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JEWISH WOMEN UNDER SIEGE: THE FIGHT FOR SURVIVAL ON THE FRONT LINES OF LOVE AND THE LAW

ADAM H. KOBLENZ*

I. INTRODUCTION

A myth persists in contemporary American society that domestic violence is virtually nonexistent in the Jewish community. This falsehood subsists both within and outside the Jewish population. The inconvenient truth is that domestic violence has endured in the Jewish community for centuries. The survival of domestic violence in Jewish communities is deeply rooted in the tenets of traditional Jewish law, known as *Halakhah*, in which generations of Jewish men have long found a justification for the exclusion of women in many facets of Jewish life.¹ A modern societal illusion endures that Jewish men make “perfect” husbands, and are incapable of committing domestic violence.² However, studies show that domestic violence occurs in Jewish households at a comparable rate to other ethnic and religious groups, and fails to discriminate based on socioeconomic status or educational background.³ In fact, Jewish women, like other women afflicted by domestic violence, are victims of a crime that often combines the effects of physical, verbal, and mental abuse.⁴ Unlike other affected groups, however, battered Jewish women face the harrowing challenge of fighting domestic violence on two distinct yet

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1. Beverly Horsburgh, Recent Development, *Lifting the Veil of Secrecy: Domestic Violence in the Jewish Community*, 18 HARV. WOMEN'S L.J. 171, 183–86 (1995); see also Naomi Graetz, *Wifebeating In Jewish Tradition*, JEWISH WOMEN: A COMPREHENSIVE HISTORICAL ENCYCLOPEDIA, JEWISH WOMEN'S ARCHIVE (Mar. 1, 2009), available at <http://jwa.org/encyclopedia/article/wifebeating-in-jewish-tradition> (last visited Jan. 27, 2010).

2. Horsburgh, *supra* note 1, at 178.

3. JEWISH COMMUNITY RELATIONS COUNCIL OF SAN FRANCISCO, THE PENINSULA, MARIN, SONOMA, ALAMEDA AND CONTRA COUNTIES, GUIDELINES ON DOMESTIC VIOLENCE, 1, 1 (Mar. 12, 1997), available at http://www.jcrc.org/downloads/consensusstatements/3.12.97_JCRC_CS_Violence.pdf (last visited Jan. 27, 2010) [hereinafter JEWISH COMMUNITY RELATIONS COUNCIL].

4. Horsburgh, *supra* note 1, at 177.

diametrically opposed battlegrounds. This dichotomy can be seen in the direct confrontation that currently lies between: (1) the ancient teachings of traditional Jewish law; and (2) the development of modern American secular law and its impact on the interpretation of religious doctrinal issues under the United States (“U.S.”) Constitution.

In this article, I will address the following critical issues: (1) whether the underlying stigma associated with battered Jewish women negatively impacts the secular courts’ treatment of this group of women in domestic violence cases; (2) whether the American secular courts’ reluctance to interpret traditional Jewish law violates battered Jewish women’s constitutional right to equal protection; and (3) whether rabbis have a legal duty to act as intermediaries between battered Jewish women and the legal system. By examining the disparate and inferior role of women inherent within traditional Jewish law and analyzing its impact on the secular and religious courts’ treatment of Jewish women in the context of Jewish divorce proceedings, I will demonstrate that battered Jewish women today still struggle to obtain equal protection and access to the American legal system.

II. EVALUATING THE UNDERLYING STIGMA ASSOCIATED WITH JEWISH WOMEN AND ITS EFFECT ON THE SECULAR COURTS’ TREATMENT OF ABUSED JEWISH WOMEN IN DOMESTIC VIOLENCE CASES

A. Statistical Data and Clinical Studies

According to statistical data, “[o]f the approximately fourteen and a half million Jews in the world,⁵ almost six million live in the United States.”⁶ Clinical studies administered by a variety of distinguished Jewish organizations and independent researchers suggest that anywhere from fifteen to twenty-five percent of Jewish

5. Jeremy Glicksman, Note, *Almost, But Not Quite: The Failure of New York’s Get Statute*, 44 FAM. CT. REV. 300, 302 (Apr. 2006) (citing Jewish Virtual Library, *The Jewish Population of the World* (2006), <http://www.jewishvirtuallibrary.org/jsource/Judaism/jewpop.html>); see also AMERICAN JEWISH COMMITTEE, *AMERICAN JEWISH YEAR BOOK 2006* (David Singer & Lawrence Grossman eds., 2006).

6. Glicksman, *supra* note 5 (citing Jewish Virtual Library, *The Jewish Population of the World* (2006), *available at* <http://www.jewishvirtuallibrary.org/jsource/Judaism/jewpop/html> (last visited Jan. 27, 2010); see also AMERICAN JEWISH COMMITTEE, *JEWISH YEAR BOOK 2006* (David Singer & Lawrence Grossman eds., 2006).

women have been abused at least once during their lifetime.⁷ As staggering as this data is on its face, even more important is that it demonstrates that domestic violence is an epidemic in the Jewish community. Notably, these figures are commensurate with the statistics observed in most other ethnic and religious groups afflicted with domestic violence in the U.S. today.⁸ In fact, the national rate among all groups and nationalities impacted by domestic violence ranges between fifteen and twenty-five percent of all U.S. households.⁹

In October 2004, Jewish Women International¹⁰ (“JWI”) and Baltimore’s Counseling, Helpline and Network for Abused Women (“CHANA”), released a study (“JWI-CHANA study”) that evaluated the state of domestic violence in the Jewish community and proposed a regimen for resolving it.¹¹ This study produced five important findings: (1) domestic violence is as prevalent in the Jewish community as in other communities; (2) due to stereotypes that Jewish men do not abuse their wives, law enforcement, rabbis and social services tend to ignore the problem; (3) the embarrassment and shame that battered Jewish women feel make it even less probable that Jewish women will affirmatively and unilaterally seek help; (4) Jewish women are less likely to use emergency shelters shortly after they leave an abusive home; and (5) acknowledgement of the vital role that rabbis and spiritual leaders play in aiding and leading the Jewish community in confronting domestic violence.¹²

In sum, the JWI-CHANA study revealed that battered Jewish women were the least likely of any ethnic or religious group to utilize available resources or implement self-help remedies such as women’s

7. JEWISH COMMUNITY RELATIONS COUNCIL, *supra* note 3; *see also* JEWISH WOMEN INTERNATIONAL, *JWI’S NEEDS ASSESSMENT: A PORTRAIT OF DOMESTIC ABUSE IN THE JEWISH COMMUNITY* (2004); NATIONAL RESOURCE CENTER ON DOMESTIC VIOLENCE, *RELIGION AND DOMESTIC VIOLENCE: INFORMATION AND RESOURCES – STATISTICS 4, 5* (2007) [hereinafter *JWI’S NEEDS ASSESSMENT*], *available at* http://new.vawnet.org/Assoc_Files_VAWnet/NRC_Religion.pdf. (last visited Jan. 27, 2010).

8. JEWISH COMMUNITY RELATIONS COUNCIL, *supra* note 3. The figures on Jewish domestic violence are further corroborated by Richard Gelles, Director of the Family Project at the University of Rhode Island, who estimates that “[one] (1) in [one-hundred] (100) Jewish women and [one] (1) in [thirty] (30) Jewish children are abused.”; *see also* *JWI’S NEEDS ASSESSMENT*, *supra* note 7.

9. *Do Jewish Men Really Do That? Domestic Violence in the Jewish Community*, *available at* http://www.jewishannarbor.org/content_display.html?articleID=6996 (last visited Jan. 27, 2010) (citing *JWI’S NEEDS ASSESSMENT*, *supra* note 7).

10. Karen Buckelew, *Jewish Domestic Abuse Equals Same As for Others*, *BALTIMORE JEWISH TIMES*, Oct. 22, 2004 at Local News (citing *JEWISH WOMEN INTERNATIONAL’S NEEDS ASSESSMENT: A PORTRAIT OF DOMESTIC ABUSE IN THE JEWISH COMMUNITY* (2004)).

11. *Id.*

12. *Id.*

shelters, support groups, or social services.¹³ This finding is alarming considering that “Jewish women often stay in violent relationships longer than women in the non-Jewish community.”¹⁴ Moreover, while the basis for this conclusion may vary to some degree, the tendency of Jewish women to remain in violent relationships is due in large part to the often cited attempt of Jewish women to maintain “*shalom bayit*,” also known as “peace in the home.”¹⁵ A survey conducted by the Coalition on Domestic Violence in Cleveland, Ohio, found that “of those women reporting spousal abuse, less than fifty percent sought assistance to escape their situation.”¹⁶ In fact, “Jewish women stay in abusive relationships for 7-13 years whereas women in non-Jewish homes stay in such relationships for 3-5 years.”¹⁷ Abused Jewish women, embarrassed by their plight, are less inclined to seek public assistance, especially because society perceives Jewish women as well-educated and financially secure.¹⁸ This dilemma is further exacerbated by the fact that Orthodox Jewish women feel compelled to maintain a fictional image of stability even in times of desperation.¹⁹ However, the heart of the problem lies within the Jewish community itself, as evidenced by the concealment of rampant domestic violence. The community’s lack of reporting makes it even more difficult for women to come forward out of fear that they will be shunned from the Jewish community at large.²⁰

In an attempt to address this concern, JWI released a study on the state of Jewish domestic violence at the National Needs Assessment Conference in March 2004.²¹ This study demonstrated the need for increased funding in order to promote awareness, improve existing outreach programs, and implement new strategies for combating domestic abuse in the Jewish community.²²

13. *Do Jewish Men Really Do That? Domestic Violence in the Jewish Community*, available at http://www.jewishannarbor.org/content_display.html?articleID=6996 (last visited Jan. 27, 2010); see also JWI’S NEEDS ASSESSMENT, *supra* note 7.

14. JEWISH COMMUNITY RELATIONS COUNCIL, *supra* note 3 (citing Liane Clorfene-Casten, *A Chicago Haven for Jewish Battered Women*, LILITH (Winter 1993)).

15. JEWISH COMMUNITY RELATIONS COUNCIL, *supra* note 3.

16. *Id.*; see also JWI’S NEEDS ASSESSMENT, *supra* note 7.

17. JEWISH COMMUNITY RELATIONS COUNCIL, *supra* note 3; see also JWI’S NEEDS ASSESSMENT, *supra* note 7.

18. JEWISH COMMUNITY RELATIONS COUNCIL, *supra* note 3.

19. *Id.*

20. Danielle Cantor, *JWI To Release National Needs Assessment in March*, 1 DOMESTIC ABUSE IN THE JEWISH COMMUNITY, Nov. 20, 2004, available at http://www.imakenews.com/jewishwomeninternational/e_article000218239.cfm?x=b21.

21. *Id.*

22. *Id.*

Notwithstanding this call for increased attention and resources, statistical data on Jewish domestic violence remains quite scarce, due in large part to under-reporting.²³ Currently, efforts are underway to promote awareness and increase grant funding for this genre of research.²⁴ Furthermore, as awareness grows and other studies emerge in the next several years, society will not only gain greater perspective, but begin to expose the realities that pervade domestic violence in the Jewish community.

B. Gender Disparity Created By Traditional Jewish Law (Halakhah)

1. The Root of Inequity

The stigmatization of Jewish women as being inferior to Jewish men has endured for centuries.²⁵ In evaluating the American secular courts' treatment of battered Jewish women, it is imperative to understand the origin of this stigmatization.²⁶ From a historical context, rabbis living between 200 and 500 B.C.E. created most of the existing body of Jewish law in the *Mishnah* and *Talmud*; any other additions came from medieval scholarship.²⁷ This body of religious law was codified between the Twelfth and Sixteenth Centuries,²⁸ most authoritatively in Rabbi Joseph Caro's *Shulhan Arukh* ("Set Table"), completed in 1555.²⁹ The *Mappah* ("Tablecloth"), a set of notes to the

23. Horsburgh, *supra* note 1, at 178.

24. E.g., Jewish Community Foundation of Phoenix Fund for Jewish Philanthropy and Field of Interest Grants, *available at* <http://www.jcfphoenix.org/grants-jewphilan.html> (grant issued in 2008 to support domestic violence outreach, prevention and intervention services in greater Phoenix region. The program is designed to reach the Jewish community, with a particular focus on engaging Orthodox individuals experiencing situations of domestic violence); *see also* Jewish Women's Foundation of Detroit Grant Awards, *available at* <http://www.thisisfederation.org/jwff/grantees.htm> (continuation grant issued in 2007 to Jewish Women International in connection with ongoing project entitled "Building a Coordinated Response to Domestic Abuse in the Detroit Community" aimed at building a community coalition to respond to the problem of domestic violence in Detroit, Michigan).

