Mediation, Jewish Marriage, Jewish Divorce, and Agunah

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By Rabbi Martin Rosenfeld

The late Rabbi Harry Wohlberg Z'L taught Medrash at Yeshiva University to generations of Semicha students. He asked his students on one occasion to explain why the Talmud states that the Mizbaeach itself cries for the couple going through a divorce proceeding. Why was this metaphor of a "crying altar" used? Rabbi Wohlberg explained that the altar was the scene of bloody activity on a daily basis, it had become de-sensitized to blood and gore, but yet it could not tolerate the scene of a couple seeking to end their marital relationship.

Divorce takes its toll on many individuals, in a ripple effect. It is no wonder that divorce is frequently listed among the 5 biggest traumas in the adult experience. Unfortunately, its negative impact affects multiple generations, with children often the greatest victims of all.

It is estimated that more than half of the marriages in the U.S. will end up in divorce. I have not seen comparable statistics for Jewish marriages but we know intuitively that this rate of divorce is growing significantly. In my post-rabbinic career, I have chosen to work in the field of divorce as a Divorce

Mediator. I find this work to be both satisfying and greatly needed. I can think no situation, with the possible exception of custody disputes, where mediation is not infinitely more beneficial and therapeutic that that which can be found in the traditional adversarial system of battling attorneys.

Mediation, unlike litigation, fully involves the couple in an open discussion and negotiation concerning the conditions of the divorce settlement. This discussion is facilitated by a mediator who serves as a neutral party, assisting the couple in reaching an agreement. Mediation is an optimistic profession in that it believes that adults, even when they possess variant interest and needs, can reach an accord that will be fair and balanced. Mediation utilizes skills that the couple will need to use even after the divorce if they share e.g. children. Mediation allows the couple to close the door on their marriage, but not slam it. It is an example of what constructive communication can yield.

There is a Chassidic "vort" that defines Pesach as the combination of two words: Peh Sach. "The mouth began to speak". We show our most basic humanity when we become free enough to state opinions, wants and needs. Through the medium of speech we can define problems and we can then begin to seek solutions. The ability of a couple, even in the midst of divorce, to seek solutions rather than blame, lies at the heart of mediation. More importantly, mediation trains the couple in the power of working collaboratively towards a shard goal. The need for such positive and focused conversation can serve us on the communal level as well.

A question that occurs to me often is why our society expects a couple to marry as Bnai Torah and yet allows them (frequently) to divorce as battle-hardened mercenaries. Judaic values are often observed only in their breach when many couples negotiate their divorce settlement. This situation is aggravated exponentially when the rancor becomes so great that the Get becomes a bargaining chip. It is, at times, to our chagrin, withheld (or not accepted) by the recalcitrant spouse. I would like to propose in an outline form below some suggestions that deal with Jewish divorce and the painful status of the Jewish Agunah. (Additional thoughts may be found at my website, www.glattyashar.com). Many of these thoughts derive from the model of mediation where finger-pointing is rejected in favor of constructive searches for solutions and frank discussion. However, one caveat is in order. In order to discuss Jewish divorce, we first need to discuss Jewish marriage. In like manner, in order to discuss Agunah concerns, we must communally first address Jewish marriage as it currently exists.

Social critics have often commented on how society tests for driving competence before it issues a motor vehicle license, but does not do so before it issues a marriage license. How do we prepare our future generation for married life in a society which becomes accepts "disposable" relationships as a cardinal principle of romantic faith? I believe we need to apply our education paradigms towards martial preparation and counseling. Many communities have begun projects, often called Chupah Project" "Shalom Project" etc. In some communities, such programs involve an interface between e.g. Jewish Family Services and the rabbinic community. The purpose of these programs is to offer sessions with the newly-engaged couples in order to teach communication skills, introduce halachic norms, and offer guidance on issues that will need to be negotiated in marital life. For many couples, this will represent their first opportunity to meet community professionals in the religious sphere as well as that of the mental health arena. The group setting offers the couple a chance to listen and also a chance to dialogue. They are introduced to potential challenges and also strategies for a successful resolution of the same. The couple learns to listen, to talk, and to problem-solve these are qualities that serve us all well in our daily exchanges.

I have seen in recent years a dramatic growth of mental health professionals who are well-versed in both Jewish law and social theory and practice. It is no longer unusual to see a young man/woman go through many years of Yeshiva education and then choose to serve her/his community by electing to serve as a mental health practitioner. The rabbinate and the mental health professionals need to work hand-in-hand and cross-refer when appropriate in this area. It would be a worthy project to have a national roster of such professionals whose expertise in the areas of marital life and Shalom Bayit make them a natural resource for married couples. I know of no organization that is limited to those who specialize in issues affecting married life but I think the need for such a group is self-evident.

The role of Roshei Yeshiva has been discussed and debated in multiple journal entries. I will only offer the observation that the influence of these leaders among our young adults is undeniably great. I do believe that their role in stressing the need to learn proper communication skills would be most valuable. These rabbinic leaders should encourage students to seek professional intervention when this is called for. Their lectures should stress the need for positive communication and the need to seek solutions in a spirit of collaboration. Finally, these leaders, and others, when confronting the reality of

the dissolution of a marriage, should encourage the positive method of mediation rather than the divisive alternative of lengthy confrontation and litigation. (As an aside, mediated divorces have been projected as representing 20% of the cost of a litigated divorce. The money savings is however far from being the real benefit of such an approach.). We need, in short, to teach the skills needed for a positive home life, reinforce them, give Chizuk where needed and set a tone for an integration of Jewish values couples with insights from contemporary social thought. We also need to remember the advice that "Values are not taught, they are caught".

