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"Taking Responsibility for Torah"

ONLY IN AMERICA! By Rabbi Aryeh Klapper

What is the nature of Jewish citizenship in a pluralistic democracy? To my knowledge, there has been no sustained effort to address this question with theological seriousness and halakhic rigor. But in honor of the US semiquincentennial, I'll present here a summary of a fascinating halakhic essay that sheds some light on one possibly radical way forward.

Please note that I am not endorsing any argument in the essay as practical halakhah. I am also presenting what may be a generous summary of the essay, that is to say, I respond to potential challenges it doesn't address, and elide arguments that I cannot understand or follow. The translation is mine, as are all the emphases in the translation.

The essay in question, dated 20 Elul 5752 and titled "A Torah Perspective on State Laws to Coerce a Get", was authored by the late Rabbi Tibor Stern, then of Miami. It was later published in his *ShuT HaShavit* (8:34). I do not know if it was made public earlier, or if it was circulated privately, and if so to whom.

The essay responds to the New York State *Get* Law that had just been passed with considerable controversy. Some of that controversy revolved around exactly what the law entailed. Opponents claimed that the law allowed Family Court judges to use the threat of a less favorable asset distribution to persuade recalcitrant spouses to give or receive a get, and that the use of such a threat, and perhaps even the possibility of such a threat, made a *get* "*meuseh* = coerced" and therefore invalid. Many supporters claimed that it only allowed judges to compensate a spouse for direct economic damage caused by their inability to remarry.

Rabbi Stern never raises this issue. Instead, here is how he begins:

We live in a state that has a government of grace and equal rights for all with no distinction based on religion or race. All citizens have equal responsibility for everything and everyone has equal rights.

Among the rights and responsibilities are the right and responsibility of voting.

Every person, man and woman, is able to vote and also to be among those elected. And every man and woman is obligated to be among those who acquit and convict.

Why does this matter? Rabbi Stern here makes his first and most creative halakhic move:

Therefore – the nature of the laws in this state is not coercion at all, **rather a right to a just legal system** (זכות למשפט צדק), and we the people of the Jewish nation are full partners in the legal procedures, and just as every citizen accepts upon themselves all the regulations of the state without distinguishing [among them] – so they accept upon themselves the laws and regulations that are legitimated by the Supreme Court

Therefore, Rabbi Stern appears to implicitly argue, the whole question of a *get meuseh* is irrelevant to coercion by American legal courts, because American law is genuinely democratic and therefore is regarded as having been accepted voluntarily by all citizens. Because all citizens agree to accept the outcomes of the democratic process, those outcomes are regarded halakhically as the expressions of every individual will. Living as a citizen under American law is a privilege not a burden.

A nitpicker might argue that the law applies even to noncitizens divorcing in New York. But that is obviously a small potatoes objection.

The bigger objection of course is that Jews are a minority in this democracy, and this approach seems to give the majority the right to mandate *gittin* at will. Rabbi Stern seems to recognize this and pivots away from his overarching claim to more familiar arguments, e.g. that only physical force constitutes halakhic coercion, or that the husband can choose not to divorce civilly.

But each of these arguments has weaknesses as well, whether as a matter of halakhah – certainly some rishonim do consider even self-imposed financial coercion as invalidating at least *lekbatchilah* – or as a matter of law – the state does not require both parties to consent. So Rabbi Stern pivots back to explain that the state has a legitimate interest in obtaining the get:

in our case – there is no compulsion either by blows or by money,

rather it is among the conditions of a civil divorce, in order to dissolve the marital knot that was created via the state's regulations, that immediately after the man or woman claims that civil divorce will not dissolve the marriage and she is still tied by the bonds of marriage and freed from her husband so as to be authorized to marry another man – then the civil divorce has not accomplished what it needed to accomplish, and the government and the [civil court] are able, in order that the marriage will be completely dissolved, to make it into a bill of divorce to break the marital covenant.

The state chooses to permit divorce, and having done so, it wishes its divorces to free its citizens to remarry. Therefore, so long as the state's regulations coerce a get only in the context of a civil divorce (and, implicitly, so long as the state's regulations coerce the get only in cases where the recalcitrant party has indicated that he or she no longer wishes to be married to their present spouse) - the state should be viewed as facilitating a proper, *halakhic* divorce rather than as coercing a divorce.

Rabbi Stern recognizes that the state cannot determine which *gittin* are halakhically valid, and that it may choose to coerce a get in circumstances where halakhah would invalidate even a get coerced by a beit din. He believes that all such issues can be addressed by competent *dayyanim* on an ad hoc basis.

Rabbi Stern then turns to another possible objection – should Jews support a law that exposes fellow Jews to government coercion? His response is simply – yes!

I previously wrote at length in Shu"t HaShavit 6 CM regarding the law of handing Jews who are murderers or drug dealers - G-d save us! and the like, and I ruled as a matter of practice that it is not that one has permission, rather there is a holy obligation to hand them over to the nonJews, both to save lives and to prevent desecration of the Name, and it is forbidden to conceal them . . .

To my mind, those who are *meagen* Jewish women and seek to extort money from them by means of the *get* – they are bloodshedders and there is a mitzvah to pursue them, and if no Jewish hand can rule them – certainly *the Elo-him will seek out the pursued*, and "*the Elo-him* – these are the judges".

The last sentence of the quote seems like an enormous stretch, as in the halakhic tradition *E-lohim* refers specifically to the judges of a properly constituted halakhic court, and also, there is generally a halakhic opprobrium attached to those who go to secular court rather than a *beit din*. Rabbi Stern confronts this challenge directly:

true that this relates only to Jewish judges,

but in this country, where the courts are not idolatrous courts but rather courts of the state, and there is a complete separation in the laws of the land between religion and state,

and all of us, Jews and – not to equate – nonJews are citizens of the same state,

Rabbi Stern appears to be arguing here that the prohibition against using nonJewish courts = *arkaot shel nokhrim* simply doesn't apply to American courts because they aren't nonJewish; rather, they're as Jewish as they are anything else, because Jews are citizens and the courts are secular.

However, Rabbi Stern implicitly recognizes that this argument's implications are far too broad – is there never an obligation to go to beit din rather than American courts? So he pivots again to more familiar arguments, in this case that the secular court can be considered merely the bailiff of the beit din forcing the spouse to appear before them and obey their instructions.

therefore Halakhic authorities must object with a powerful objection against those who issue Torah rulings not in accordance with Halakhah in opposition to this law which is capable of saving Jewish women from *iggun*, and blessing should come upon all those who strengthen our ability to fulfill the *chukim* of the Torah.

Therefore, if giving the get is facilitated by the laws of the state - this not called a "coerced get" at all, and the law is nothing but the agent of a Jewish court, and I don't see any reason, for example, that a beit din agent can't be a nonJew if a beit din is unable to hire a (Jewish) marshal to compel someone to appear before it.

Therefore this *chok* makes them the agents of the Jews, and the get is done via the *chukim* of our holy Torah, and certainly it is a kosher get, and all the opposition leads to anarchy and mercilessness and corruption and injustice.

Leaving aside the specific context and content, Rabbi Stern at least raises the question of whether halakhah should regard the laws of a democratic society in which Jews have full citizenship as intrinsically different than those of either undemocratic or discriminatory societies. That is an important contribution deserving of our gratitude. I would love to see his thesis analyzed and challenged at length. Only then can we move on to the harder question of what Halakhah thinks the secular law should be in such a society, given that halakhah requires different things of Jews than nonJews, and US law cannot tolerate such discrimination.

Shabbat shalom!

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