceable arbitration agreement, and any decision issued pursuant to this Agreement shall be fully enforceable in secular court. Should any provision of this Agreement be deemed unenforceable, all other provisions shall continue to be enforceable to the maximum extent permitted by applicable law. As a matter of Jewish law, the parties agree that to effectuate this Agreement they accept now (through the Jewish law mechanism of *kim li*) whatever minority views determined by the Beth Din of America are needed to effectuate the obligations, procedures and jurisdictional mandates contained in this Agreement.
- VIII. Counterparts. This Agreement may be signed in one or more duplicates, each one of which shall be considered an original.

In witness of all the above, the Husband-to-Be and Wife-to-Be have entered into this Agreement.

Signature of  
Husband-to-Be

Signature of  
Wife-to-Be

Signature of  
Witness

Signature of  
Witness

Signature of  
Witness

Signature of  
Witness

Notarization forms appear on the next page. For further information about notarization, see the instructions.



# BETH DIN OF AMERICA BINDING AGREEMENT

STANDARD  
VERSION

## Notarization Forms

### Acknowledgment for Husband-to-Be

State of \_\_\_\_\_ County of \_\_\_\_\_  
On the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_ before me, the undersigned personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to within this agreement and acknowledged to me that he executed the agreement.

Notary Public \_\_\_\_\_

### Acknowledgment for Wife-to-Be

State of \_\_\_\_\_ County of \_\_\_\_\_  
On the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_ before me, the undersigned personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to within this agreement and acknowledged to me that she executed the agreement.

Notary Public \_\_\_\_\_

In New York State, the officiating rabbi is qualified to notarize a prenuptial agreement, and he may use the following form.  
For other states, please check local rules and regulations.

State of \_\_\_\_\_ County of \_\_\_\_\_  
On the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, before me, the undersigned, a person authorized to solemnize a marriage pursuant to Domestic Relations Law § 11(1), personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to within this agreement and acknowledged to me that he executed the same in his capacity, and that by his signature on the arbitration agreement, the individual executed the agreement.

\_\_\_\_\_  
Officiating Clergy/Rabbi (print and sign name)

\_\_\_\_\_  
Address

State of \_\_\_\_\_ County of \_\_\_\_\_  
On the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, before me, the undersigned, a person authorized to solemnize a marriage pursuant to Domestic Relations Law § 11(1), personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to within this agreement and acknowledged to me that she executed the same in her capacity, and that by her signature on the arbitration agreement, the individual executed the agreement.

\_\_\_\_\_  
Officiating Clergy/Rabbi (print and sign name)

\_\_\_\_\_  
Address





# BETH DIN OF AMERICA BINDING AGREEMENT

STANDARD  
VERSION

## INSTRUCTIONS

**INTRODUCTION.** Mazal tov on your upcoming marriage! This Agreement is intended to facilitate the timely and proper resolution of certain marital disputes. When a couple about to be married signs this Agreement they thereby express their concern for each other's happiness, as well as their concern for all couples marrying in accordance with Jewish law. To enter into the agreement, follow these five steps:

- 1 Read the agreement. A detailed guide explaining the provisions of the agreement is also available at [www.theprenup.org](http://www.theprenup.org), and you can also discuss the agreement with an attorney. You can also call or e-mail the Beth Din of America (212-807-9042; [info@bethdin.org](mailto:info@bethdin.org)) with any questions.
- 2 Sign the agreement in front of witnesses and a notary. Put your initials on the bottom of page 1, and sign the agreement on the bottom of page 2. (Section II contains some optional provisions that you do not have to sign, but if you want these provisions to be effective you should sign the appropriate provisions.)
- 3 Have the witnesses sign in the spaces provided beneath your signatures. The same people can witness each signature and sign twice, once under the signature of the Husband-to-Be, and once under the signature of the Wife-to-Be, or four witnesses can be used, each signing once.
- 4 Have the notary complete the notary block on page 3, sign it at the bottom, and affix his or her notary stamp. Notaries can usually be found in banks, law offices, etc. In New York State, the officiating rabbi can notarize the agreement, even if he is not a notary. In New Jersey, any attorney who is licensed to practice law in New Jersey can serve as the notary.
- 5 Husband-to-Be and Wife-to-Be should keep his or her own copy of this Agreement in a safe place. In addition, scan the signed agreement, or take a picture of it, and e-mail it to [prenup@bethdin.org](mailto:prenup@bethdin.org) or fax it to (212) 807-9183. The Beth Din of America will retain a copy of your signed agreement in its confidential files in case it is ever needed.

These *Tenaim Achronim* (premarital agreement) should be discussed, and then signed, as far ahead of the wedding day itself as is practically feasible. While it is preferable that the *mesader kiddushin* (i.e., supervising rabbi at the wedding) take responsibility for explaining the background for, and then implementing the agreement itself, any other knowledgeable rabbi or individual, or the couple themselves, may coordinate the process. Advice of proper legal counsel on both sides is certainly encouraged.

**BINDING CIVIL COURT EFFECT.** When properly executed, this Agreement is enforceable as a binding arbitration agreement in the courts of the United States of America, as well as pursuant to Jewish law (*halakha*). The supervising rabbi should explain this to the parties. This Agreement should only be used when the parties expect to reside in the United States upon marriage. Parties should contact the Beth Din of America to inquire about appropriate forms when they will be residing outside the United States. For those who will reside in the United States, the Beth Din will appoint the proper *dayanim* (arbitrators) to hear and resolve matters throughout the country.

