



A Canadian story of Jewish divorce: Listening to rabbis across denominations wrestle with egalitarianism and *K'lal Yisrael*

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Abstract: This ethnographic interview-based research (2016–2021) analyzes the narratives of a cohort of rabbis in Ottawa who share their experiences of Jewish divorce. Jewish religious divorce is gendered and asymmetrical where the husband gives the divorce to the passively receiving wife who may not herself initiate divorce. This project interrupts the ways in which Jewish divorce is primarily identified in terms of get abuse in the Orthodox world. The asymmetrical divorce process contributes to get abuse, which includes delaying, refusing, or extorting favourable terms in exchange for the husband providing the wife with her *get* (religious divorce). Women who cannot secure divorces are known as *agunot* (singular *agunah*, chained women), who cannot remarry and who commit adultery if they have sexual relations with another man. Women face the additional burden that if they bear children to anyone other than their husband, such children would have the status of *mamzerim* (singular *mamzer*, legally illegitimate, product of an illicit union) who may not marry other Jews except other *mamzerim*, who may not hold certain positions of communal leadership, and whose status is inherited from generation to generation. This gendered injustice becomes the focus of scholarship even as it arouses both communal activism and internal debates. While get abuse is most common in the Orthodox Jewish community, our interviews with Canadian rabbis reveals that Jewish divorce is a transdenominational phenomenon that plays out within and across denominational boundaries. Against a backdrop of

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increasing stringency in the Orthodox world transnationally, and intensifying concern for the consequences of egalitarian Jewish divorce, rabbinic stories point to shifting denominational practice. This transdenominational context is key to understanding Jewish divorce in North America. Attending to Jewish divorce in Canada through a denominational lens does important work in disentangling systemic and local factors. We argue that rabbinic stories about how rabbis engage with divorce reveals how the twin challenges of egalitarianism and rabbinic concerns for the unity and continuity of the Jewish people (*K'lal Yisrael*) shape the experience of Jewish divorce and divorce practice itself. Jewish divorce impacts women in particularly gendered ways but is largely interpreted and practiced by male rabbis. Through our original theoretical framework of “troubling orthopraxy”, we analyse how orthopraxy (correct divorce practice) is conflated with stringency, and how that dynamic pushes and pulls at divorce practice.

Résumé : Cette recherche ethnographique basée sur des entretiens (2016-2021) analyse les récits d'une cohorte de rabbins d'Ottawa qui partagent leurs expériences du divorce juif. Le divorce religieux juif est genré et asymétrique puisque le mari donne le divorce à la femme qui le reçoit passivement et ne peut l'initier elle-même. Ce projet interrompt la manière dont le divorce juif est principalement identifié en termes d'abus du *get* dans le monde orthodoxe. Le processus de divorce asymétrique contribue à l'abus du *get*, qui comprend le fait de retarder, de refuser ou d'extorquer des conditions favorables afin que le mari fournisse à la femme son *get* (divorce religieux). Les femmes qui ne peuvent obtenir de divorce sont connues sous le nom d'*agunot* (singulier *agunah*, femmes enchaînées). Elles ne peuvent se remarier et commettent un adultère si elles ont des relations sexuelles avec un autre homme. Elles sont aussi confrontées à un fardeau supplémentaire, car si elles ont des enfants d'un autre homme que leur mari, ces enfants ont le statut de *mamzerim* (singulier *mamzer*, légalement illégitime, produit d'une union illicite) qui ne peuvent se marier avec d'autres Juifs, sauf avec d'autres *mamzerim*, ne peuvent pas occuper certaines positions de leadership communautaire et lèguent ce statut de génération en génération. Cette injustice sexospécifique devient le centre d'intérêt des chercheurs, alors même qu'elle suscite à la fois un activisme communautaire et des débats internes. Si les abus sont plus fréquents dans la communauté juive orthodoxe, nos entretiens avec des rabbins canadiens révèlent que le divorce juif est un phénomène transconfessionnel, se jouant à l'intérieur et au-delà des frontières confessionnelles. Dans un contexte où le monde orthodoxe devient de plus en plus strict au niveau transnational et où l'on s'inquiète de plus en plus des conséquences d'un divorce juif inégalitaire, les récits rabbiniques indiquent une évolution des pratiques confessionnelles. Ce contexte transconfessionnel est essentiel pour comprendre le divorce juif en Amérique du Nord. L'étude du divorce juif au Canada dans une optique confessionnelle permet de démêler les facteurs systémiques et locaux. Nous soutenons que les récits rabbiniques sur la façon dont les rabbins abordent le divorce révèlent comment le double défi de l'égalitarisme et les préoccupations rabbiniques pour l'unité et la continuité du peuple juif (*K'lal Yisrael*) façonnent l'expérience du divorce juif et la pratique du divorce. Le divorce juif a un impact particulièrement marqué sur les femmes, mais il est largement interprété et pratiqué par des rabbins masculins. Grâce à notre cadre théorique original de « l'orthopraxie troublante », nous analysons comment l'orthopraxie (pratique correcte du divorce) est confondue avec la rigueur, et comment cette dynamique pousse et tire sur la pratique du divorce.

