

AN EXAMINATION OF DIVORCE WITHIN
JEWISH AND ISLAMIC LEGAL FRAMEWORKS

Thomas A. Muething
Comparative Religion
5 August 2011

Marriage is considered to be the ideal in Judaism and Islam, based on the account of the creation of man in the Torah.¹ What, though, of a marriage that turns sour? Unlike Christianity, whose adherents seem to prefer to argue about *when* divorce is permitted,² Islam and Judaism focus much more on the *process* for divorce itself.³ Like anything regarding religion, internal fighting over what is orthodoxy is inevitable in all three of the Abrahamic religions. Nevertheless, both Judaism and Islam have specific procedures and laws regulating divorce, which have not fallen out of favour with the most devout of their adherents.

In order to fully understand the complexities of these faiths' practices, some theological foundation must be laid: that is, one must be familiar with the foundations and nuances of each religion. Both are strictly monotheistic; the primary difference lies in Islam's understanding of revelation. Whereas Judaism affirms the national revelation⁴ of the Torah by God at Mount Sinai to the Jewish people, Islam contends that God's

¹ Although the Torah is primarily the text of Judaism, Islam also regards the Torah as a revelation of God. See, e.g., Gen. 2:17: "...it is not good for man to be alone..."

² David Instone-Brewer, "What God Has Joined," editorial, *Christianity Today*, October 5, 2007, pg. 2, accessed August 5, 2011, <http://www.christianitytoday.com/ct/2007/october/20.26.html>. Wide-ranging overview on divorce in Christianity.

³ Divorce in Jewish law has an entire tractate in the Talmud, "Gittin", and there are myriad quotations from the Qu'ran and Sunnah pertaining to divorce.

⁴ Nechemia Coopersmith and Moshe Zeldman, "Did God Speak at Sinai?," Aish.com, April 8, 2000, introductory section, accessed August 5, 2011, <http://www.aish.com/jl/b/bb/48943936.html>. - This website is written from an Orthodox perspective. The Conservative and Reform movements usually believe in a documentary hypothesis approach to the origin of the Torah; although some traditional Conservative Jews believe the Torah itself is divine, but the Talmud is not.

revelation did not stop, and continued with Muhammad, who revealed the Qu'ran.⁵ Judaism traditionally holds that God revealed both the Written Torah and the Oral Torah, or the Talmud, at Mount Sinai, and that both hold the statutes of *halakhah*, or Jewish law. Islam has a similar structure: in addition to accepting both the Jewish and Christian bibles, Islam holds that the Qu'ran was God's revelation to Muhammad, the last prophet, and that it is the supreme source of what is right. It is complemented with the Sunnah, which are records of Muhammad's life and his interactions with non-Muslims, secular governments, and the way he lived. Together, Muslims revere these works as the basis for *sharia*, or Islamic law. Within the frameworks of these religions, an expansive system for divorce is found.

In Judaism, divorce is discouraged earnestly. It is not banned, though; in some cases, divorce is seen as the most prudent option for the couple involved. Traditional *halakhah* does not grant the wife the ability to initiate the divorce herself; the husband must give the *get*, or the document of divorce. As can easily be inferred, *halakhah* was not fair to women – a woman could be divorced without her consent. It was not until Rebbeinu Gershom ben Yehudah ruled that a husband could not divorce his wife without her express consent about a thousand years ago that this practice was outlawed – even then, the ruling was only accepted by European Jews.⁶ Although the wife cannot initiate the divorce herself by giving a *get*, Chabad sources state that she *does* have the right to

⁵ Kirk VanGilder, *Qislam1*, Mp3, Kirk VanGilder, April 23, 2011. Audio recording of a part of the chapter on Islam in Oxford University Press' *World Religions Today*. Islam also believes that Jesus was a prophet of God and that the New Testament is valid. Judaism, with the exception of the contentious Messianic Judaism, does not.

⁶ "Divorce," Jewish Virtual Library, accessed August 05, 2011, <http://www.jewishvirtuallibrary.org/jsource/Judaism/Divorce.html>.

ask the *beit din*, the rabbinical court of Jewish law, for a *get*.⁷ A wife may ask for a *get* in any of the following scenarios: abuse, leprosy, if her husband forbids her from outside employment, if the husband refuses to have intimate relations with her, and other reasons determined as valid by a *beit din*.(C2) Because only the husband may initiate divorce, this can cause a fundamental power play in the divorce process. Sometimes, women are not able to divorce their estranged husbands, and they become an *agunah* – a chained woman. The implications of being an *agunah* affect the most intimate of matters; a *halakhically* married woman may not remarry or engage in intimate relations with another man. If she does become pregnant as a result of her *unhalakhic* relations, her children would be considered *mamzerim*.(note) Unfortunately, there exists no Orthodox solution to this problem, but that doesn't mean that people don't argue publicly about it. However, this is the Orthodox approach – the two other denominations, Reform and Conservative, have their own approaches.