**CHOICE OF OPTIONS.** The document has been designed to cover a range of decisions which the Husband-to-Be and Wife-to-Be may make regarding the scope of matters to be submitted for determination to the Beth Din. These alternatives are set forth in Section II. The *Tenaim Achronim* will be valid whether or not any of the alternatives are chosen. If none of such alternatives are chosen, the Beth Din will decide matters relating to the *gef*, as well as any issues arising from this Agreement or the *ketubah* or the *tenaim*. The Uniform Marriage and Divorce Act Section 307 is a general statement of the principles of equitable distribution or community property proposed as a model law. It is not the law of any particular state. Parties who wish greater certainty as to possible future divisions of property (for example, persons with substantial assets at the time of marriage or persons interested in taking advantage of the particular decisions of a state where they will be married) should sign a standard prenuptial agreement with the advice of counsel and incorporate this arbitration agreement by reference.

Section II:A deals with financial matters related to division of marital property. If Section II:A is chosen, the Beth Din will be authorized to decide financial matters related to division of financial property. The Beth Din can decide these financial matters in one of three ways. The couple may choose one, but not more, of those ways. If more than one is chosen, all choices are void. If none of such paragraphs are selected, the Beth Din of America will not be authorized to resolve any additional monetary disputes between the parties.

Section II:B deals with matters related to child custody and visitation. If the parties choose to refer matters of child custody and visitation to the Beth Din for resolution, they may do so by signing this Section II:B. They must, however, understand that in many states secular courts retain final jurisdiction over all matters relating to child custody and visitation. Section II:C deals with the question of whether the Beth Din may take into consideration the respective parties' responsibility for the ending of the marriage when Sections II:A or II:B are chosen. Section II:C only applies if the parties have authorized the Beth Din under Section II:A or Section II:B, but then it applies as a matter of course, reflecting normal Beth Din procedure. Thus Section II:C will apply to all decisions authorized under Section II, unless the parties strike it out. Striking out Section II:C, while discouraged by Jewish law, will not render the entire Agreement invalid or ineffective.

**ADDITIONAL FORMS.** Some couples, for financial or other reasons, sign other prenuptial agreements. In such cases they may find it useful or practical to sign this document and incorporate this arbitration agreement by reference into any additional agreement. Additional copies of this document and other materials can be obtained from the offices of the Beth Din of America, or by visiting [www.theprenup.org](http://www.theprenup.org).

**FURTHER INFORMATION.** Further information regarding this Agreement, or further information concerning the procedures to be followed for resolution of any matters or disputes covered by this Agreement, may be obtained from the Beth Din of America, which has disseminated this form Agreement. Background information is available at [www.theprenup.org](http://www.theprenup.org).



### Beth Din of America

305 Seventh Ave., Suite 1201, New York, NY 10001

Tel: (212) 807-9042 Fax: (212) 807-9183

Email: [info@bethdin.org](mailto:info@bethdin.org)

Web: [www.bethdin.org](http://www.bethdin.org)

[www.theprenup.org](http://www.theprenup.org)

**In an Emergency:** Outside of normal business hours, questions may be addressed to Rabbi Shlomo Weissmann, Director of the Beth Din of America, at (646) 483-1188.

AGREEMENT TO FOSTER MUTUAL RESPECT AND REMOVE BARRIERS TO RELIGIOUS REMARRIAGE  
ENTERED INTO THIS \_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_, IN THE CITY OF \_\_\_\_\_, PROVINCE  
OF \_\_\_\_\_, CANADA. [http://www.adathcongregation.org/pdf\\_doc/HalachicPrenupforCanada1-25-16.pdf](http://www.adathcongregation.org/pdf_doc/HalachicPrenupforCanada1-25-16.pdf)

1. We understand that, according to Jewish law, when a marriage has irrevocably failed, a Get (*Jewish Bill of Divorce*) must be willingly given and received without delay, and without refusal for any reason.

2. Therefore we, the undersigned Bride and Groom, hereby freely and voluntarily agree, without compulsion and without reservation, that in the event that problems arise in continuing our marriage, Heaven forbid, we obligate ourselves to appear in person for counsel, at the request of the other, before the Beth Din of America (currently located at 305 Seventh Avenue, Suite 1201, New York, New York 10001, USA; [www.bethdin.org](http://www.bethdin.org)), or if the Beth Din of America deems it appropriate, another Beth Din authorized in writing by the Beth Din of America, for the purpose of following the direction of that Beth Din concerning giving/receiving a Get only.

3. Should that Beth Din suggest that we remove barriers to religious re-marriage by obtaining a Get, we agree to follow that advice without delay, and not refuse to either give or receive a Get. It is our intention to address any other issues that at that time may need to be resolved between us, separate from the giving and receiving of the Get, outside of the Beth Din proceeding.

4. If any provision of this agreement is held to be invalid or unenforceable by any competent authority, that invalidity or unenforceability shall not affect or render invalid or unenforceable any other provision of this agreement.

5. Before signing this agreement, both of us were instructed to seek the advice of our own legal advisors and rabbinic advisors, and we were given the opportunity to do so before signing. Each of us acknowledges that we are executing and signing this Agreement voluntarily and freely, and that our willingness to execute and sign this Agreement did not result from any undue stress, duress, improper understanding, undue influence, or false inducements. We further acknowledge that we are entering into this Agreement with full knowledge of all the implications, rights, and obligations; that this is in accord with, and does not conflict with our religious convictions and principles; and that we consider this to be in our own self-interest.

6. The present document has been written in the English language at the express request of the parties.  
*Le présent document a été rédigé en langue anglaise à la demande expresse des parties.*

Scheduled date of marriage ceremony: \_\_\_\_\_

\_\_\_\_\_  
Bride:

\_\_\_\_\_  
Groom:

\_\_\_\_\_  
Witness:

\_\_\_\_\_  
Witness: