

A Courageous Proposal: The First Heter Agunah in America

By Rabbi Adam Mintz

The Book of Ruth interweaves many complex interpersonal relationships. It is the story of husbands and wives, of a mother-in-law and her daughters-in-law, and finally of distant relatives appreciating and understanding their familial responsibilities. Much has been written about these relationships. One aspect that has not received a lot of attention is the choice that Ruth appears to make—that of a life of widowhood—so she may accompany Naomi to Israel, against her mother-in-law's wishes. Naomi instructs both Ruth and Orpah to return to the home of their mother:

“Have I any more sons in my womb?... Even if I were married tonight and bore sons, should you wait for them to grow up? Should you on their account prevent yourselves from marriage?” (Ruth 1:11).

In the end, Ruth's decision to go with Naomi does not prevent her from remarrying. Rather, it creates the opportunity for a wonderful marriage that establishes the lineage for King David and the *Mashiach*. Yet, we know that not all such stories have happy endings. Many women remain unable to remarry and continue their status of *agunah*, a word derived from the speech Naomi gave to her daughters-in-law in the Book of Ruth.

The tradition of reading the Book of Ruth on Shavuot makes this an appropriate moment to focus our attention on the plight of *agunot* and especially on the attempts to resolve this issue. In this essay I discuss the first American rabbinic attempt to free *agunot* from their recalcitrant husbands. Rabbi Yosef Eliyahu Henkin made this proposal in 1925, and although it was never implemented, it resonates in halakhic literature to this day.

Rabbi Henkin was born in White Russia in 1881. He studied primarily in the yeshiva in Slutsk and spent ten years as a rabbi and Rosh Yeshiva in Georgia on the Black Sea. Rabbi Henkin emigrated to America in 1923 and was appointed the rabbi of Congregation Anshei ShtutSEN on the Lower East Side. In 1925, he became secretary and then director of Ezras Torah, a rabbinic organization founded in 1915 to assist Torah scholars imperiled by the turmoil of World War I. The organization's mission later expanded to assist rabbis and their students who attempted to flee Europe during the dark years surround-

ing World War II. Rabbi Henkin remained at the helm of Ezras Torah for the next forty-eight years. He served as a *posek* for rabbis and laypeople throughout North America and wrote numerous articles for a variety of Torah journals. Many of his essays and *teshuvot* are reprinted in a two-volume work entitled *Kitvei ha-Gaon Rabbi Yosef Eliyahu Henkin* (New York, 1980).

Rabbi Henkin was the first American rabbi to offer a proposal to solve the *agunah* problem. He made this proposal in 1925 soon after his arrival in the United States. Rabbi Henkin noted that the problem of *agunah*, experienced by women whose husbands had disappeared or by women who were unable to receive the necessary *halitza*, was “a daily occurrence,” and he made the following suggestion: at the time of the wedding the husband must authorize that a *get* may be written and delivered in the future. He must allow the *get* to be written to cover several situations, including one in which the husband refuses to provide a *get* to his wife for three years. At that time, the claim would be brought to a central *beit din* (in the original proposal, he wrote that this should be the Jerusalem *beit din*) and, if the *beit din* agrees, then a *get* would be written even if the husband opposes writing it at that time. Rabbi Henkin called for this proposal to be discussed and voted on in a meeting of rabbis and that, if approved, it would remain the standard practice for fifty years.¹

However, before Rabbi Henkin's proposal had the chance to be discussed and voted on, events in the larger Jewish community intervened. In 1930, Rabbi Louis Epstein, a leading Conservative rabbi from Boston and the president of the Rabbinical Assembly and its Committee on Jewish Law, suggested that prior to every marriage, the husband should appoint his wife as an agent to execute a divorce on his behalf. Thus, if the husband disappears or refuses to grant the *get*, the wife can, in effect, divorce herself. In that same year, Rabbi Epstein published a book entitled *Hatza'ah Lema'an Takanat Agunot* that attempted to prove the halakhic foundation for this proposal. In 1935, the Rabbinical Assembly, the rabbinic body of the Conservative movement, initially voted to accept this proposal.