25. Horsburgh, *supra* note 1, at 180–86.

26. *Id.* at 178. The tenets of Jewish law are deeply rooted in ancient traditional commentaries written by rabbis and Jewish scholars alike which date back to medieval times. Understanding the genesis of Jewish law is critical to evaluating the modern impact that these commentaries have had on the interpretation of religious doctrinal matters in both the religious and secular arenas today.

27. Arnold S. Rosenberg, *Motivational Law*, 56 Clev. St. L. Rev. 111, n.120 (2008) (citing JUDAH GRIBETZ ET AL., *THE TIMETABLE OF JEWISH HISTORY* 165 (1993)); *see also* MOSES MAIMONIDES, *THE CODE OF MAIMONIDES: MISHNEH TORAH* (Menachem Kellner trans., Yale Univ. Press 2004) (1135); RACHEL BIALE, *WOMEN AND JEWISH LAW: AN EXPLORATION OF WOMEN'S ISSUES IN HALAKHIC SOURCES*, 10–13, 37 (Schocken Books 1984).

28. *Id.*

29. *Id.*

Shulhan Arukh, written by Rabbi Moses Isserles of Krakow in the late 16th century, also played a significant role.³⁰

Marriage is a prime example of gender inequality within the Jewish community. Historically, marriage in Judaism serves “two fundamental purposes: (1) the satisfaction of the spouses”; and (2) “the procreation of children.”³¹ Within traditional Jewish law (*Halakhah*) and culture, Jewish women were historically treated as inferior to Jewish men in most facets of Jewish life.³² Over time, a patriarchy evolved from the teachings of *Halakhah*, the core of which established Jewish men as the focal point in the Jewish community.³³ Based on these teachings, Jewish women were essentially treated as “second class” citizens.³⁴ In some instances, women were even viewed as their husband’s property.³⁵ Essentially, a Jewish woman’s main purpose on earth was to be at their husband’s disposal and to bear his children.³⁶ Accordingly, the disparate role of Jewish women was apparent within familial relationships, religious practices and cultural traditions.³⁷

For centuries, some of the most prominent commentators on *Halakhah* have endorsed domestic abuse.³⁸ In fact, in *Yam Shel Shlomo*, Solomon Luria’s sixteenth century commentary on the *Talmud*, the rabbi and scholar exclaimed that: “a husband is permitted to beat his wife ‘in any matter when she acts against the law of the divine Torah. He can beat her until her soul departs, even if she transgresses only a negative commandment.’”³⁹ In contrast, there is evidence to suggest that some of the ancient rabbinical commentaries of that time condemned domestic violence.⁴⁰ In the thirteenth century, Rabbi Meir of Rothenberg recommended that court sanctions should increase if a husband continues to abuse his wife, refusing to “desist from his ‘shameful practices.’”⁴¹

30. *Id.*

31. Helen M. Alvare, *The Moral Reasoning of Family Law: The Case of Same-Sex Marriage*, 38 LOY. U. CHI. L.J. 349, 364 (2007).

32. Horsburgh, *supra* note 1, at 181–2.

33. Stacey A. Guthartz, *Domestic Violence and the Jewish Community*, 11 MICH. J. GENDER & L. 27, 31, (2004); *see also* Horsburgh, *supra* note 1, at 181.

34. Guthartz, *supra* note 33; *see also* Horsburgh, *supra* note 1, at 184–5.

35. Telephone Interview with Rabbi Michael A. White, Senior Rabbi, Temple Sinai of Roslyn, in East Hills, N.Y. (Nov. 22, 2004) [hereinafter Telephone Interview with Rabbi Michael A. White].

36. Horsburgh, *supra* note 1, at 190.

37. Horsburgh, *supra* note 1, at 184.

38. BIALE, *supra* note 27 at 94–5; *see also id.* at 191.

39. Horsburgh, *supra* note 1, at 191.

40. BIALE, *supra* note 27 at 94; *see also* Horsburgh, *supra* note 1, at 191.

41. Horsburgh, *supra* note 1 at 191; *see also* Biale, *supra* note 27, at 93.

Nonetheless, it appears that such anti-abuse commentaries were the exception rather than the norm, insofar as “[t]he most highly regarded of rabbis wrote abuse into the tradition and so it remains, institutionalizing the battering of women.”⁴² In fact, “[c]ommunities of the religiously observant typically exist within a larger society, and concealment—e.g., of domestic abuse—may be condoned and even abetted by others within the community in order to avoid a collective loss of face.”⁴³ For example, one prominent religious commentator on *Halakhah* asserted that “[w]e should not compel a husband to divorce on the basis [of wife-beating] since they were not mentioned by any of the famous authorities.”⁴⁴ Consistent with this ideology, if a “wife [were to] curse her husband or her husband’s family,” or she simply “failed to complete her household chores,”⁴⁵ according to Maimonides in the *Mishneh Torah*, the husband would be justified in “disciplining” her for her purported “transgressions.”⁴⁶ In light of these and other ancient commentaries, some Jewish men have read into *Halakhah* that certain types of wife-beatings may be “justified” from time-to-time, even in the most benign of circumstances.⁴⁷

Today, however, those who find justification for wife-abuse within *Halakhah* do so without a clear understanding of Jewish law, which, in nearly all circumstances, strictly forbids domestic violence.⁴⁸ Contemporary scholar Naomi Graetz echoes this principle, explaining that “[g]ratuitous wifebeating, striking a wife without a reason, is unlawful and forbidden by all.”⁴⁹ Thus, in situations where the husband arbitrarily punishes his wife, meaning that the husband recklessly beat his wife without cause, *Halakhah* encourages him to divorce his wife without pretense.⁵⁰

42. Horsburgh, *supra* note 1, at 192.

43. Rosenberg, *supra* note 27, at 134.

44. BIALE, *supra* note 27 at 95 (citing Even Ha-Ezer 154:15)); *see also* Horsburgh, *supra* note 1 at 191.

45. Horsburgh, *supra* note 1, at 191.

46. BIALE, *supra* note 27 at 95; Horsburgh, *supra* note 1, at 191; *see also* Graetz, *supra* note 1.

47. Graetz, *supra* note 1; *see also* Horsburgh, *supra* note 1, at 191.

48. Telephone Interview with Ilene H. Barshay, Professor of Law, Touro College of Law, in Long Island, N.Y. (Dec. 4, 2004) [hereinafter Telephone Interview with Ilene H. Barshay]; Guthartz, *supra* note 33 at 33 (“It is naïve to believe that all or even most Jewish men who abuse their wives and girlfriends do so because they find justification within halakhah. Over time, however, halakhah has developed Jewish traditions that some abusers, and those who refuse to acknowledge the abuse, use to justify their action or inaction.”).

49. Graetz, *supra* note 1.

50. BIALE, *supra* note 27, at 95 (citing Moses Isserles, Dar-khei Moshe, Tur, Even Ha-Ezer 154: 15); *see also* Horsburgh, *supra* note 1, at 191.

2. *The Role of Sexism*

Within *Halakhah*, sexism plays a critical role in the perpetuation of domestic violence in the Jewish community.⁵¹ The pervasiveness of sexism varies depending on the denomination of Judaism at issue.⁵² While adherence to traditional Jewish law can be an effective indicator of a particular denomination's stance on gender discrimination, it is not always dispositive of the denomination's position on a particular issue as a whole. Rather, a myriad of factors must be taken into consideration when determining the prevalence of gender discrimination in a denomination of Judaism.⁵³

Evidence indicates that sexism is most prevalent in the Ultra-Orthodox and Orthodox communities.⁵⁴ This deeply rooted sexism reinforces traditional gender roles and creates a culture that accepts domestic violence against women.⁵⁵ In fact, the Ultra-Orthodox Movement, arguably the most conservative Jewish denomination, in some ways reinforces the exclusion of women in both familial and religious practices without regard for contemporary changes in modern secular civil rights law.⁵⁶ Orthodox communities often scorn women who do not bear males because males are considered the critical sex for the perpetuation of Jewish culture, customs, and religion.⁵⁷ For instance:

When a male child is born in a Jewish family, there is a special ceremony for friends and relatives. The child is given a Jewish name and circumcised (the *brit milah* or *bris*) eight days following his birth. However, there is no traditional ceremony in honor of the birth of a baby girl. If anything, in the past, a daughter's birth was a disappointment to a Jewish family. . . .⁵⁸

Likewise, “[l]ater in a child's life, in traditional Judaism only a male becomes *Bar Mitzvah* and formally assumes adult

51. Horsburgh, *supra* note 1, at 177.

52. *Id.* at 182.

53. Horsburgh, *supra* note 1, at 190.

54. Guthartz, *supra* note 33, at 44–45; Horsburgh, *supra* note 1 at 190; *see also* Denominations of Judaism, [hereinafter Denominations of Judaism], available at <http://www.jewishroots.net/LIBRARY/Miscellaneous/Denominations-of-Judaism.htm> (last visited Jan. 27, 2010).

55. Horsburgh, *supra* note 1, at 191.

56. Guthartz, *supra* note 33, at 42–44.

57. Horsburgh, *supra* note 1, at 177.

58. *Id.* at 186.

responsibilities at the age of thirteen . . . 'Thirteen-year-old girls enjoy no traditional formal rite of passage.'"⁵⁹ Indeed, there is "[n]o fanfare, ceremony, or applause [to] mark their entry into adulthood."⁶⁰ This inequity can also be seen within the Orthodox Jewish court system, commonly referred to as a *beit din*, where the court "will not admit the testimony of women except in a few emergency situations."⁶¹

In addition, traditional Jewish law also bars Orthodox Jewish women from participating in many important daily religious ceremonies.⁶² These rituals include the listening of Torah reading and the reciting of sacred prayers.⁶³ In fact, the Orthodox do not allow Jewish women to become rabbis nor lead a religious service.⁶⁴ Orthodox Jewish women are also excluded from reciting the Mourner's *Kaddish*, a sacred prayer specifically recited in honor of the dead.⁶⁵ In effect, these exclusionary practices have unnecessarily isolated Jewish women and deprived them of a vital opportunity to pray "at a time when they needed spiritual solace the most."⁶⁶ The fact that Jewish women are excluded from certain religious practices and "obligations commanded by God" provides further evidence of the inequity and contempt for women that underlie the Orthodox community's stance on domestic violence.⁶⁷

The Conservative community is less stringent and perhaps more moderate than the Orthodox community in its exclusionary

59. *Id.*

60. *Id.*

61. *Id.* at 184.

62. *Id.* at 185.

63. *Id.* Pursuant to Jewish law, Orthodox women are forbidden from being "called to the Torah, recit[ing] blessings, or read[ing] passages of scripture, all of which are [considered] great honors. *Id.*

64. *Id.* at 186.

65. *Id.* at 184.

66. *Id.*; see also "What is Kaddish? – The Mourner's Kaddish available at http://www.chabad.org/library/article_cdo/aid/371079/jewish/What-is-Kaddish.htm (last visited Jan. 27, 2010) ("The *Kaddish* is a deeply meaningful prayer that expresses and reflects the values of the Jewish people. A male mourner is obligated to recite the Mourner's Kaddish during the three daily prayer services. This continues for the first eleven months (less one day) for the parent, and for thirty days for other relatives. Kaddish is then said on each Yartziet (anniversary of passing). A step-son or an adopted son may take upon himself to recite the Kaddish, but he is not obligated to do so. If a relative has left no sons, close male relatives have a responsibility to ensure that the Kaddish is recited for eleven months and three weeks, and on each Yartziet thereafter. The Kaddish is in essence a prayer of praise for G-d. It was written in Aramaic, the common language in Talmudic times, to ensure that everyone understood what was being said. The title "*Kaddish*" is translated as "holy," and its recitation brings holiness to G-d's name and to all those who respond "*Amen*" while it is being recited."). *Id.*

67. *Id.* at 184–85.

policies, but not nearly as tolerant, progressive or liberal as the Reform community.⁶⁸ “Conservative Judaism is a middle ground of sorts between Orthodox and Reform Judaism.”⁶⁹ Reform Judaism tends to promote greater gender equity in both religious practices and customs, at least more so than the other denominations.⁷⁰ In addition, the Reform community often critically denounces the modern-day sexism that permeates other denominations of Judaism. In contrast, the Conservative and Orthodox communities have not publicly advocated against domestic violence as prevalently as the Reform communities, in part because of their strict adherence to ancient Rabbinical Law and reliance on somewhat antiquated religious doctrines and commentaries.⁷¹ In turn, this perception has hurt both the Orthodox and Conservative communities in the realm of public opinion.

Furthermore, sexism also infiltrates Jewish cultural perceptions and attitudes about women within the Jewish family.⁷² These “[i]ngrained attitudes can outlive symbolic rituals and these attitudes might well continue to influence the upbringing of many non-observant Jews.”⁷³ Traditional values, such as the exclusion of women in education, continue to influence the attitudes and practices of Jewish men with regards to raising their daughters today.⁷⁴ For instance, “*Halakhah* commands fathers to teach only their sons to read the law.”⁷⁵ As a result, greater emphasis is placed on sons achieving

68. Telephone Interview with Rabbi Michael A. White, *supra* note 35; Horsburgh, *supra* note 1, at 181–82; *see also* Denominations of Judaism, *supra* note 55 (“Conservative Judaism maintains that the ideas in the Torah come from G-d, but were transmitted by humans and contain a human component. Conservative Judaism generally accepts the binding nature of halakhah (Jewish Law), but believes that the Law should adapt, absorbing aspects of the predominant culture while remaining true to Judaism’s values. Worship services are in a synagogue or temple and women are able to take part in leading the service, even as a rabbi or cantor. Services can be a combination of Hebrew and English. Conservative Judaism is kind of like a middle ground between Orthodox and Reform Judaism.”).

69. Denominations of Judaism, *supra* note 55.

70. Telephone Interview with Rabbi Michael A. White, *supra* note 35; *see also* Denominations of Judaism, *supra* note 55 (“Reform Judaism affirms the central tenets of Judaism – G-d, Torah and Israel – and embraces diverse beliefs and practices. Reform Jews accept the Torah as the foundation [of] G-d’s ongoing revelation while learning also from modern exploration of its development. Reform emphasizes Jewish ethics through action to improve the world. Sometimes referred to as Liberal Judaism in Great Britain. [Reform Jews] usually meet[] for worship service in a temple. Head coverings are option. Services are often in English. Reform Judaism tends to reject the binding authority that rabbinical Judaism seems to have on Conservative and Orthodox congregations.”).

71. Telephone Interview with Rabbi Michael A. White, *supra* note 35.

72. Guthartz, *supra* note 33 at 45; *see also* Horsburgh, *supra* note 1, at 182–183, 188.

73. Guthartz, *supra* note 33 at 45; *see also* Horsburgh, *supra* note 1, at 182.

74. Horsburgh, *supra* note 1, at 191.

75. *Id.* at 185.

higher educational and professional goals than their daughters.⁷⁶ These underlying attitudes and cultural practices facilitate a sub-culture within the Jewish community that attempts to establish men as superior to women.⁷⁷ Unfortunately, implicit within this gender warfare are ingrained beliefs that increase the likelihood that Jewish men may commit domestic violence in order to sustain this self-imposed, institutionalized form of dominance over Jewish women.

C. The Secular Courts' Engendered Societal Stereotypes and Antipathy toward Jewish Women

1. The Lasting Effects of Anti-Semitism

Anti-Semitic stereotypes play a critical role in spawning societal antipathy towards Jewish women.⁷⁸ For example, the typical stereotype that Jewish women are almost always catered to by their fathers and dominant of their husbands engenders a false reality that is dangerous to the security of Jewish women.⁷⁹ Likewise, the modern societal perception endures that Jewish women are unlikely to become victims of domestic violence based on imperfect notions of empowerment or dominance in relation to men (within their faith) than their non-Jewish counterparts.⁸⁰ "Stamped as an abrasive, emasculating, and overbearing mother or a pampered, demanding, and self-centered shrew, a Jewish woman hardly evokes sympathy from the public or a court of law."⁸¹ As a result, Jewish women are mistakenly viewed as unsympathetic figures that possess great power over the men in their lives.⁸²

It is often the case that Jewish women are simply afraid to report domestic violence directly to the authorities because they believe that law enforcement will fail to protect them.⁸³ Thus, domestic violence in Jewish households remains virtually undetected by the outside public. As a result, Jewish women tend to succumb to the hands of their abusers due to the absence of viable options or preemptive recourse.⁸⁴ The reporting of domestic violence can also create animosity within the Jewish community itself, often polarizing

76. *Id.* at 187–88.

77. *See id.* at 188.

78. Horsburgh, *supra* note 1 at 177.

79. *Id.* at 178.

80. Guthartz, *supra* note 33 at 45; *see also* Horsburgh, *supra* note 1 at 177–78.

81. Guthartz, *supra* note 33; *see also* Horsburgh, *supra* note 1 at 177.

82. *See* Horsburgh, *supra* note 1 at 177.

83. Guthartz, *supra* note 33 at 45; *see also* Horsburgh, *supra* note 1 at 177.

84. *See* Horsburgh, *supra* note 1 at 178.

Jewish women from one another within the faith.⁸⁵ Abused Jewish women often face the unsympathetic scorn of other Jewish women, as well as the Jewish community at large, who frown upon those who dare accuse abusive Jewish men of such heinous and immoral crimes.⁸⁶ As one scholar aptly noted, “[t]o some Jews, [the abused Jewish woman] is nothing short of a traitor who undermines efforts to combat the more pressing issue of anti-Semitism.”⁸⁷ The term *shanda*, for instance, is defined as the “exposure of Jewish misconduct to the Christian majority.”⁸⁸ To commit *shanda*, a battered Jewish woman “brings disgrace upon all Jews.”⁸⁹

The undeniable reality is that Jewish women, particularly of the Orthodox faith, possess very little power in relation to men.⁹⁰ Jewish women are excluded from meaningful participation in religion and within the home.⁹¹ Jewish women are raised to believe the stereotype that Jewish men make ideal husbands and are incapable of committing domestic violence.⁹² In turn, these women often become paralyzed and unable to truly conceptualize the violence that defines their daily existence.⁹³ Because reporting of domestic violence is much maligned within the Jewish community, it is not uncommon for a rabbi to discredit a victim’s account or recollection of abuse.⁹⁴ A rabbi may even instruct a Jewish woman to work more diligently for the “sake of *shalom bayit* [peace in the home],” rather than provide aid or comfort in times of need.⁹⁵ Nevertheless, most rabbis today, regardless of denomination, would likely not hesitate to offer some form of assistance to victims of domestic abuse within their congregation.

There is strong evidence to suggest that the failure of Jewish legal scholars to denounce domestic violence in the Jewish community has sharply contributed to the perpetuation of domestic violence.⁹⁶ In fact, one scholar reasoned that: “[t]he hesitation of legal scholars to criticize Jewish law in effect amounts to a condonation of the status

85. *Id.* at 178.

86. Guthartz, *supra* note 33 at 38–39; *see also* Horsburgh, *supra* note 1, at 178.

87. Guthartz, *supra* note 33 at 37–39; *see also* Horsburgh, *supra* note 1, at 178.

88. Horsburgh, *supra* note 1, at 178.

89. Guthartz, *supra* note 33 at 36–37; *see also* Horsburgh, *supra* note 1, at 178.

90. Horsburgh, *supra* note 1, at 182.

91. *Id.*

92. *Id.* at 178, 203.

93. Guthartz, *supra* note 33, at 44–45 (2004).

94. Horsburgh, *supra* note 1, at 204.

95. *Id.*

96. Horsburgh, *supra* note 1, at 211–12.

quo.”⁹⁷ This impediment to progress is solely predicated upon an ill-conceived cultural notion that self-help is secondary to the need to reflect a facade of stability to the outside world. Based on the foregoing, it is clear that Jewish women still struggle to obtain adequate recourse from domestic violence.

III. ANALYZING THE SECULAR COURTS’ RELUCTANCE TO INTERFERE WITH RELIGIOUS DOCTRINAL PRACTICES AND ITS IMPACT ON FIRST AMENDMENT RIGHTS

In this section, I analyze the secular courts’ reluctance to interfere with religious doctrinal practices and how this implicates First Amendment rights under the U.S. Constitution.⁹⁸ This section specifically examines the roles of the government and judiciary in preserving rights guaranteed by the Establishment and Free Exercise Clauses of the First Amendment in the context of Jewish divorce proceedings. In addition, this section tackles the preeminent First Amendment opinions of the U.S. Supreme Court as well as local and state case law that has broader implications on the legislative and judicial landscapes nationwide in the area of Jewish divorce law.

A. First Amendment Analysis: The Establishment and Free Exercise Clauses

It is well-settled that the Establishment and Free Exercise Clauses of the First Amendment to the U.S. Constitution guarantee an individual’s right to freely practice religion.⁹⁹ However, there is an inherent conflict in the courts’ interpretation of these clauses in the context of religious doctrinal matters in recent years.¹⁰⁰ Historically, the U.S. Supreme Court has recognized a “zone of accommodations of religion” under the Establishment Clause, but not required by the Free Exercise Clause.¹⁰¹ Unfortunately, the Court has failed to demonstrate

97. *Id.* at 212.

98. U.S. CONST. amend. I.

99. U.S. CONST. amend. I.; Jodi M. Solovy, *Civil Enforcement of Jewish Marriage and Divorce: Constitutional Accommodation of a Religious Mandate*, 45 DEPAUL L. REV. 493, 507–08 (1996).

100. Solovy, *supra* note 99, at 505.

101. *Zorach v. Clauson*, 343 U.S. 306, 313-14 (1952) (citing Tanina Rostain, *Permissible Accommodations of Religion: Reconsidering the New York Get Statute*, 96 YALE L.J. 1147, 1149 (1987) (“upholding against establishment challenge program that released children from school premises for religious education and devotional exercises”)).

the relationship of these two clauses in distinguishing the zone of accommodation.¹⁰²

The Constitution not only prohibits government from endorsing a particular religion, but it also imposes restrictions on the government's ability to intrude upon an individual's right to freely practice religion.¹⁰³ In order to satisfy the mandate of the First Amendment, *albeit* without governmental intrusion, the "government should act to achieve secular goals in a religiously neutral manner."¹⁰⁴ To that end, the government is not entirely restricted from interpreting religious doctrinal matters predicated upon judicial decisions that achieve purely secular objectives.¹⁰⁵ Nevertheless, courts often hesitate to rule on certain religious practices or interpret Jewish law for fear of potential backlash created by a perception that the court might be infringing upon the constitutional rights of Jewish litigants.¹⁰⁶ In particular, courts dealing with Jewish divorce law often struggle to protect the rights of battered Jewish women without violating constitutional law.¹⁰⁷

Public policy also plays an influential role in shaping the judicial branch's perspective on issues concerning the role of government in religious doctrinal matters. The civil courts' reluctance to interfere in certain religious practices has arguably had an adverse effect on the problem of domestic violence in the Jewish community.¹⁰⁸ Judicial inaction has resulted in several problematic outcomes: (1) the creation of a subculture where Jewish women are less willing and/or able to come forward, (2) a well-established fear of directly confronting an abuser in court, (3) the convoluted perception that the abuser's rights will be protected over the victim's because of the inherent inequity in traditional Jewish law, and (4) the notion that the abuse will continue, and even escalate, because of the courts' inability to guarantee protection.¹⁰⁹

102. Rostain, *supra* note 101, at 1147, 1149.

103. *Id.* at 1148.

104. Solovy, *supra* note 99, at 505 (citing John E. Nowak & Ronald D. Rotunda, CONSTITUTIONAL LAW 1157 (4th ed. 1991)).

105. *Id.*

106. Horsburgh, *supra* note 1, at 193.

107. Michelle Greenberg-Kobrin, *Civil Enforceability of Religious Prenuptial Agreements*, 32 COLUM. J.L. & SOC. PROBS. 359, 386-87 (1999).

108. Horsburgh, *supra* note 1, at 193.

109. *Id.* at 193-94.

1. Lemon v. Kurtzman: The Lemon Test

The U.S. Supreme Court's decision in *Lemon v. Kurtzman*¹¹⁰ has had widespread implications for the modern interpretation of religious doctrinal issues under the U.S. Constitution.¹¹¹ In *Lemon*, the Court articulated a three-prong test for determining Establishment Clause infractions.¹¹² The *Lemon* test requires that government actions meet three critical criteria to survive Establishment Clause scrutiny:

(1) have a secular purpose, (2) a primary effect that neither advances nor inhibits religion, and (3) avoids creating an 'excessive government entanglement with religion' which might erode the principle of government neutrality in religious decision-making.¹¹³

Notably, the third prong of the *Lemon* test is the most complicated to apply in situations where the secular courts are called upon to implement and effectuate religious [doctrinal] law.¹¹⁴ Although the Supreme Court has indicated that the *Lemon* test "provides no more than a helpful signpost" regarding Establishment Clause cases, "the Supreme Court has utilized the test in most Establishment Clause cases over the past twenty-five years."¹¹⁵

However, the *Lemon* test has been denounced by several U.S. Supreme Court justices in recent years. For instance, Justice Sandra Day O'Connor argued for the substitution of the [secular] purpose prong in favor of "asking whether government intends to convey a message of endorsement or disapproval of religion."¹¹⁶ Justice O'Connor indicated that she would "substitute the 'effect' prong for a determination of whether the government action has 'the effect of communicating a message of government endorsement or the disapproval of religion.'"¹¹⁷ The rationale behind this substitution is to place a higher burden on government to decipher between inadvertent and intentional intrusion on religious doctrinal issues affecting the

110. *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

111. *Id.* at 612–13.

112. *Id.*; see also Greenberg-Kobrin, *supra* note 107, at 380.

113. Greenberg-Kobrin, *supra* note 107, at 380.

114. Ilene H. Barshay, *The Implications of the Constitution's Religion Clauses on New York Family Law*, 40 How. L.J. 205, 207 (1996).

115. *Id.*

116. *Id.*

117. *Id.* at 207–208

states. Justice O'Connor has also signaled disapproval with the entanglement prong of the test.¹¹⁸

Chief Justice William Rehnquist has expressed discontent with the *Lemon* test as well, however on dissimilar grounds. Rehnquist supports the view "that government may advance religious goals or religion so long as it demonstrates no preference among different religions."¹¹⁹ Against this backdrop, "[Rehnquist] and Justice Byron White have joined with Justices Anthony Kennedy and Antonin Scalia, by individually and collectively expressing their wish to abandon the three part *Lemon* test. They would ask, rather, whether government is directly supporting religious activity or coercing persons to engage in religious activity."¹²⁰ In reality, a majority of Supreme Court justices have supported the 'endorsement' approach, although the Court has never adopted this approach in a way that amounts to outright rejection of the *Lemon* test.¹²¹ Accordingly, although the viability of the test's future is unclear, the *Lemon* test remains good law.¹²²

2. *The Modern View: Avitzur v. Avitzur*

The New York Court of Appeals' decision in *Avitzur v. Avitzur*,¹²³ a significant case in Jewish divorce law, represents the modern view with regard to the secular courts' interpretation of Jewish doctrinal issues.¹²⁴ The *Avitzur* court held that "a State may adopt any approach to resolving religious disputes which does not entail consideration of doctrinal matters."¹²⁵ In this regard, the Court specifically approved the use of the "neutral principles of law' approach as consistent with constitutional limitations,"¹²⁶ including those found in the Establishment and Free Exercise Clauses.¹²⁷

118. *Id.*

119. *Id.* at 208.

120. *Id.* at 208-209.

121. *Id.* ("First Amendment cases decided by the Supreme Court have primarily involved intrachurch property disputes, state mandated aid to religious organizations, attempts to conduct religious training or hold religious meetings in public schools and government sponsored religious displays. Deferring to church polity, testing a dispute against statutory law, and balancing the relevant religious and societal interests are among the most utilized strategies that the Court has employed in determining the outcome of these disputes. The church-property cases are illustrative of the utilization of the excessive entanglement prong of the *Lemon* test, notwithstanding the fact that these cases predated *Lemon*."). *Id.*

122. *Id.*

123. *Avitzur v. Avitzur*, 446 N.E.2d 136, 136 (N.Y. 1983).

124. Barshay, *supra* note 114, at 225.

125. *Avitzur*, 446 N.E.2d at 138.

126. *Id.* at 114-15.

127. *In Re Marriage of Goldman and Goldman*, 554 N.E.2d 1016, 1022 n.1 (I.L. 1990).

Notably, the State has a greater interest in upholding the fundamental right [of women] to remarry than in any incidental effect a court's decision might impose on a defendant-husband's free exercise claim.¹²⁸ To achieve this end, the government must respect the "right [of individuals] to practice religious beliefs in conformance with that particular faith's forms of worship and customs."¹²⁹ Therefore, before a court is able to fashion a distinct and comprehensive ruling, it must first determine whether "the practice is religious in nature, whether it creates an undue burden on an individual's religious beliefs, and [whether] there is a compelling State interest."¹³⁰

*B. The Jewish Divorce Decree:
Understanding the Significance of a "Get"*

1. Procedural Requirements: Overview

Divorce is a central issue impacting domestic violence in the Jewish faith.¹³¹ In that approximately thirty-three percent of all Jewish marriages end in divorce,¹³² this issue is most directly confronted by Jewish women seeking to obtain both a civil and religious divorce. The courts' reluctance to interpret religious law tends to place an undue burden on a Jewish woman seeking to flee her abuser.¹³³

Under traditional Jewish law, Jewish women cannot, under any circumstances, ever initiate a divorce.¹³⁴ Generally, Jewish divorce practice is considered unilateral since men are the only party technically afforded the ability to initiate a divorce.¹³⁵ In order for a Jewish woman to effectuate a divorce under Jewish law, Deuteronomy 24:1 mandates that she must first obtain a divorce decree from her husband, known as a *get*.¹³⁶ The only "built-in protection" for Jewish

128. Solovy, *supra* note 99, at 511–12.

129. Horsburgh, *supra* note 1, at 197.

130. Solovy, *supra* note 99 at, 509–11.

131. Glicksman, *supra* note 5, at 302 (citing Lisa Zornberg, *Beyond the Constitution: Is New York's Get Legislation Good Law?* 15 PACE L. REV. 703, 713 (1995)).

132. *Id.*

133. Horsburgh, *supra* note 1, at 193.

134. *Id.*

135. *Id.*

136. *Id.*; See also Glicksman, *supra* note 5, at 301 (citing *Deuteronomy* 24:1; Julius Kravetz, *Divorce in Jewish Tradition*, in *JEWIS AND DIVORCE* 149, 156 (Jacob Freid ed., Ktav Publishing House 1968)).

women is that they must first provide their consent to the divorce itself.¹³⁷

According to traditional Jewish law, a secular civil divorce does not have the effect of a Jewish divorce decree in the Jewish community.¹³⁸ If a Jewish woman does not obtain a *get*, Jewish law prohibits her from remarrying.¹³⁹ Women who are unable to obtain a *get* from their husbands are referred to as *agunah* or “untouchable.”¹⁴⁰ Accordingly, “[t]he increasing divorce rate is certain to create an accompanying increase in the number of *agunot*.¹⁴¹ Recent estimates indicate that as many as [fifteen-thousand] 15,000 Orthodox Jewish women in New York alone are *agunot*.”¹⁴²

2. *Dissecting the Agunah Problem*

Of critical importance, “[t]he *agunah* problem is [deeply] rooted in [traditional] Jewish divorce law.”¹⁴³ There are five basic scenarios under which a woman becomes an *agunah*.¹⁴⁴ The first situation occurs when a husband abandons his wife and subsequently disappears.¹⁴⁵ A second possibility is the death of a husband without sufficient proof of his demise.¹⁴⁶ In the third possible scenario, a mentally incompetent husband is unable to grant a divorce.¹⁴⁷ The fourth scenario is the *Levirate* marriage.¹⁴⁸ In the fifth scenario, the

137. Horsburgh, *supra* note 1, at 193.

138. *Id.* at 194.

139. *Id.*

140. Guthartz, *supra* 33, at 42.

141. Glicksman, *supra* note 5, at 302 ((citing Lisa Zornberg, *Beyond the Constitution: Is New York's Get Legislation Good Law?* 15 PACE L. REV. 703, 713-14 (1995)). *Agunot* is the plural form of *agunah* meaning multiple women facing the same predicament as a result of a Jewish husband's failure to timely issue a *get* or Jewish divorce decree. *Id.*

142. Glicksman, *supra* note 5, at 302-303 (citing Lisa Zornberg, *Beyond the Constitution: Is New York's Get Legislation Good Law?* 15 PACE L. REV. 703, 713-14 (1995)(citing IRWIN H. HAUT, *DIVORCE IN JEWISH LAW AND LIFE* 101 (Sepher-Hermon Press 1983)).

143. Glicksman, *supra* note 5, at 301.

144. Glicksman, *supra* note 5, at 301 (citing BIALE, *supra* note 27 at 102).

145. *Id.*

146. *Id.*

147. *Id.*; see also Menachem M. Brayer, *The Role of Jewish Law Pertaining to the Jewish Family, Jewish Marriage and Divorce*, in *JEWS AND DIVORCE* 1, 18 (Jacob Freid ed., Ktav Publishing House 1968) (“a husband is precluded from giving his wife a *get* when he is ‘insane and incapable of exercising his legal rights’”).

148. Glicksman, *supra* note 5, at 301 (citing BIALE, *supra* note 27, at 102). Jewish law requires that a childless widow marry the brother of her husband. This is known as a *Levirate* marriage. However, through a ceremony known as *halizah*, the decedent's brother can release the widow from such a marriage. When the brother refuses to marry her and refuses to

husband is alive, well, and accounted for, but patently refuses to provide his wife a *get* despite being fully able to do so.¹⁴⁹ While all five of these situations have serious religious and legal implications for an *agunah* seeking a religious divorce, this article will concentrate on the fifth scenario as it is the most pervasive and common situation.¹⁵⁰

The stigma that attaches to an *agunah* is debilitating. Such a classification can result in tremendous emotional and psychological stress and undue burden.¹⁵¹ “They [Jewish women] are unable to remarry under Jewish law and are forced to live in marital limbo without a *get*.”¹⁵² It is considered adulterous conduct for an *agunah* to remarry.¹⁵³ Moreover, any children who are the product of the second marriage are considered illegitimate.¹⁵⁴ “[A]gunahs have virtually no standing in the Jewish community. . . [and] are trapped, unable to rebuild their lives as long as the *get* issue remains unresolved.”¹⁵⁵ It is not unusual for this limbo state to continue for as long as 18 years.¹⁵⁶

In some instances, Jewish men utilize the Jewish divorce proceeding as a mechanism of gaining control¹⁵⁷ and for reasons “. . . not likely motivated by a sincere religious conviction.”¹⁵⁸ Men who effectuate this process typically do so without fear of retribution. As one scholar aptly noted:

“[m]andatory arrest of alleged domestic abusers tends to increase, not decrease, domestic violence among men who do not find arrest shameful, while it reduces domestic violence among those who do. Compliance with a request or demand is more likely if the subject likes the requester or perceives that others comply. Compliance does increase when threats are made, but only if the threats are public and the opportunity to

perform the *halizah* the widow becomes an *agunah*. See *Levirate Marriage and Halizah*, in 11 ENCYCLOPEDIA JUDAICA 121–31 (1973).

149. Glicksman, *supra* note 5, at 301 (citing BIALE, *supra* note 27, at 102).

150. *Id.*

151. Esther Rosenfeld, *The Evolution & Impact of Jewish Law: Jewish Divorce Law*, 1 U.C. DAVIS J. INT’L L. & POL’Y 135, 149–150 (1995).

152. Glicksman, *supra* note 5, at 303 (citing Lisa Zornberg, *Beyond the Constitution: Is New York’s Get Legislation Good Law?* 15 PACE L. REV. 703, 718–719 (1995)).

153. Horsburgh, *supra* note 1, at 194.

154. *Id.*

155. *Id.*

156. Glicksman, *supra* note 5, at 303 (citing Lisa Zornberg, *Beyond the Constitution: Is New York’s Get Legislation Good Law?* 15 PACE L. REV. 703, 719 (1995)).

157. Guthartz, *supra* note 33, at 41–42; see generally Horsburgh, *supra* note 1, at 194.

158. Horsburgh, *supra* note 1, at 197.

comply is private, suggesting that shame rather than fear is the principal factor in increasing compliance. If shaming is ongoing and does not offer the wrongdoer a means of reintegration, as through a ceremony celebrating a return to compliance, the ties of the wrongdoer with the relevant group are weakened and the wrongdoer simply decides he or she doesn't care anymore what the group thinks."¹⁵⁹

Some Jewish men refuse to offer the *get* as a way to remain seemingly bonded to the woman that they have battered for years.¹⁶⁰ Jewish men even utilize these proceedings as a means of "manipulating alimony proceedings."¹⁶¹ For instance, there have been several accounts of husbands refusing to give their respective wives a *get* unless their wives provide them with certain financial and non-financial incentives. Some demands have ranged anywhere from \$150,000 to \$200,000.¹⁶² Notably, in one case a husband demanded \$200,000 and minimal child support payments before he would offer his wife a *get*. In another case, the husband first requested \$100,000, then raised his demands to one million dollars, including her father's pension, in exchange for a *get*.¹⁶³ Arguably, such demands teeter on blackmail and extortion. The reality is that certain "Jewish men utilize the *get* as a means of gaining leverage in custody proceedings, child support payments, property division, and/or spousal support."¹⁶⁴ The husband is, in effect, attempting to chastise his wife for her purported "transgressions" over the course of the marriage, without fear of retribution or public shame.¹⁶⁵ Judaism characterizes this type of spiteful behavior as "chutzpah," a Yiddish word "connoting brazenness."¹⁶⁶

159. *Id.*

160. Horsburgh, *supra* note 1, at 194.

161. *See* Horsburgh, *supra* note 1, at 197.

162. Glicksman, *supra* note 5, at 303 n.3 (citing Lisa Zornberg, *Beyond the Constitution: Is New York's Get Legislation Good Law?* 15 PACE L. REV. 703, 719 (1995)).

163. *Id.* (citing Lisa Zornberg, *Beyond the Constitution: Is New York's Get Legislation Good Law?* 15 PACE L. REV. 703, 719 (1995)).

164. Glicksman, *supra* note 5, at 303 (citing Patricia Ward Biederman, *When a Jewish Divorce is Really Hard to Get*, L.A. TIMES, May 17, 1992, at J4); *see also* Horsburgh, *supra* note 1, at 197.

165. Horsburgh, *supra* note 1, at 197.

166. *Id.*; *see also* Jack Achiezer Guggenheim, *The Supreme Chutzpah*, Jewish Law Commentary: Examining Halacha, Jewish Issues and Secular Law, *available at* <http://www.jlaw.com/Commentary/SupremeChutzpah.html> (last visited Jan. 27, 2010).

3. *The Court's Interpretation of Jewish Marital Contract Law*

In order to remedy the inherent imbalance of power and tactical advantage maintained by Jewish men, recent court decisions have interpreted Jewish law pursuant to the terms of contract law. In doing so, some courts have elected to treat Jewish divorce as a dissolution proceeding agreed to by both parties at the onset of a marriage, rather than mire the courts in interpretation of religious doctrinal issues.¹⁶⁷ The case of *In Re Marriage Goldman*¹⁶⁸ is illustrative in this regard. Of seminal import, *In Re Marriage Goldman* stands as the first appellate level case to interpret the *ketubah* [Jewish marriage contract] as an equally implied contract to give a *get*.¹⁶⁹ However, despite this important ruling by the Illinois Court of Appeals, *Goldman* “is the only recorded Illinois case in this area of law.”¹⁷⁰

Similarly, in *Avitzur v. Avitzur*,¹⁷¹ New York’s highest court ruled “that judicial involvement in matters touching upon religious concerns has been constitutionally limited, and courts should not resolve such controversies in a manner requiring consideration of religious doctrine.”¹⁷² Under *Avitzur*, courts may rely upon religious documents, “but only if those documents do not require interpretation of ecclesiastical doctrine.”¹⁷³ Moreover, the *Avitzur* court found that “judicial involvement is [only] permitted when the case can be decided solely upon the application of neutral principles of . . . law, without reference to any religious principle.”¹⁷⁴ Because the New York Court of Appeals determined that there was no “religious doctrinal issue” to resolve in *Avitzur* and subsequent cases, it has been able to fashion prospective rulings in a manner consistent with the guarantees of the First Amendment.¹⁷⁵

Notably, and not without controversy, *Avitzur* and its progeny affirmed the notion that “a state may adopt any approach to resolving religious disputes that does not entail consideration of doctrinal matters, using the ‘neutral principles of law’ approach as consistent

167. Horsburgh, *supra* note 1, at 194.

168. *In re Marriage of Goldman v. Goldman*, 554 N.E.2d 1016, 1021 (Ill. App. Ct. 1990).

169. Solovy, *supra* note 99, at 520.

170. *Id.* at 521.

171. 446 N.E.2d 136 (N.Y. 1983).

172. *Id.* at 138.

173. *In the Matter of Congregation Yetev Lev D'Satmar, Inc., et al. v. Jacob Kahana et al.*, 2007 NY Slip Op 9068, at *3, 9 N.Y.3d 282 (2007) (citing *Avitzur v. Avitzur*, 446 N.E.2d 136 (N.Y. 1983)).

174. *Congregation Yetev Lev D'Satmar, Inc., v. Kahana*, 879 N.E.2d 1282, 1285 (N.Y. 2007) (citing *Avitzur v. Avitzur*, 446 N.E. 2d 136, 138 (N.Y. 1983)).

175. *Avitzur*, 446 N.E.2d at 138.

with constitutional limitations.”¹⁷⁶ In fact, the major rationale for supporting this decision hinges on the fact that rabbis are not required under traditional Jewish law to preside over the *get* proceeding.¹⁷⁷ The court determined that it is constitutional to enforce secular divorce provisions within the Jewish marriage contract [*ketubah*].¹⁷⁸ Consequently, *Avitzur* was an important decision as it laid the foundation for subsequent court rulings affirming the enforcement of secular law resolving religious doctrinal issues.¹⁷⁹

C. The New York Get Statute

1. Proposed Legislation

Despite *Avitzur*, the issue of a Jewish woman’s constitutional right to obtain a *get* “remained, to a large extent, unresolved.”¹⁸⁰ In an attempt to “remedy the[se] circumstances, the New York State Legislature endeavored to amend the Domestic Relations Law to combat problems such as this one.”¹⁸¹ This change was effectuated by the addition of Section 253, entitled: “[R]emoval-of-barriers to marriage.”¹⁸² Section 253 is commonly referred to as the “*Get Statute*” because of its targeted impact on Jewish divorce proceedings. Politicians supported this bill, including then Governor of New York Mario M. Cuomo, who stated:

[t]he bill solves a problem created by the interrelation of Jewish Law and New York Civil Law. Traditional Jewish Law does not recognize a secular divorce as sufficient to dissolve a marriage, but rather requires that the husband give the wife a . . . ‘[G]et.’¹⁸³

Arguably, “New York’s ‘[*Get*] [S]tatute’ is flawed because it is of limited applicability and still allows for situations in which the Jewish wife is civilly divorced but religiously married.”¹⁸⁴ At this juncture, the New York “*Get Statute*” “only applies to marriages

176. *Id.* (citing *Jones v. Wolf*, 443 U.S. 595, 602 (1979)).

177. *Avitzur*, 446 N.E.2d at 137.

178. *Id.* at 138–139.

179. Barshay, *supra* note 114, at 225–26.

180. Lawrence M. Warmflash, *The New York Approach to Enforcing Religious Marriage Contracts: From Avitzur to the Get Statute*, 50 BROOKLYN L. REV. 229, 250 (1984).

181. *Id.*

182. *See id.* at 250; *see also* Barshay, *supra* note 114, at 230.

183. Barshay, *supra* note 114, at 230–31.

184. Glicksman, *supra* note 5, at 300.

solemnized by a cleric, minister, or ethical leader.”¹⁸⁵ Procedurally, under the current legislative scheme, a divorce cannot be properly effectuated until the plaintiff has personally submitted a statement acknowledging that he or she has destroyed any “barrier to remarriage that is solely within his or her power to remove following an annulment or divorce.”¹⁸⁶ The statute defines a “‘barrier to remarriage’ to include ‘any religious or conscientious restraint or inhibition imposed on a party to a marriage, under the principles of the denomination of the clergyman or minister who has solemnized the marriage.’”¹⁸⁷ As one scholar noted, “The Get Statute makes it virtually impossible for a New York State civil court to enter a final judgment for divorce unless the plaintiff has filed a sworn statement that he or she has removed all barriers to the defendant’s remarriage or that the defendant has waived, in writing, the statute’s requirements.”¹⁸⁸ Ultimately, the purpose of the statute was to promote an individual’s fundamental right to remarry, while preserving adequate recourse for Jewish women seeking to break away from abusive relationships tenuously based on antiquated technicalities contained within the *ketubah*.¹⁸⁹

Some constitutional scholars also argue that the “*Get Statute*” patently violates the Establishment Clause. This position is based upon the notion that the “*Get Statute*” allows clergyman to prevent a divorce from occurring simply by “submitting a statement rebutting the removal of barriers statement.”¹⁹⁰ In addition, some legal scholars contend that the “*Get Statute*” directly interferes with an individual’s right to freely contract,¹⁹¹ while other schools of thought deride the courts’ failure to effectively maintain the separation of church and state within the adjudication process.¹⁹² Yet other critics denounce the “*Get Statute*” simply for its inclusion of clergyman in the divorce proceeding, because this creates a perception that the divorce proceeding is somehow religious in nature.¹⁹³ Along these lines, one authority on the Constitution’s religious clauses argues that the New York courts’ interpretation of the “*Get Statute*” renders the concept of

185. *Id.* at 304.

186. Barshay, *supra* note 114, at 230.

187. *Id.*

188. *Id.*

189. *Id.* at 229.

190. Warmflash, *supra* note 180, at 250.

191. *Id.* at 251.

192. *Id.*

193. Telephone Interview with Ilene H. Barshay, *supra* note 48; *see also* Warmflash, *supra* note 180, at 252.

“separation of church and state. . .virtually non-existent”¹⁹⁴ and that “New York Judges, irrespective of precedent or statutory analysis, fashion decisions that hinge on the borderline between infringement and constitutionality.”¹⁹⁵ Many Jewish scholars counter that the *get* proceeding is “not religious in nature because it involves no act of prayer or worship.”¹⁹⁶ The obstacles to remarriage within Judaism can thus be expressed as an “indirect effect of civil divorce; the state’s attempt to offset this effect constitutes an accommodation of religion.”¹⁹⁷

Without fail, the “*Get* Statute” falls short of enabling Jewish women to obtain a *get* because there is no provision within the statute that requires a defendant-husband to submit a “removal of barriers” statement during a civil divorce proceeding.¹⁹⁸ At this juncture, a defendant-husband still reserves the right to refuse to grant his wife a *get*.¹⁹⁹ From a public policy standpoint, it seems counterintuitive to require the plaintiff-wife to submit a statement declaring that she has removed all barriers preventing a divorce when, in most cases, it is the husband who is likely to have erected these obstacles. Thus, it seems that the “*Get* Statute” fails to achieve its desired objectives and, therefore, more work clearly needs to be done.

2. Recent Developments

To further combat the disparity in the secular courts between adjudication of Jewish divorce issues and secular familial legal concerns, former Chief Judge of the New York Court of Appeals Judith Kaye spearheaded New York’s first generation of problem-solving courts.²⁰⁰ These special courts are specifically designed to handle all types of familial legal issues including, *inter alia*, domestic violence, drug and alcohol addiction and treatment, and matrimonial matters.²⁰¹ Under this unified system, a single judge presides over one

194. Telephone Interview with Ilene H. Barshay, *supra* note 48.

195. Telephone Interview with Ilene H. Barshay, *supra* note 48; *see also* Barshay, *supra* note 117, at 225.

196. Solovy, *supra* note 99, at 507.

197. Rostain, *supra* note 101, at 1166.

198. Warmflash, *supra* note 180, at 252–53.

199. *Id.* at 253.

200. Jack B. Weinstein, *Does Religion Have a Role in Criminal Sentencing?*, 23 *TOURO L. REV.* 539, 559 n.81 (2007) (*citing* Maura D. Corrigan & Daniel Becker, *Problem-Solving Courts: Moving Problem-Solving Courts into the Mainstream: A Report Card from CJ-COSCA Problem-Solving Committee*, *Court Review* 6 (2002), at 17, *Michigan Bar Journal*, Jan. 2003, *available at* <http://aja.ncsc.dji.us/courtrv/CR39-1BeckerCorrigan.pdf>).

201. *Id.*

family's civil, criminal and matrimonial matters.²⁰² The results of this innovative and progressive agenda of reform have yet to be realized, but should serve as a paradigm for other jurisdictions to follow in the years ahead.

D. Solutions for Obtaining a Get

1. Arbitration: Jewish Religious Panel (Beit din)

Arbitration is an alternative dispute resolution method by which battered Jewish women are afforded an opportunity to redress their grievances.²⁰³ The arbitration process is facilitated by Jewish religious courts, known as the *beit din*, or "house of justice."²⁰⁴ The *beit din* generally consists of three rabbis and functions as an arbitration panel overseeing religious disputes.²⁰⁵ This function is attributable to the *beit din*'s special knowledge of traditional Jewish law and customs. The *beit din* may reach a legally binding decision so long as both parties sign an arbitration agreement consenting to the decision.²⁰⁶ It is worth noting that arbitration may foster inequity in certain situations. As one scholar explains, "arbitration in private religious courts is likely to be inappropriate, as mediation usually results in enhancing the power imbalance between the parties and minimizing the woman's claims against her abuser."²⁰⁷ Therefore, while the *beit din* may be a viable alternative to traditional methods of dispute resolution, it still does not possess the inherent authority to compel the husband to consent to issuing his wife a *get*.²⁰⁸

2. Prenuptial Agreement

The prenuptial agreement provides another vehicle for Jewish women to avoid the strict consequences of Jewish law. In fact, some modern Jewish couples have entered into prenuptial agreements to protect Jewish women from the consequences of being classified as an *agunah* upon termination of the marriage.²⁰⁹ Prenuptial agreements are generally considered civilly enforceable contracts depending on the

202. *Id.* at 559 n.81 (2007).

