Egalitarian History in Jewish Divorce: Judaism's Egalitarian Traditions Provide Solutions to Divorce Woes

Dorothy Werner

Letter to Editor

This letter was sent to the Editor in response to Naomi Graetz' article in Vol. I, no.2.

Dear Dina,

As evidenced by findings in the Cairo Genizah, Judaism does have a long history of egalitarianism. The following article discusses the ability of both men and women to initiate divorce. Since writing that article, I made aliyah. I would be pleased if you'd include my comments in your next issue.

I have included a section from Cambridge University Library's Genizah Centenary Exhibition that you might enjoy; in particular the last item (T-S 24.68) estimated to be from the 10th century. The web site is: http://www.lib.cam.ac.uk/Taylor-Schechter/exhibition.html

Sincerely,

Dorothy Werner

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The perception of Judaism as a patriarchal religion is most blatantly manifested in the divorce laws. The husband can divorce his wife unilaterally, whereas she has no right to divorce him.

Today, pressure exists to change the divorce laws, primarily to alleviate the plight of the agunah, the abandoned wife whose husband refuses to grant her a Jewish divorce.

However, there is no need to go in new directions, as there exists in Judaism a long tradition of egalitarianism.

*Ketubbot*(Jewish marriage contracts) from fifth-century BCE Elephantine include separate clauses that deal with the termination of marriages at the initiative of either the husband or the wife.

Mordechai Akiva Friedman of the Talmud Department of Tel Aviv University discussed this in his book written in 1980-81, *Jewish Marriage in Palestine: A Cairo Geniza Study*. 
He states that each of the three marriage contracts "contains a double clause that deals with the consequences of divorce initiated by husband and wife respectively. "Variations between the texts notwithstanding, it includes the following elements: husband or wife may rise in the assembly and declare that he or she 'hates' the other, the instigating party makes certain payments, and (as a result of the divorce) the wife leaves her husband's home and is free to go wherever she desires.

As we learn from the Geniza fragments, such a stipulation was written in the ketubbot of Palestine through the 11th century," the book continues. "Passages that reflect the wife's right for a divorce can be identified in the Talmudic literature. And in some localities, this usage became accepted legal practice in post-Talmudic times."

Ze'ev W. Falk, noted scholar and lawyer at the Hebrew University, Jerusalem discussed the Elephantine papyri and the follow-up in the Talmud in his 1973 book, The Divorce Action by the Wife in Jewish Law.

Friedman goes on to cite a marriage document executed at Alalakh, some 1,000 years before the Elephantine papyri, in which the wife was given equal rights with her husband for divorce.

In other words, equality of initiating divorce existed from the 15th century BCE to the 11th century CE, a period of 2,600 years.

Oddly enough, this vital egalitarian aspect of Judaism is ignored by those fighting to change the plight of the agunah. The agunah does not require a change in Jewish law that, by implication, goes contrary to a basically paternalistic history and tradition. What is needed is a return to the equality of bygone days.

CAMBRIDGE UNIVERSITY LIBRARY

History in Fragments: A Genizah Centenary Exhibition

November 1997-February 1998

This presentation of Cambridge Genizah documents at the University Library was a continuation of the highly successful exhibition The Cairo Genizah: A Mosaic of Life held at the Israel Museum in Jerusalem, June-October 1997, by arrangement with the Syndics of Cambridge University Library.

The Taylor-Schechter Genizah Research Unit is currently preparing to mount images of all the manuscripts which were in the exhibition on their web site.

The curators of that exhibition were Daisy Raccah-Djivre and Iris Fishof, assisted by Shulie Reif, Orpa Slapak and Ze'ev Elkin. The academic committee consisted of Haggai Ben-Shammai, Menahem Ben-Sasson and Na'ama Brosh (Jerusalem), Mark Cohen (Princeton), Mordechai Friedman (Tel Aviv) and Stefan Reif (Cambridge).
Cambridge University Library is grateful to the Israel Museum for kindly making available here material that was specially prepared for the original exhibition in Jerusalem.

A booklet describing that exhibition (no. 392; ISBN 965 278 204 1) was published by the Israel Museum in Hebrew and English versions.

**T-S J1.29**

Dowry of a rich bride; Egypt; 12th century; Judeo-Arabic; paper

Hundreds of dowry lists have survived in the Cairo Genizah, but this fragment contains the fabulous trousseau of the richest girl in the Genizah. The dowry of a Jewish wife was entrusted to her husband, but in the event of a divorce or the husband's death, its full value had to be restored to her, thus providing her with the security of what was in effect a medieval insurance policy.

Marriage contract of a Karaite woman and the leader of the Rabbanite community of Egypt; 1082; Aramaic; vellum

The special importance of this text lies in the fact that it constitutes a rabbinically approved marriage document that permits the Karaite bride of a Rabbanite leader in the eleventh century to continue to adhere to her own religious customs. “...He also took it upon himself not to compel his wife to sit with him in the light of the Sabbath lamp, nor to eat the fatty tail, nor to profane her religious festivals, as long as she also observed his festivals with him...” Within a century, the religious leadership ceased to permit such social and religious integration and the schism between the two communities became complete.

**T-S 24.68**

Part of a ketubbah (marriage document) with special reference to a woman's right of divorce; Egypt or Eretz-Israel; 10th century(?); Aramaic; vellum

“...And if this Maliha [the bride] hates this Sa`id, her husband, and desires to leave his home, she shall lose her ketubbah money, and she shall not take anything except that which she brought in from the house of her father alone; and she shall go out by the authorization of the court and with the consent of our masters, the sages...” This document provides the evidence that a woman was able to add a clause to her marriage contract giving her the right to a divorce to be arranged by the rabbinical court at a future date if she so desired.

Dorothy Werner is a former Montreal chartered accountant, now living in Israel.

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