In *Hatza'ah Lema'an Takanat Agunot*, Rabbi Epstein describes how he sent

copies of his proposal to nearly one thousand rabbis asking for their opinions on it. He explained that he received very few responses. Although one of the few letters he did receive was critical of his work, most were complimentary but argued that he could not proceed without the consensus of the leading halakhic authorities. He seemed encouraged by these responses inasmuch as they were not critical of his halakhic reasoning.²

Among the letters that Rabbi Epstein received was one from Rabbi Henkin dated February 18, 1931. In this letter, Rabbi Henkin apologized for not having the time to study the book carefully. Although Rabbi Henkin proceeded to make certain halakhic suggestions to Rabbi Epstein, the letter was in no way dismissive of his efforts. He even concluded the letter with the practical advice that if Rabbi Epstein wanted to send copies of the proposal to all the rabbis of Europe, it would become a very expensive undertaking.³

The Orthodox rabbinate as a whole responded to Rabbi Epstein's proposal with disapproval, and the Agudath Harabonim convened a meeting of rabbis at which various halakhic presentations were made that argued that the proposal was both impractical and halakhically unsound. In 1937, the Agudath Harabonim published *Le'Dor Aharon*, a book that included correspondence from leading rabbis around the world (including Rabbi Henkin) opposing Rabbi Epstein's proposal. In response in 1940, Rabbi Epstein published *Le'Sheelat Ha-Agunah* in which he attempted to support his proposal in light of the strong rabbinic opposition. The Orthodox rabbinate did not respond to this second volume, and Rabbi Epstein's proposal was never adopted by the Conservative movement.⁴

In Rabbi Henkin's lengthy essay that was included in *Le'Dor Aharon*,⁵ he explained his halakhic opposition to Rabbi Epstein's proposal. Among other considerations, he concluded that it is nonsensical for the husband to appoint his wife to serve as the agent to write the *get*, as she is the one who will be receiving the divorce. Then he added, “And I have already written that the reason that I have become involved in this battle is due to the fact that he [Rabbi Epstein] mentioned my proposal for the freeing of *agunot*...and I must escape from this comparison...My proposal was merely a suggestion and not meant as a halakhic decision...and when the volume *Ain Tnai Be-Nisuin* was published, I retracted from my position for even the greatest scholar has to follow the majority view.”⁶

Ain Tnai Be-Nisuin, the book referred to by Rabbi Henkin in his essay cited above, was published in Vilna in 1930 by Judah Lubetsky, an Eastern European rabbinic scholar who served for many years as a rabbi in Paris. It was published in response to a decision by the Agudat Rabbanei Tzarfat in 1908 to allow a Jewish woman to remarry after a civil divorce based on this condition made at the time of the wedding: if the couple were to be divorced by the civil authorities, then retroactively the original marriage would be nullified.⁷ Rabbi Lubetsky collected letters from rabbinic scholars from around the world condemning this opinion and explaining that such a condition at the time of the marriage would not be valid and that the couple would still need a get.

Indeed, it seems probable that in 1931 when Rabbi Henkin wrote his initial letter to Rabbi Epstein he had not yet seen *Ain Tnai Be-Nisuin* and therefore did not then reject Rabbi Epstein's proposal. However, by 1937, he had read *Ain Tnai Be-Nisuin* and felt compelled both to reject Rabbi Epstein's proposal and to retract his own earlier view. In the reprinted edition of *Perushei Ivra*, the pages that contain his initial proposal are bracketed with the words "*hadru be*" (I have retracted). In Rabbi Henkin's personal copy of *Perushei Ivra*, this retraction is written in his handwriting.⁸

Rabbi Henkin's proposal, although retracted, has been cited in halakhic literature since 1937. Rabbi Eliezer Berkovits, the foremost disciple of Rabbi Yehiel Yaakov Weinberg and a leading Jewish philosopher of the American Orthodox community, offers a resolution to the *agunah* problem in 1967 in a book entitled *Tnai Be-Nisuin u-ve-Get*. In this book, he reviews the history of halakhic literature concerning the validity of a conditional marriage and argues for its introduction to prevent the tragedy of *agunah*. At the end of the book, he refers to Rabbi Henkin's retraction of his proposal in 1937, writing, "We revere Rabbi Henkin's greatness and piety. Yet, one is not permitted to sway from the truth as it appears to him."⁹ Rabbi Menachem Kasher, in his critique of Rabbi Berkovits's thesis, relies on the fact that Rabbi Henkin had rejected conditional marriages.¹⁰ Thus, Rabbi Henkin's proposal, thirty years after he retracted it, was still being used to support both sides of this argument.