203. Greenberg-Kobrin, *supra* note 107, at 368.

204. Rosenberg, *supra* note 27, at 139 n.121.

205. Ginnine Fried, *The Collision of Church and State: A Primer to Beth Din Arbitration and the New York Secular Courts*, 31 *FORDHAM URB. L.J.* 633, 634, 641 (2004).

206. *Id.*

207. Horsburgh, *supra* note 1, at 201.

208. *Id.* at 195.

209. Guthartz, *supra* note 33; *see also* Greenberg-Kobrin, *supra* note 107 at 375.

circumstances surrounding their execution.²¹⁰ Prenuptial agreements afford a married couple the option of: “(1) appearing before a religious court or *beit din* to resolve marital disputes, and (2) agreement by consent to the giving of a *get* at the time of a separation or civil divorce.”²¹¹ As will be discussed below, modern prenuptial agreements have evolved in many forms in an effort to adapt and strive to meet the parties’ present needs.

There are two types of standard prenuptial agreements in this context.²¹² The first type is one in which the marital couple agrees to submit to mediation.²¹³ Under this scenario, an arbitrator trained to interpret prenuptial agreements leads the mediation and assists the couple in dividing assets according to the provisions of their agreement.²¹⁴ The second type functions preemptively as an escape clause or “catch all” designed to protect Jewish women under various circumstances.²¹⁵ This type of agreement typically imposes a penalty when certain conditions are breached.²¹⁶ For example, the couple might contract that should a recalcitrant husband fail to consent to the issuance of a *get* upon the dissolution of the marriage, the husband would be required by the prenuptial agreement to pay his wife a stipulated sum.²¹⁷ However, if the husband decides to issue his wife a *get*, he has no financial consequences.²¹⁸

Conflicts may arise in the secular courts where the prenuptial agreement is “formed within the context of a religious document.”²¹⁹ The notion that a secular court will interpret a contract that is religious in nature is problematic in many ways.²²⁰ Thus, the New York Court of Appeals recently held that “the fundamental objective when interpreting a written contract is to determine the intention of the parties as derived from the language employed in the contract.”²²¹ For example, as in a “*get* proceeding” arising under the auspices of a prenuptial agreement, the court often struggles with infringement

210. *Id.*

211. *Id.*

212. Greenberg-Kobrin, *supra* note 107, at 375.

213. *Id.*

214. *Id.*

215. *Id.*

216. *Id.*

217. *Id.*

218. *Id.*

219. *Id.*

220. *Id.*

221. Tandler v. Knesses, 860 N.Y.S.2d 551, 553 (N.Y. App. Div. 2008) (*citing* Abiele Contracting v. New York City School Constr. Auth., 689 N.E.2d 864, 868 (N.Y. 1997)).

issues in conjunction with its interpretation of an abusive husband's First Amendment rights under the Establishment and Free Exercise Clauses.²²²

The struggle by Orthodox Jewish women seeking to secure a secular divorce is further compounded by the influence that rabbis can exert on Jewish divorce proceedings. For instance, some rabbis do not acknowledge domestic violence as evidence worthy to justify divorce.²²³ As one critic noted: “[a]lthough the *beit din* and the pre-nuptial agreement can help women, much depends on the rabbis who sit on the *beit din* or who draft the pre-nuptial agreement.”²²⁴ In addition, “rabbis are often viewed by *agunah* activists as an obstacle to finding *halakhic* [Jewish law] solutions to the *agunah* problem.”²²⁵ Hence, “[w]hile a carefully worded prenuptial agreement may bring some relief to a battered woman or *agunah*, it often does not.”²²⁶ Therefore, Jewish women may still encounter difficulties enforcing the terms of a prenuptial agreement.

a. The United States Supreme Court Fails To Weigh In

Although the Supreme Court has recently attacked the *Lemon* three prong test, it has “failed to explicate a single standard for Establishment or Exercise Clause” violations.²²⁷ “Thus, one cannot conclusively determine the constitutionality of secular court enforcement of prenuptial agreements.”²²⁸ In *Civil Enforceability of Religious Prenuptial Agreements*, author Michelle Greenberg-Kobrin bolstered this analysis of the ineffectiveness of prenuptial agreements, by stating, in pertinent part:

Prenuptial agreements seem to be the best means to prevent future *agunot* within the Jewish community. . . [t]he advantages of the prenuptial, however, are not guaranteed. Civil court judges are often wary of alternate forums, especially ecclesiastical tribunals that are vulnerable to charges of corruption. As a result, civil court judges would prefer to adjudicate the

222. *Id.* at 552.

223. Guthartz, *supra* note 33, at 50.

224. *Id.*

225. *Id.*

226. *Id.*

227. Greenberg-Kobrin, *supra* note 107, at 384 (emphasis added); *see also* *Lemon v. Kurtzman*, 403 U.S. 602, 612–13 (1971).

228. Greenberg-Kobrin, *supra* note 107, at 384.

prenuptial agreement in their own court (emphasis added).²²⁹

Therefore, until there is greater consistency and uniformity within the secular court system on this issue, progress will remain stagnant and Jewish women will continue to suffer dire consequences.

3. *The Lieberman Clause: Conservative Proposal*

The Conservative community has proposed an alternative remedy to alleviate the problems that arise when one party, typically the recalcitrant husband, fails to abide by provisions integral to the *ketubah*.²³⁰ The pioneer of this movement, Dr. Saul Lieberman, a leader of the Jewish Theological Seminary, drafted a significant clause for inclusion in the *ketubah*. The clause, which later came to be known as the “Lieberman Clause,” is designed to penalize the husband for his pervasive failure to respond or comply with a decision rendered by the Jewish religious court [*beit din*].²³¹ While the New York courts have consistently upheld the Lieberman Clause, it has not been adopted uniformly by the Conservative community.²³² This approach is consistent with *Avitzur*, wherein the court “enforced the Lieberman Clause in the Conservative *ketubah*, concluding that a legally valid agreement should not escape enforceability simply because it appears in a religious document.”²³³

Notwithstanding the above, and not surprisingly, the Orthodox Rabbinate has consistently denounced the Lieberman Clause for many years.²³⁴ In fact, the Orthodox Rabbinate has patently failed to recognize the Lieberman Clause because that Rabbinate unequivocally does not recognize Conservative religious court rulings.²³⁵ As one scholar appropriately noted, “[e]ven though secular law may address this issue, an effective solution requires a united Jewish community.”²³⁶ Therefore, because the Lieberman Clause is limited in scope and effectiveness, it arguably falls short of adequately remedying domestic abuse in all denominations of Judaism.²³⁷

229. *Id.* at 393–94.

230. Horsburgh, *supra* note 1, at 200.

231. *Id.*

232. *Id.* at 200–01.

233. Greenberg-Kobrin, *supra* note 107, at 379.

234. Horsburgh, *supra* note 1, at 201.

235. Horsburgh, *supra* note 1, at 201.

236. *Id.*

237. *Id.*

IV. ANALYZING THE EQUAL PROTECTION RIGHTS OF ABUSED JEWISH WOMEN IN CONNECTION WITH JEWISH DIVORCE PROCEEDINGS

A. The Fourteenth Amendment Equal Protection Clause

It is well-established that the Equal Protection Clause of the Fourteenth Amendment guarantees that individuals similarly situated will be treated in a similar manner.²³⁸ In as much as the Equal Protection Clause is designed to protect an individual's fundamental rights and liberties,²³⁹ it provides "freedom of choice in issues of marriage and family."²⁴⁰ Thus, analyzing marital rights in this context is instructive.

Historically, marital rights, such as the freedom to remarry, are traditionally considered protected fundamental rights under the liberty provision of the Due Process Clause of the Constitution.²⁴¹ In the context of domestic violence cases, abused Jewish women often struggle to obtain equal protection under the law, due in part to the courts' reluctance to intercede in religious doctrinal matters.²⁴² It seems that courts are hesitant to infringe upon an individual's contract rights in favor of a Jewish woman's fundamental right to remarry.²⁴³ This is readily apparent in the conflict between secular and religious law concerning Equal Protection claims in the context of Jewish divorce proceedings arising out of a husband's refusal to issue his wife a *get*.²⁴⁴

A critical legal issue to be confronted during the twenty-first century is whether the states have a compelling interest in upholding an individual's right to remarry by effectuating the "remov[al] [of] barriers that prevent the exercise of this fundamental right" under the Fourteenth Amendment.²⁴⁵ On one side of the proverbial coin, some Jewish women argue that if the right to remarry is not protected by the State, then the State has, in effect, burdened a fundamental right to remarry in violation of a guarantee of the Fourteenth Amendment.²⁴⁶ Theoretically, on the other side, perhaps some Jewish men might

238. U.S. CONST. amend. XIV, §1.

239. Solovy, *supra* note 99, at 513.

240. *Id.* at 513–14.

241. *Id.*; U.S. CONST. amend. XIV, §1.

242. *See* Solovy, *supra* note 99, at 515.

243. *Id.* at 523.

244. Solovy, *supra* note 99, at 515.

245. *Id.* at 514.

246. *Id.*

contend that their fundamental right to contract under the *ketubah* may be violated due to the courts' willingness to interfere with a private individual's right to contract. Ultimately, achieving this balance of equities among the parties to a Jewish divorce proceeding is the crux of future challenges for the courts.

1. Case Study: In Re Marriage of Goldman

The case study of *In Re Marriage of Goldman* is germane to the issue of whether the states have a compelling interest in upholding an individual's right to remarry.²⁴⁷ Decided in 1990, *Goldman* stands as another landmark decision interpreting Jewish divorce law.²⁴⁸ In *Goldman*, the husband asserted that the Jewish marriage contract, known as the "ketubah" was not a contract and therefore did not subject him to the laws of the Orthodox Jewish faith.²⁴⁹ The Illinois Court of Appeals, in affirming the trial court's ruling, emphatically held that the ketubah was a contract under which the parties intended the status and validity of their marriage to be governed by Orthodox Jewish law.²⁵⁰ Enforcing the terms of the Jewish marital contract, the *Goldman* court awarded specific performance of the ketubah and found that the trial court's order did not violate the Establishment and Free Exercise Clauses of the First Amendment.²⁵¹ Ultimately, in reaching this conclusion, the court reasoned that a strict interpretation of the *ketubah* "implicitly" required that the husband grant his wife a *get* immediately upon the dissolution of the marriage, in accordance with Orthodox Jewish law.²⁵² Although the prevailing standard established by Illinois's highest court teetered on the collision between church and State, the court avoided this constitutional violation by framing the issue as one governed by contract law, rather than interpretation of religious doctrinal issues.²⁵³ As a result, the framework developed by the Illinois Court of Appeals serves as a model for comparison for other jurisdictions faced with similar challenges today.

247. *In Re the Marriage of Goldman v. Goldman*, 196 Ill. App. 3d 785 (Ill. App. Ct. 1990).

248. *Id.* at 792–96.

249. *Id.* at 787.

250. *Id.* at 792.

251. *Id.* at 794–96.

