

Two Cheers for the Chief Rabbi

The Freehof Blog, December 17, 2015

We tend on this blog to be rather critical of the established (= Orthodox) rabbinate in Israel. So it's only proper to congratulate that august institution when it does something right. We're referring to remarks delivered by Chief Rabbi David Lau at a conference sponsored by [Tahel](#), a crisis center that assists Orthodox women and children who fall victim to domestic violence. In expressing his [support](#) of the organization and its work, Rabbi Lau sought to [dispel](#) any notion that Jewish law permits a husband to resort to violence in order to "discipline" his wife:

It is the right of every man and every woman to live a life of wholeness and satisfaction. No man is ever justified or permitted to exert violence against a woman. It is completely erroneous to learn from the first *mishnah* of Tractate *Kiddushin*[1] that a husband "owns" his wife, that she is his physical property. Whoever understands the text in that way doesn't know how to read the *Mishnah* and does not understand the words of our Sages.

Bravo for him. Our tradition - Torah - is founded upon ancient and medieval texts that, like all texts, can be subjected to differing interpretations that range from the reasonable to the extreme. Sometimes, these texts are read so as to "permit" the most [morally horrendous behavior](#). And that, as a number of scholars point out, is the case with our question.[2] While some leading halakhic authorities totally reject domestic violence, others accept it when it is undertaken for "disciplinary" purposes, that is, in situations where the husband must "educate" his wife in the rules of proper conduct or Torah observance. Take, for example, Maimonides (Rambam), who rules that "a wife who refuses to perform any of the household labors that she is obligated to perform[3] may be coerced to perform them, even with a whip." [4] The only thing that can deter some well-meaning (or not-so-well-meaning) Jews from adopting such twelfth-century interpretations is forthright rabbinical leadership. Halakhic authorities must stand up for those readings of Torah that affirm justice, mercy, and life, and they must categorically reject interpretations that are destructive of those ends. Rabbi Lau, who declared at the Tahel conference that "it is not the husband's role to 'educate' his wife" and that no one should "hide behind Judaism" to justify domestic violence, has exhibited just this kind of leadership.

So why only two cheers?

Because condemning domestic violence, while vitally important, is not enough. Those who represent Jewish law to the wider public must guarantee that a wife who is the victim of domestic violence can secure a divorce from her husband. And that mission, sad to say, has yet to be accomplished.

Under traditional Jewish law, a wife is not empowered to divorce her husband. It is he, and not she, who issues the *get* (divorce document). This requirement obviously places the wife at a severe disadvantage when the husband refuses her demand for a divorce. The Rabbis of the Mishnah and Talmud partially address this inequity by specifying grounds upon which the wife

may sue for divorce in a *beit din* (rabbinical court). Should the *beit din* find in her favor, it can require the husband to issue her a *get*. And under some circumstances, the *beit din* is empowered to use coercive measures[5] to enforce that requirement and obtain a *get* from the husband.

At one time, these measures included physical coercion, including - cue the irony - whips. Today in the state of Israel, where matters of marriage and divorce law for Jews are generally adjudicated in the rabbinical courts, the law does not authorize those courts to go so far. They *are* permitted, though, to impose other enforcement measures, up to and including imprisonment, in order to persuade recalcitrant husbands to issue divorces.[6] (In other countries, where Jewish courts do not enjoy the legally-authorized power to enforce their rulings, the situation is more complicated.)[7]

Now the use of coercion is a tricky thing, particularly as a *get* is said to be invalid unless the husband issues it of his own free will and consent (לרצונו).[8] For this reason, many Orthodox halakhic authorities limit the resort to these measures in divorce cases to the reasons specified in the Talmud as grounds for coercion. And - this is nothing to be proud of - wife-beating is not one of those specified grounds. For the last 1500 years, rabbis have disputed whether the Talmud's list of authorized grounds for coerced divorce is a closed set. Can we add domestic violence to that list? Or is it better not to utilize coercive measures in cases not specified in the Talmud, lest the improper application of coercion cause the *get* to be deemed invalid? Most - though not all - authorities hold with this latter opinion, which makes many rabbinical courts reluctant to impose coercive measures to secure divorces for abused wives. This means that the wife who suffers from domestic violence, while she need not live under the same roof as her tormentor, will remain an *agunah*, legally unable to remarry and rebuild her life until such time as her husband chooses to issue a *get*.