Finally, in a review essay in the *Edah Journal* in 2005, Rabbi Michael Broyde, a law professor at Emory University Law School and a *dayan* in the Beth Din of America, included a theoretical proposal to help free *agunot*. (Rabbi Broyde's discussion and proposed text can also be

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found in *JOFA Journal*, Summer 2005, V(2), pp. 8-9) For the proposal to have any chance of acceptance among the rabbinic community, Rabbi Broyde argued that it would need to combine three mechanisms into a single document: "conditions applied to the marriage (*tenai be-kiddushin*), authorization to give a get (*harsha'ah*), and broad communal ordinance to void a marriage (*taqqanat ha-qahal*)...Indeed, in the twentieth century alone, one can cite a list of luminary rabbinic authorities who have validated such agreements in one form or another, including Rabbi Yosef Elyahu Henkin."¹¹ Although this tripartite proposal is still only in the theoretical phase, Rabbi Henkin's argument has played an important role in its formulation.

Rabbi Henkin's courageous proposal is a model of rabbinic creativity in an effort to resolve the problem of *agunah*. As we celebrate the holiday of Shavuot, let us continue to encourage and support those who are working to free women from their recalcitrant husbands and allow them to begin their lives anew.

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- 1 *Perushei Ivra* (New York, 1925), pp. 110-117.
- 2 *Le-Sheelat Ha-Agunot* (New York, 1940), p. 16.
- 3 This letter can be found in Tzvi Gertner and Bezalel Karlinsky, "Ain Tnai Be'Nisuin," *Yeshurun* 9 (2001): 888.

- 4 See Moshe Meiselman, *Jewish Women in Jewish Law* (New York, 1978), 105-107, and Marc B. Shapiro, *Saul Lieberman and the Orthodox* (University of Scranton Press, 2006), 11-13, for various descriptions of the events surrounding, and the Orthodox responses to, the Epstein proposal.
- 5 *Le'Dor Aharon* (Brooklyn, NY, 1937), pp. 105-110.
- 6 *Le'Dor Aharon*, p. 109.
- 7 The events leading to the writing of this volume are described in the introduction to *Ain Tnai Be-Nisuin* (Vilna, 1930), 11-15.
- 8 Personal correspondence from Rabbi Yehuda Henkin of Jerusalem, grandson of Rabbi Yosef Elyahu Henkin.
- 9 Eliezer Berkovits, *Tnai Be-Nisuin u-ve-Get*, (Jerusalem, 1967), p. 170.
- 10 "Be-inyan Tnai be-Nisuin," *Noam* no. 12, p. 148. For a description of the debate between Rabbis Berkovits and Kasher, see Tzvi Gertner and Bezalel Karlinsky "Ain Tenai Be'Nisuin" in *Yeshurun* 10(2002): 736-750. For a plethora of meticulous citations and a lucid description of the debate between Rabbis Berkovits and Kasher, see Marc B. Shapiro, *Between the Yeshiva World and Modern Orthodoxy: The Life and Works of Rabbi Jechiel Jacob Weinberg 1884-1966* (Littman Library, 1999), 190-192, especially the extensively researched footnote 83.
- 11 Michael J. Broyde, "Review Essay: An Unsuccessful Defense of the Bet Din of Rabbi Emanuel Rackman: *The Tears of the Oppressed*," *Edah Journal* 4:2 (Winter, 2005) p. 17 which can be found at http://www.edah.org/back-end/JournalArticle/4_2_Broyde.pdf.