Preparation for married life needs to be a prime focus of our educational and communal curricula. We must ask how are we to train our students for the life skills they will need for successful married life. Yemei Iyun on such topics as communication skills, pre-nuptial agreements, Jewish sexuality need to be more widespread. More importantly, we need to ask what objectives we seek, and how to we plan to get there. It might be appropriate to recall the thought that "If you don't know where you are going, all roads will take you there". I daresay that we know where we are going. My question is directed at the query as to whether we know how to get there.

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There is an oft-quoted story about the young child who saw some starfish awash on the seashore. She took them one at a time and hurled them back into the sea. She was asked "There are so many starfish here, do you think you can possibly help them all?" She answered: "I don't know but I just made a difference in the life of the the one I sent back to the ocean". I do not have a solution which will remedy the "Agunah problem". I do believe however, that like the girl in the story, we need to focus attention on the micro as much as the macro, i.e. why do we have an Agunah problem, and can we make a difference?"

A few years ago, Attorney Joseph Rackman, wrote an article about a registry that would contain the names of recalcitrant spouses. Their respective communities would put the appropriate pressure on such individuals to hopefully bring about the desired effect of effecting the granting of Gittin. I met with Attorney Rackman to discuss his proposal and made a suggestion. Should we not first meet with each spouse who was acting in such a defiant fashion and explore what was sparking their unacceptable behavior? It is easy to accuse all recalcitrant spouses of being "money-hungry" and

manipulative. However, this may not have been the original trigger. There may have been a call for "someone to listen" that was never heeded. There may have been a negative experience with a Bait Din. There may have been pre-existing threats from the opposing spouse. Idle legal threats may have caused a violent reaction. We will never know unless we try to reach out and communicate. Our system is not fool-proof and neither are our appointed representatives. In our zeal to help one spouse (as sacred as that work is) we dare not demonize the other without first trying to hear from them. Communal pressure ultimately is quite important and a desideratum. But let us not forget the need to first enter into conversation with those who flaunt our halachic norms.

One of the organizations working with this issue, ORA, has offered couples pro bono mediation when there is a hope that communication can still be productive. Even if we fail in our attempts to reach out to these individuals, we will gain a wealth of insight into how our community structure has "broken done" and why we have failed to impress some community members with the thought that "Her ways are ways of peace".
We have much to gain by offering mediation assistance to couples who are unable to find the proper manner to dissolve their marriage and its attendant issues.

I do not believe we have made the institution of marriage a communal priority in terms of education ,outreach and financial support. To cite one example, the Catholic groups have Family institutions, seminars, lecture bureaus, etc. Prominent Church leaders head such efforts and have even become national figures. What have we done in our community to try to emulate such work? (On a personal note, I have communicated with 5 major Jewish organizations, in order to volunteer to try to initiate some of the proposals outlined herein. Only 1 of the 5 actually responded.) Marital life is probably the most vital Jewish institution to ensure continuity of our value system. What have we invested in such an undertaking? Where are our communal structures?

If we felt the pressing need, we could convene a meeting on Agunah and divorce. Papers could be presented, issues debated, and dialogue begun. With every year that we fail to do something of this nature, we miss an opportunity that is desperately needed. Indeed our national conferences always have the occasional session on issues of Jewish marriage. But don't we need and deserve more? We have organizations for Agunah. Do we have similar organizations that deal with Jewish marriage, Jewish divorce, and the halachic norms that surround them?

To the above, I would add the need for blogs so that community members with specific needs have a place to go for direction and inspiration. I maintain such a website for those who seek a Get but do not know where to turn. A great Kiruv opportunity exists if we make the effort to explain to the non-Orthodox what a Get entails, help them find a proper Bait Din, and organize volunteers to help them through their Get process. We shout about the tragedy of Agunah but yet we allow the non-Orthodox to be unaware of the Get process, thus dooming future generations to our community's ultimate rejection; i.e. mamzerut. Surely there is more work that can engage us in this area.

The Maggid , according to Rabbi Krohn, was stymied by a lack of success in a project he had undertaken. He visited the Brisker Rav, who explained to him why he failed. The bracha for Torah is "La'Asok" "Esek" means business. To succed as Torah Jews, the Brisker Rav stated, we need to be business-like. We need to have a mission statement, objectives, and resources, in addition to moral commitment. This is the regimen we would undertake for our business and this must be our charge as Torah leaders. There is work to be done in the area of Ishut, and all that the term entails. We all have ideas and strategies. Perhaps the time for "Peh Sach" has arrived. We need to dialogue, talk, and listen. We need to work collaboratively. If we apply such an approach, the challenges presented in the areas of Jewish Marriage, Jewish Divorce, and Agunah, we will be worthy of Bilaam's coerced admission: "How goodly are your tents Jacob". I can think of no greater praise, or goal, than that.