252. Solovy, *supra* note 99, at 520.

253. *Id.*

2. Public Policy Perspective

With respect to public policy, the husband's position on the issue of *get* enforcement is fatally flawed for a number of reasons. For one, the majority position essentially advocates for upholding an inherently inequitable law that appears to substantially protect men over women.²⁵⁴ In an article entitled *Civil Enforcement of Jewish Marriage and Divorce: Constitutional Accommodation of a Religious Mandate*, author Jodi Solovy extrapolated on this very issue, arguing that "[b]y forcing a husband to grant his wife a *get* upon dissolution of their marriage, the court is ensuring equal application of the law by remedying an inherently discriminatory situation, and enabling both parties to freely remarry on equal footing."²⁵⁵ Moreover, because "Jewish law, unlike constitutional law, has not developed a process for formally repudiating past commentary [condoning wife-abuse]," the state arguably has a heightened interest in reversing the inherent inequity of the outdated Jewish divorce law in order to protect an *agunah's* fundamental right to remarry.²⁵⁶ Consequently, it appears that the state is well-equipped to present a compelling interest argument sufficient to overcome Fourteenth Amendment scrutiny in this regard.²⁵⁷

B. The Interaction between the Secular and Religious Courts in America

According to Jewish law, a Jew may not confront another Jew in a secular court proceeding.²⁵⁸ This inherent conflict between Jewish and secular law is deeply rooted in the tenets of the *Talmud*. The *Talmud* has long had a debilitating effect on Jews seeking to settle disputes before the secular courts in the U.S.²⁵⁹ Fostering this stigma is the internal perception held by many in the faith that it is shameful for a Jew to publicize another's transgressions in front of a secular court.²⁶⁰ The Jewish community especially frowns upon a member who chooses a secular court instead of a Jewish court.²⁶¹ Some fear that the choice to utilize a secular court instead of a Jewish court could

254. *Id.* at 535.

255. *Id.*

256. Horsburgh, *supra* note 1, at 193; *see also* Solovy, *supra* note 99, at 533–35.

257. Horsburgh, *supra* note 1, at 193; *see also* Solovy, *supra* note 99, at 520.

258. Fried, *supra* note 205, at 636–37.

259. *Id.* at 635–36.

260. Fried, *supra* note 205, at 636–37.

261. *Id.* at 637.

dangerously undermine the credibility and authority of the Jewish court to decide religious doctrinal matters.²⁶²

In fact, one legal scholar has even suggested that the secular courts are not properly equipped to adjudicate matters concerning Jewish doctrinal issues.²⁶³ This argument reflects the notion that religious courts typically serve as more viable alternatives to the secular courts based on the religious courts' ability to render decisions without the concern of overstepping constitutional boundaries.²⁶⁴ Moreover, religious litigants can submit to triers of fact of their own faith without fear of judicial activism or public backlash. Furthermore, some Jews may be more comfortable in the setting of a *beit din* due to the threat of anti-Semitism that still covertly subsists within today's American society.²⁶⁵

V. EVALUATING THE LEGAL DUTY OF CLERGY TO ACT IN INSTANCES OF DOMESTIC VIOLENCE

A. General Overview

An analysis of the legal duty of rabbis to act in instances of domestic violence is critical to resolving the issues discussed herein. Rabbis play a somewhat understated but crucial role in facilitating religious practice and fostering Jewish traditions in the Jewish community. Rabbis, like other members of the clergy, engage in and oversee many facets of daily life affecting the family,²⁶⁶ and are central figures to whom members of the Jewish faith look for guidance in troubled times.²⁶⁷ They are often entrusted with the most private, and often times painful, family secrets,²⁶⁸ such as the prevalence of domestic violence within the home.²⁶⁹ Accordingly, this section addresses whether rabbis have a legal duty to act upon notification of domestic abuse in the home.

262. *Id.*

263. *Id.* at 639–40.

264. Horsburgh, *supra* note 1, at 193.

265. Fried, *supra* note 205, at 639.

266. Telephone Interview with Rabbi Michael A. White, *supra* note 35.

267. *Id.*

268. *Id.*

269. *Id.*

B. Maintaining Clergy Confidences: Halakhah versus Secular Law

Maintaining clergy confidences is a controversial issue today, particularly where domestic violence is revealed to a rabbi by a member of his or her congregation. The origin of this problem traces its roots to the dichotomy between traditional *Halakhah* and secular laws, which invariably differ in the respective protections afforded to battered Jewish women, as set forth below.²⁷⁰

For instance, where a rabbi is made aware that physical harm will befall a Jewish woman, rabbis tend to grapple with the issue of breaking confidences in favor of protecting the endangered party.²⁷¹ Evaluating the risk of succumbing to “financial harm” by potentially litigious penitents can sometimes present a challenge for rabbis.²⁷² Naturally, a rabbi’s primary duty is to protect an injured party from harm, and where in question, this duty should always supersede a rabbi’s financial needs.²⁷³ In this regard, the prevailing view under *Halakhah* dictates that rabbis have an affirmative obligation to protect congregants from harm, irrespective of the potential consequences for serious financial hardship.²⁷⁴ An alternative public policy argument is that exposure to “community backlash” would be minimized if rabbis utilized better judgment in protecting an abused congregant.²⁷⁵

1. The Clergy-Penitent Privilege

With regard to confidentiality issues, secular law impacts rabbis in much the same way that it affects other members of the clergy and professionals.²⁷⁶ Members of the religious clergy, like doctors, lawyers, and psychological professionals, also have a fiduciary obligation to maintain confidentiality of their congregation’s communications.²⁷⁷ In the religious context, this right is commonly referred to as the “clergy-penitent privilege.”²⁷⁸ Today, every state has

270. Rabbi Michael Broyde, et al., *Confidentiality and Rabbinic Counseling: An Overview of Halakhic and Legal Issues*, available at <http://www.jlaw.com/Articles/RabbinicCounselings3.html> (last visited Jan. 27, 2010).

271. *Id.*

272. *Id.*

273. *Id.*

274. *Id.*

275. *Id.*

276. ELLIOT N. DORFF, PERSPECTIVES ON THE PROFESSIONS, CONFIDENCES AND THEIR LIMITS IN RABBINIC COUNSELING, Vol. 21, No. 1, Fall 2001, available at <http://ethics.iit.edu/perspective/v21n1%20perspective.pdf> (last visited Jan. 27, 2010).

277. *Id.*

278. *Lightman v. Flaum et al.*, 97 N.Y.2d 128, (N.Y. 2001).

“enacted the cleric-congregant privilege in some form.”²⁷⁹ The statutes differ in three principal respects: their definition of ‘clergy,’ their scope, and the question of to whom the privilege ‘belongs,’ i.e., who may claim or waive, the privilege – the cleric, the congregant, or both.”²⁸⁰ Generally, in accordance with this privilege, clergy members are obligated to maintain confidences, barring certain defined exceptions.²⁸¹

The New York courts have expanded the exception to the “clergy-penitent” privilege in a series of landmark decisions. Presently, under New York law, “the privilege does not attach to statements merely because they are made to a clergyman; rather, it is only confidential communications made to a clergyman in his spiritual capacity which the law endeavors to respect.”²⁸² In this regard, “the privilege ‘belongs’ to the congregant whose burden it is to establish that the privilege applies.”²⁸³

Beginning with the New York Court of Appeals decision in *Keenan v. Gigante*, a case in which a State grand jury subpoenaed an ordained Roman Catholic priest and former New York City Councilman to testify about alleged abuses within the New York City Department of Corrections.²⁸⁴ The priest refused to testify, claiming both that his conversations were privileged under N.Y. C.P.L.R. § 4505 and that to compel him to testify would “jeopardize the free exercise of his ministry.”²⁸⁵ In rejecting these arguments, the Court of Appeals reasoned that “the communications sought to be privileged had not been made in the context of the cleric-congregant relationship, and therefore, ‘the revelation of such conversations, spoken outside the sphere of confidentiality, cannot be said to fall within the sanctuary of the priest-penitent privilege.’”²⁸⁶

Next, in the context of criminal proceedings, the New York Court of Appeals decision in *People v. Carmona*, “made it clear that far from discriminating among religions, the New York legislature intended N.Y. C.P.L.R. § 4505 to protect confidential communications

279. *Cox v. Miller*, 296 F.3d 89, 102 (2d Cir. 2002) (citing Ronald J. Colombo, *Forgive Us Our Sins: The Inadequacies of the Clergy-Penitent Privilege*, 73 N.Y.U. L. Rev. 225, 231 n.39 (1998)).

280. *Id.*

281. *Lightman*, 97 N.Y.2d at 134.

282. *Miller*, 296 F.3d at 104.

283. *Id.* at 106, n.9 (citing *De’Udy v. De’Udy*, 495 N.Y.S.2d 616 (Sup. Ct. Nassau County 1985)).

284. *Keenan v. Gigante*, 47 N.Y.2d 160, 163–65 (N.Y. 1979).

285. *Id.*

286. *Id.* at 167.

between clerics and congregants of all religions, provided that the communication in question qualifies as the kind that the legislature intended, as a matter of policy, to protect: those [communications] ‘made in confidence and for the purpose of obtaining spiritual guidance.’”²⁸⁷

Most recently, the New York Court of Appeals weighed in on the status of the clergy-penitent privilege in the context of Jewish divorce proceedings in the landmark decision of *Lightman v. Flaum*.²⁸⁸ Decided in 2001, *Lightman* centered around an underlying civil divorce proceeding between a Jewish couple living in New York.²⁸⁹

The Court’s analysis in *Lightman* is instructive. In *Lightman*, a Jewish woman claimed violations of the clergy-penitent privilege based upon the rabbis’ disclosure to the woman’s husband concerning her attempted plot to extricate herself from all levels of intimacy with her husband, due, in large part, to an ongoing extramarital relationship with another man.²⁹⁰ In this instance, because the wife had broken Jewish purification laws under Orthodox law, the Court of Appeals determined that the two rabbis maintained unbridled discretion to handle this particular religious infraction in any manner that the rabbis deemed appropriate, given the unique circumstances at bar.²⁹¹ The *Lightman* court ultimately held that two rabbis were not subject to civil liability for breaching a duty of confidentiality.²⁹²

The *Lightman* court, in a close three to two decision, reasoned that while New York state law²⁹³ acknowledges the duty of confidentiality between clergy and penitent, it does not “give rise to a cause of action for breach of a fiduciary duty involving the disclosure of oral communications between a congregant and a cleric.”²⁹⁴ Justice Victoria Graffeo commented that “[t]he prospect of conducting a trial to determine whether a cleric’s disclosure is in accord with religious tenets has troubling implications.”²⁹⁵ Notably, the court indicated that since clerics, unlike doctors and lawyers, are not licensed by the state or subject to state-sponsored disciplinary action for professional misconduct, they have the autonomy to participate in religious

287. *People v. Carmona*, 82 N.Y.2d 603, 609, 606 N.Y.S.2d 879, 627 N.E.2d 959 (1993).

288. 97 N.Y.2d 128 (N.Y. 2001).

289. *Id.* at 131.

290. *Id.*

291. *Id.* at 137.

292. *Id.*

293. *Id.* at 131; *see also* N.Y. C.P.L.R. § 4504(a) (McKinney 2009).

294. *Lightman*, 97 N.Y.2d 128 (N.Y. 2001).

295. *Id.* at 137.

activities without the state's permission.²⁹⁶ As a result, the court limited its ruling in such a way as to avoid prosecuting the decision of the rabbis, while circumventing direct interpretation of Jewish law; a decision arguably motivated by concern for what effect such precedent might have.²⁹⁷

Based on the foregoing analysis, it appears that *Halakhah* and secular law are treated equally under circumstances where the matter concerns the prevention of domestic violence. However, the stark reality is that the enforceability of these laws differs slightly when the domestic violence involves Jewish women. Therefore, secular law, on its face, appears to protect all individuals from domestic violence by permitting certain breaches of confidence between clergy and congregants, while *Halakhic* law is seemingly less consistent in preemptive containment, depending somewhat on the denomination of Judaism involved.

C. Contrasting the Role of Rabbis amongst the Denominations of Judaism

Depending on the denomination of Judaism, the role of rabbis and community leaders and their underlying attitudes towards the issue of domestic violence varies.²⁹⁸ Among the three most popular denominations of Judaism, the Reform Movement tends to be the most progressive, flexible, and active denomination when it comes to the prevention of domestic violence.²⁹⁹ Reform Judaism promotes gender equality while encouraging participation of women in religious customs.³⁰⁰ Moreover, rabbis within the Reform community struggle to counter the inherent inequity that Jewish women face in other denominations of Judaism by seeking to rewrite antiquated Jewish law that is detrimental to Jewish women today.³⁰¹ Reform rabbis' interpretation of the enforceability of the *ketubah* varies differently from clergy in other denominations of Judaism.³⁰² For example, Reform rabbis do not believe that when a couple signs the *ketubah*, the parties truly understand and agree to adhere to all of the outdated and often non-translated scriptures that appear on the face of the

296. *Id.* at 136.

297. *Id.* at 137.