Reform Judaism does not hold *halakhah* as a binding system(source), and as such many believe that a civil divorce satisfies the *halakhic* requirements. Conservative Judaism is much like Orthodox Judaism, with the exception of its treatment of an *agunah*. Traditional *halakhah* does not allow the *beit din* to annul a marriage; Conservative Judaism simply ignores this prohibition in favour of what they consider to be an issue of human dignity and respect.⁸ The *beit din* can alternatively retroactively declare the

⁷ Rueven P. Bulka, "The Wife's Grounds for Divorce," Chabad.org, section goes here, accessed August 05, 2011, http://www.chabad.org/library/article_cdo/aid/560111/jewish/Wifes-Grounds.htm.

⁸ Chana Thompson Shor, "Jewish Divorce Through the Eyes of the First Messaderet Gittin," editorial, CJ: Voices of Conservative/Masorti Judaism, Spring 2010, n.p., accessed August 05, 2011, http://www.uscj.org/Jewish_Divorce_Throu8292.html.

marriage void due to some mistake in the betrothal and wedding processes⁹; in Conservative Judaism, when this option is not feasible, there are other *halakhic* work-arounds.¹⁰

Like Judaism, Islam sees divorce as the least favourable option in most dramatic terms: Dr. Sherif Abdel Azim of Queens University states bluntly, “[d]ivorce is not to be resorted to except when there is no other way out.”¹¹ However, unlike Judaism, Islam offers women legal recourse within the framework of *sharia*: if a husband is recalcitrant, his wife may divorce him through a process known as *khula* (alt., *khul*).¹² The *khula* process is fairly straight-forward: the wife approaches her husband and says she wants to be separated from him, he says in essence that she’s free to go, and gives her money.¹³ However, some traditional Islamic sources affirm that like Judaism, divorce is solely the husband’s right, and any divorce he grants her under pressure is invalid.¹⁴

As any astute observer can note, women’s lack of power during the divorce process is primarily concentrated within Judaism, and more specifically then within Orthodox Judaism. Activist organisations such as the Organization for the Resolution of Agunot (based in New York) have worked tirelessly in support of *agunot* such as the wife

⁹ Ibid.

¹⁰ Ibid.

¹¹ Sherif Abdel Azim, "Women in Islam Versus Women in the Judaeo-Christian Tradition: Myth versus Reality," IslamiCity, accessed August 5, 2011, http://www.islamicity.com/mosque/w_islam/divorce.htm.

¹² Ibid.

¹³ "Khula': Definition and How It Is Done," Islam QA, accessed August 5, 2011, <http://www.islamqa.com/en/ref/26247/khula>.

¹⁴ Ibid.

of Washington-area policy advisor Aharon Friedman.¹⁵ Rabbi Shmuel Herzfeld, head rabbi of Ohev Sholom, has said of the issue of *agunot*: “I don’t think the Messiah can come, as long as there is one agunah in the world.”¹⁶ Other than old-fashioned guilt, practical *halakhic* solutions have been offered up by other Jewish organisations.

The Jewish Orthodox Feminist Alliance (JOFA), founded by Rebbetzin Blu Greenberg, seeks to provide women with greater participation rights and power within a *halakhic* framework. As one can infer, the matter of *agunot* is at the core of JOFA’s mission. JOFA feels that at the core of any *agunah* prevention system is a halakhic pre-nuptial agreement.¹⁷ This move is recommended by the Rabbinical Council of America,¹⁸ but it is not required that its rabbis ask to see a pre-nup in addition to a *ketubah* (Jewish marriage licence).

It is palpable that Judaism and Islam view divorce as an absolute last resort – a common analogy in Jewish sources is that divorce is akin to an amputation.¹⁹ With regards to the equity of women to get out of a loveless marriage themselves, Islam is far more egalitarian than even Conservative Judaism, which relies on rabbinic work-arounds to free *agunot*. It is with the work of feminist Orthodox organisations that a solution may be reached. Until then, may all couples live in delirious happiness.

¹⁵ Mark Oppenheimer, "Religious Divorce Dispute Leads to Secular Protest," *The New York Times*, January 3, 2011, accessed August 5, 2011, <http://www.nytimes.com/2011/01/04/us/04divorce.html>.

¹⁶ Ibid.

¹⁷ "Agunah Prevention," JOFA: Jewish Orthodox Feminist Alliance, accessed August 5, 2011, <http://www.jofa.org/about.php/advocacy/agunahpreven>.