This is where Rabbi Lau comes in. He has said the right thing; now let him *do* the right thing. Since he has said that there is no excuse, no justification for a husband to act violently against their wives, then he can exert his influence and personal prestige on behalf of victims of domestic violence who seek to divorce. He can declare, simply and with no prevarication, that the opinion of "most halakhic authorities" can no longer be accepted. If the only remedy for these woman is coerced divorce - that is, a divorce that is enforced by the *beit din* to the full extent of the powers granted it under Israeli law - then this is the remedy that must be applied, unless and until the Orthodox halakhic establishment comes up with a better method for overcoming a husband's refusal to issue a *get*.[9]

Yes, yes, we know: a statement to this effect by Rabbi Lau will not by itself solve the problem. The judges who sit on Israel's rabbinical courts do not necessarily take their halakhic direction from the chief rabbi. But such a statement would put some righteous pressure on them, even if it can't - well, *coerce* them into doing the right thing. At the very least, by taking this principled stand, Rabbi Lau would demonstrate clear and unequivocal evidence of moral leadership...

... which we're entitled to expect from one who occupies an office called "chief rabbi."

[1] M. *Kiddushin* 1:1, in describing the legal rituals by which the marital bond is effected, states: האישה נקנית בשלושה דרכים - literally, "the wife is acquired (by the husband) in three ways." This "acquisition," notes Rabbi Lau, has to do with certain monetary rights enjoyed by the husband with respect to his wife (ירושה, מעשה ידיה); "it does not mean that, God forbid, he acquires ownership of her body."

[2] On this history see Naomi Graetz, *Silence is Deadly: Judaism Confronts Wifebeating* (Northvale, NJ: Jason Aronson, 1998); Avraham Grossman, *Pious and Rebellious: Jewish Women in Medieval Europe* (Waltham, MA: Brandeis University Press, 2004); and Michal Wolf, "Halakhic Verdicts Regarding the Enforcement of Bill of Divorcement on Battering Husbands (Hebrew)," *Hebrew Union College Annual 75* (2004), Hebrew section, pp. 81-116.

[3] See *Mishnah Ketubot* 5:5.

[4] *Mishneh Torah, Hilkhot Ishut* 21:10: כל אשה שתמנע מלעשות מלאכה מן המלאכות שהיא חייבת לעשותן כופין אותה ועושה אפילו בשוט. Rambam's commentators dispute the precise meaning of this passage. Rabad (R. Avraham b. David of Posquierres) objects that he is unaware of any precedent permitting the use of physical force for disciplining a wife. *Magid Mishneh*, on the other hand, cites both Ramban (Nahmanides) and Rashba in support of the view that physical coercion is permissible for this purpose.

[5] See *Mishnah Gitin* 9:8 and *Mishneh Torah, Hilkhot Gerushin* 2:20. .

[6] According to [Israeli law](#) (Hebrew; see especially section 2): the *beit din* can deny the recalcitrant husband the right to leave the country, to obtain a passport or driver's license, the right to be appointed to public office or engage in a variety of professions, the right to open or to maintain a bank account, and so on. It is also empowered to sentence him to prison if, in its judgment, imprisonment is likely to induce him to comply with its order to issue a *get*

[7] In North America, some Orthodox rabbis urge couples to sign a prenuptial agreement, enforceable at civil law, that would obligate the husband to continue to provide financial support to his wife in the event that he refuses a *beit din's* finding for divorce. For a comprehensive look at Orthodox divorce law in the United States, see Michael J. Broyde, *Marriage, Divorce, and the Abandoned Wife in Jewish Law: A Conceptual Understanding of the Agunah Problems in America* (Hoboken, NJ: Ktav, 2001).

[8] How can a *get* express the husband's free will and consent if it has been coerced from him? See Rambam, *Mishneh Torah, Hilkhot Gerushin* 2:20 for the classic explanation.

[9] Such solutions, preferable to and more effective than coercion, do exist in halakhic thought, although right-wing Orthodox opinion has rejected most of them. But that's a subject of a future post.