298. Telephone Interview with Rabbi Michael A. White, *supra* note 35.

299. *Id.*

300. *Id.*

301. *Id.*

302. *Id.*

ketubah.³⁰³ Instead, Reform rabbis view the *ketubah* simply as an ornate symbol of a couple's love for each other, and the recognition of the life-long bond that they will share.³⁰⁴

Similarly, Conservative Judaism is less rigid than Orthodox, but not nearly as sensitive or inclusive in its treatment of women as Reform Judaism.³⁰⁵ While the modern Conservative Movement has allowed for active participation of women in certain religious rituals and practices, the "ultra right" Conservative Rabbinate is more closely aligned with the Orthodox Rabbinate in its stance on domestic abuse issues impacting the Jewish community today.³⁰⁶

Unfortunately, domestic violence within the ultra-Orthodox Jewish community remains "unaddressed."³⁰⁷ Orthodox rabbis strictly adhere to Jewish religious doctrine and traditions, and consequently many do not acknowledge domestic violence.³⁰⁸ Instead, they view the subject matter as virtually non-existent.³⁰⁹ Orthodox rabbis tend to discount the more flexible and "gender equal" Reform community in favor of antiquated traditions that place women in an inferior position in relation to men.³¹⁰ Furthermore, the Orthodox Rabbinate generally does not permit women to actively participate in significant religious practices or ceremonies.³¹¹ Nevertheless, although Orthodox rabbis tend not to be as proactive in their efforts to prevent domestic violence in the Jewish community, some strides have been made towards reforming this unacceptable behavior within Jewish culture.³¹²

D. Recent Developments: Domestic Violence Reform Initiatives

During the past two decades, there have been noteworthy developments in domestic violence reform in the Jewish community. The first of these measures occurred in 1994, when "the Rabbinical Council of America (RCA), a group representing Orthodox sects, passed a resolution establishing 'zero tolerance' for abuse and stating that Orthodox rabbis should do everything in their power to protect

303. *Id.*

304. *Id.*

305. *Id.*

306. *Id.*

307. Rosenberg, *supra* note 27, at 150.

308. Guthartz, *supra* note 33, at 42.

309. *Id.*

310. Telephone Interview with Rabbi Michael A. White, *supra* note 35; *see also* Denominations of Judaism, *supra* note 55.

311. *Id.*

312. Horsburgh, *supra* note 1, at 192.

victims.”³¹³ Since that time, other programs have emerged with a focus on rabbinical outreach and law enforcement initiatives aimed at combating domestic violence. For example, in 2005, the Domestic Violence Initiative of the New York Board of Rabbis created an organization called DAYENU! Enough Silence! (“DAYENU!”) to equip and train rabbis and rabbinical students in domestic violence awareness, prevention and intervention.³¹⁴ Since the inception of the DAYENU! program, more than 300 rabbis in the New York metropolitan region have undergone domestic violence training.³¹⁵

In the law enforcement context, the Kings County District Attorney’s office located in Brooklyn, New York recently formed an initiative called Project Eden, which provides educational training programs on domestic violence and the criminal justice system for social services and mental health agencies, community based organizations, political offices, religious institutions, schools, hospitals, and other community leaders.³¹⁶ In particular, Project Eden provides grass-roots training to individuals who have close contact with women in the community and are often privy to family issues.³¹⁷ For instance, rabbis, teachers, attendants, cosmetologists, and day care providers are among those who are trained on how to “recognize domestic violence, how to respond if abuse is suspected and where to refer women. Project Eden is also committed to educating police, prosecutors, judges and other enforcement officials on the dynamics of domestic violence and the specific cultural and religious issues of the Orthodox community.”³¹⁸

Arguably, these progressive developments are a positive step in the right direction. However, this incremental progress does not erase the long standing traditions of *Halakhah*, in which generations of Jewish men have long found a justification for battering women.³¹⁹ For example, some non-Orthodox Jews continue to interpret *Halakhah*

313. *Id.*

314. DAYENU! ENOUGH: The Domestic Violence Initiative of the New York Board of Rabbis, available at http://dayenu.org/about_us.html (last visited on Jan. 27, 2010); see also Ari Goldman, *Rabbis Turn Focus on Domestic Abuse*, NEW YORK DAILY NEWS (Feb. 24, 2008).

315. *Id.*

316. Project Eden: Kings County District Attorney’s Office, http://brooklynda.org/project_eden/project_eden.htm (last visited on Jan. 27, 2010); see also Widawski and Frydman, *A Marriage of Jewish Family Services and the Criminal Justice System*, 82 JOURNAL OF JEWISH COMMUNAL SERVICE, (Winter/Spring 2007).

317. *Id.*

318. *Id.*

319. Horsburgh, *supra* note 1, at 192.

quite differently from the Orthodox Rabbinate.³²⁰ This suggests that the Reform and Conservative communities do not struggle as greatly to overcome the long standing traditions allowing domestic violence.³²¹ However, until leaders in all Judaic denominations collectively denounce domestic violence and take realistic steps to amend certain inequitable portions of Jewish law, domestic abuse will continue to pervade the Jewish community and adversely impact future generations.³²²

E. Proposed Methods for Remediating Domestic Violence

1. Rabbinical Intervention

There are various ways in which rabbis can facilitate the prevention and elimination of domestic violence in the Jewish community today. These methods include: (1) enhanced rabbinical education to the Jewish community, such as delivering sermons on the topic of domestic violence during religious services and holidays;³²³ (2) development of a rabbinical-based communication network between local social service groups, law enforcement agencies and courts, to better equip battered Jewish women with the necessary tools to redress their grievances;³²⁴ (3) establishment of organizations within the synagogues and communities aimed at assisting abused women and children to escape debilitating relationships;³²⁵ and (4) increased awareness of domestic violence 'self-help' remedies through various religious publications, such as a list of available resources for Jewish women who do not want to publicly come forward.³²⁶ These proposals and others mentioned in this article are just a few of many measures that may contribute positively towards eliminating domestic violence that has plagued Jewish women for centuries.

2. The Next Step: The Roadmap to Reform

Where do we go from here to remedy the issue of domestic violence in the Jewish community today? The next step in this mission is critical. However, as with past calls for reform in our nation's history, change cannot take place without establishing a roadmap for

320. *Id.*

321. *Id.*

322. Telephone Interview with Rabbi Michael A. White, *supra* note 35.

323. *Id.*

324. *Id.*

325. *Id.*

326. *Id.*

success. In this article, I propose the development of a grassroots, community-based campaign aimed at directly confronting domestic abuse in the first quarter of the twenty-first century. Is it unrealistic to expect Jewish leaders to devise a campaign to combat domestic abuse within Jewish communities? Jews must strive harder for social reform, now more than ever. The opportunity to effectuate this change is ripe. Although certain reform efforts, such as the passage of the Violence Against Women Act of 1994³²⁷ (VAWA), have been implemented in recent years, there is still room for much needed improvement. Accordingly, I propose a four-year action plan.

First and foremost, this effort must begin with an updated census aimed at identifying all of the population densities and enclaves of Jews domiciled across the U.S. An accurate census is essential to organization-building in the initial stages of change. All denominations of Judaism must band together to establish a governing board in each state or geographic region, where feasible. Each state board will be directly overseen by a national network, established as a non-profit organization for the benefit of the public at large. The infrastructure of this national network will require local and state leaders from each denomination of Judaism to form individual state-wide coalitions. The state-level coalitions would convene to identify and address areas of need specific to that particular state. Each state coalition would retain its individual autonomy and maintain discretionary authority to set policies. The national network would function as a conduit for each state board, offering logistical and administrative support as needed, including a direct entry point for funding, research, resources and tools. The national network would function as an intermediary to assist in effectuating the agenda of each state coalition as well as enforcing or implementing federal legislative policy.

In particular, the national network would assist and spearhead state-wide fundraising efforts in conjunction with local government as well as navigate federal channels to develop and gain access to available federal grant funding. The national network would be comprised of a Domestic Violence “Czar” and a National Council of Leaders representing various industries and fields across America. The “Czar” would be expected to work with or alongside the U.S.

327. The Violence Against Women Act of 1994 (VAWA) is a federal law. It was passed as Title IV, sec. 4000140703 of the Violent Crime Control and Law Enforcement Act of 1994 and signed as Public Law 103-322 by President Bill Clinton on Sept. 13, 1994. See Office of Violence Against Women, U.S. Department of Justice, The Facts about the Violence Against Women Act, *available at* <http://www.ovw.usdoj.gov/ovw-fs.htm#fs-act>.

Department of Health and Human Services in some capacity, to effectuate policies and address issues of social importance during this time. Finally, a network of this reach and magnitude would require a system of checks and balances between both the national and state-level coalitions to: (1) bridge any outstanding policy gaps; (2) ensure and monitor the effects of all reform measures across the board; and (3) to revisit those areas lagging behind on an annual basis.

At first glance, the aforementioned proposal may seem overly ambitious given the state of flux of the economy and other pressing issues that challenge Americans at this time. Naturally, change of this magnitude will not occur overnight. However, domestic violence reform in the Jewish community is long overdue. While campaign efforts may initially start small, this should not deter Jewish leaders from dreaming big. No one ever said change was easy, but where it is necessary, failure is not an option. Historically, the Jewish people have long fought for equality in human and civil rights, and prevailed in times of great upheaval. While the enemy has typically manifested itself as an external force seeking to destroy and conquer, unfortunately, here, the opposition to progress lies within the Jewish faith. It is this great paradoxical dilemma that Jewish leaders must now confront in order to quash the persistent culture of abuse. If effectively implemented, the progressive agenda I propose will undoubtedly accomplish these and other social reforms.

VI. REFLECTIONS AND CONCLUSIONS

Battered Jewish women struggle to obtain equal protection and access to the American legal system today.³²⁸ Modern Jewish women continue to encounter apathy within the court system, law enforcement and even in their own communities.³²⁹ The stigma that Jewish women are inferior to men permeates both the Jewish community and outside, thus affecting a Jewish woman's ability to flee an abusive relationship.³³⁰ In order to eliminate the antipathy directed towards Jewish women, the Jewish community must effectively educate the public and better equip both Jewish and external outreach groups with the appropriate resources to effectively identify and address this epidemic.³³¹

328. *See supra* Part IV.

329. *See supra* Part II.

330. *See id.*

331. *See supra* Part V.E.

Reflecting upon the research conducted for purposes of this article, I am left with many prevailing thoughts and impressions about a religion and culture that I have called my own for twenty-nine years, but have known little about regarding its treatment of women within the faith. Having been raised within the Reform community, and in many ways isolated from the stringent religious and cultural rituals germane to Ultra-Orthodox and Orthodox practices, I was naively shielded from the darkness that has plagued Jewish women for so many years.

It was not until I participated in a domestic violence law seminar that I first became aware of this underground societal plight. From a Jewish man's perspective, it is astonishing and disheartening to fathom how a religion known for its sacred customs and deeply ingrained sense of values could perpetuate such a widespread illusion of equality to the outside world, yet foster such disdain for its women. Throughout this journey, I have been saddened, but not surprised, to learn that domestic abuse had been written into the *Talmud* and endorsed by many respected Jewish leaders for centuries. Certainly, this is not true of the majority of practicing Jews, but rather the small minority that continue to endorse such practices do so at their peril. Nonetheless, the impact and reach of domestic violence in the Jewish community is one that must not be tolerated any longer.

The issue of domestic violence is not solely a "Jewish" problem, but instead impacts all religions and nationalities, regardless of socio-economic status. Although I now have a deeper appreciation for the significant strides that have been made in this arena, I am equally mindful of the arduous mission that lies ahead. It is abundantly clear that more work needs to be done. In order to reverse the inequitable hands of time and justice, it is incumbent upon political, law enforcement, religious, and community leaders alike to continue to advocate on behalf of all victims of domestic violence. Furthermore, while there are positive signs indicating that current efforts to reduce domestic violence in the Jewish community are underway, the difficulty lies in the effective implementation of the vital programs and policies described in this article.

Finally, I hope that this article will not only expose the predicament Jewish women face, but empower and inspire silent victims in other cultures across the world to come forward with one unified voice and work towards putting an end to domestic violence. Recognized reformer Rabbi David Saperstein said it best when he observed that "[d]omestic violence and sexual assault are not problems that will simply disappear from our homes and communities; they are

evils that we must work every day to eradicate.”³³² Until these attainable goals are realized, prospective benchmarks are raised, and societal stereotypes restraining Jewish women are shattered, domestic violence will persist in the Jewish community, under the guise of an unspoken truth, for future generations to come.³³³

332. Press Release, Religious Action Center of Reform Judaism, *Nation's Largest Jewish Organization Praises House Reauthorization of the Violence Against Women Act (VAWA)* (Sept. 26, 2000), available at http://www.rac.org/Articles/index.cfm?id=803&pge_prg_id=4368. (Rabbi Saperstein reacting to the House of Representative's nearly unanimous vote to reauthorize the Violence Against Women Act (H.R. 1248)).

333. Horsburgh, *supra* note 1, at 177.