¹⁸ "What You Can Do to Help Agunot," JOFA: Jewish Orthodox Feminist Alliance, accessed August 05, 2011, <http://www.jofa.org/about.php/advocacy/whatyoucando>.

¹⁹ Lori Palatnik, "Contemplating Divorce," *Lori Almost Live!* (video blog), August 2, 2008, <http://www.aish.com/sp/lal/48944761.html>.

Bibliography

- Abdel Azim, Sherif. "Women in Islam Versus Women in the Judaeo-Christian Tradition: Myth versus Reality." IslamiCity. Accessed August 5, 2011.
http://www.islamicity.com/mosque/w_islam/divorce.htm.
- "Agunah Prevention." JOFA: Jewish Orthodox Feminist Alliance. Accessed August 5, 2011. <http://www.jofa.org/about.php/advocacy/agunahpreven>.
- Bulka, Rueven P. "The Wife's Grounds for Divorce." Chabad.org. Accessed August 05, 2011. http://www.chabad.org/library/article_cdo/aid/560111/jewish/Wifes-Grounds.htm.
- Coopersmith, Nechemia, and Moshe Zeldman. "Did God Speak at Sinai?" Aish.com. April 8, 2000. Accessed August 5, 2011.
<http://www.aish.com/jl/b/bb/48943936.html>.
- "Divorce." Jewish Virtual Library. Accessed August 05, 2011.
<http://www.jewishvirtuallibrary.org/jsource/Judaism/Divorce.html>.
- Instone-Brewer, David. "What God Has Joined." Editorial. *Christianity Today*, October 5, 2007. Accessed August 5, 2011.
<http://www.christianitytoday.com/ct/2007/october/20.26.html>.
- "Jewish Divorce 101." Chabad.org. Accessed August 05, 2011.
http://www.chabad.org/library/article_cdo/aid/557906/jewish/Divorce-Basics.htm.
- "Khula': Definition and How It Is Done." Islam QA. Accessed August 5, 2011.
<http://www.islamqa.com/en/ref/26247/khula>.
- Oppenheimer, Mark. "Religious Divorce Dispute Leads to Secular Protest." *The New York Times*, January 3, 2011. Accessed August 5, 2011.
<http://www.nytimes.com/2011/01/04/us/04divorce.html>.
- Palatnik, Lori. "Contemplating Divorce." *Lori Almost Live!* (video blog), August 2, 2008.
<http://www.aish.com/sp/lal/48944761.html>.
- Thompson Shor, Chana. "Jewish Divorce Through the Eyes of the First Messaderet Gittin." Editorial. *CJ: Voices of Conservative/Masorti Judaism*, Spring 2010. Accessed August 05, 2011.
http://www.uscj.org/Jewish_Divorce_Throu8292.html.
- VanGilder, Kirk. *Qislam1*. Mp3. Kirk VanGilder, April 23, 2011.

"What You Can Do to Help Agunot." JOFA: Jewish Orthodox Feminist Alliance.

Accessed August 05, 2011. <http://www.jofa.org/about.php/advocacy/whatyoucando>.

Addendum

So, I'm pretty embarrassed about having all Web-based sources. However, I did make sure that they were all credible. As you say to me all the time, it's not a master's thesis. Excessive guilt manifested itself through nightmares where you and Paula Tucker chased me down the hall, heckling me and pelting me with frozen falafel. All in all, I am proud of this, and I hope you enjoyed reading what I spent a couple days researching, writing, and editing (and fussing around with the footnotes).

Oh, and as an aside, Dr. VanGilder, I am glad to have taken your course and to have met you. For many reasons, obviously, but primarily for the education. I am shocked at how much religious prejudice (mostly against Islam) stems from sheer ignorance and stupid stereotypes. As for anti-Semitism, as a Jew, I feel that it's transcended any link to religious connections (e.g. Jews are cheap? Rich? Wait a minute, you *know* that it's a mitzvah to give charity, right? ...and I've heard that we destroyed the economy. I wonder when that happened) and seem to instead focus on the bad attributes of a handful of Jews. I have come to learn that G-d is perfect (and to continue with this, religion in an unadulterated state is perfect, too) but people are imperfect. I have become fantastically more open-minded because of your class and have taken on a real responsibility for my education due to your teaching style. I am thoroughly appreciative. Finally, Dr. VanGilder, you have made me a better questioner, which makes a great Jew. If you don't get tenure, I'll lose the shred of faith I have in the system; that notwithstanding, when I do transfer, it will not be with bitterness in my heart.

Fondly,

Thomas Muething