Keywords

agunot, gender, Jewish divorce, Judaism, rabbi, troubling orthopraxy

Mots clés

agunot, genre, divorce juif, judaïsme, rabbin, orthopraxie troublante

“If you’re going into business, you want to sell the product that the most people are going to buy . . .” (Botnick, 2016)

“I really do think that the effect that we’re seeing on women who are going through a divorce process probably has to do with generic patriarchy that exists in every construct that we live within – religious, and secular, and social, and cultural, right – it’s all patriarchy everywhere.” (Zuker, 2019)

“And that helped me find a middle ground in really adhering to tradition and best if I feel comfortable but doing so in a way that demonstrates our values, certainly our notion of equality and inclusivity. I realized you could take that argument in the opposite direction and you’re not going far enough. But it’s as far as I am comfortable going towards tradition, but at the same time holding up our values.” (Mikelberg, 2020)¹

Introduction

This article focuses on the voices of a cohort of rabbis in Ottawa who share their stories of Jewish divorce. Against a backdrop of increasing stringency in the Orthodox world, and intensifying concern for the consequences of inegalitarian Jewish divorce, rabbinic stories point to shifting denominational practice.² We argue that their narratives expose how the experience of divorce is profoundly contingent and is richly entangled with the twin challenges of egalitarianism and rabbinic concerns for the unity and continuity of the Jewish people itself (*K’lal Yisrael*). We contend that these challenges are aroused by the fact that traditional Jewish divorce practice is inegalitarian in that men must both initiate and consent to the divorce process, whereas women cannot initiate the *get* (Jewish religious divorce). This gendered injustice creates the conditions for *get* abuse, including *get* refusal or *get* delay which may further involve extortion to secure more favourable terms in a civil divorce before granting the *get* (Aranoff and Haut, 2015: 40). This phenomenon is most prevalent in the Orthodox Jewish community, which in turn stakes out the parameters for thinking about Jewish divorce more generally. *Get* abuse, with its real harm to women and children, is targeted as the problem to which feminist scholarship, feminist activists and rabbinic leadership must respond. Our interviews with Canadian rabbis recalibrate this focus on *get* abuse to illuminate how the structural inequalities of Jewish divorce are a transdenominational phenomenon that plays out within and across denominational boundaries. Through our original theoretical framework of “troubling orthopraxy”, we parse how orthopraxy (correct divorce practice) is conflated with stringency, and how that dynamic pushes and pulls at divorce practice.

To speak of orthopraxy in the context of Jewish divorce is to acknowledge two (seemingly) contradictory impulses we hear in our interviews. First, *all* denominations assert their own halakhic (religious legal) practice as normative, authentic, and therefore correct (orthopraxy), while viewing other practice as comparatively stringent or lax. Second, despite this truism, Orthodox practice continues to be held up across denominations as the normative practice to which all other practice responds – even when it manifests as increasingly stringent (troubling practice). Here, correct practice is conflated with

increased stringency. This troubling orthopraxy is manifest as the Orthodox gaze. Through this gaze, the Orthodox understanding of the correct interpretation and practice of *halakha* persists as an authentic marker of Judaism, Jewish life, and practice. Issues of personal status, most often bound up with questions of egalitarianism, are often the flash-point for these contestations. Whereas the Orthodox gaze sees such practice as divinely mandated, universal, and normative, the non-Orthodox world is compelled to also see questions of law, identity, and status in light of that gaze as it defines itself against and in terms of “tradition”. However, it would be wrong to imagine Orthodoxy as monolithic. Orthodox Judaism encompasses a range of positions that extend from the controversial and marginal Open Orthodoxy (which identifies as Modern Orthodox) to the Modern Orthodox denominational movement (associated with the Rabbinical Council of America), to *Haredi* forms of Orthodoxy (also known as ultra Orthodox and including Hasidic Judaisms).³ Our interviews highlight how tensions between correct practice and egalitarianism reverberate between and within denominations troubling denominational boundaries and identities.

“Troubling orthopraxy” invokes “troubling” in two distinct senses: as a verb and as an adjective, we seek to trouble orthopraxy and we are troubled by it. Here, we are gesturing theoretically towards the project of “troubling” essentialist categories (e.g. the work of troubling gender in *Gender Trouble* by Judith Butler (2006)), where we seek to disrupt and make visible the ways in which orthopraxy functions. First, as a verb, we hear in our interviews how stringency conflated with correct practice is “troubling” denominational praxis, especially in terms of egalitarianism. Second, we use “troubling” as an adjective to reflect on how we are troubled as feminist scholars by the ways in which increased stringency, asserted as orthopraxy, shapes divorce practice and negatively impacts women and children.

Theoretically, this work emerges from scholarly conversation between liberal feminists (Adler, 1999; Plaskow, 1994) and Orthodox feminists (Adler, 1971; Greenberg, 1985; Hachohen et al., 2004; Joseph, 2001; Ross, 2004) that theorizes (often theologically) how to understand, negotiate and transform Jewish law (and life). Attending to the gendered expressions of troubling orthopraxies, this project participates in a trajectory of Jewish feminist scholarship that directly engages particular historical gendered experiences and interpretations of the law (Baskin, 2002; Cohen, 2007; Peskowitz, 1997).

In privileging rabbinic voices, we are attendant to several theoretical and methodological hazards. First, we are acutely aware that not all voices are equal. Given the relational power in the processes of Jewish divorce, it is clear that rabbinic voices have an outsized influence on the actual religious process, and therefore upon the experience of women particularly, but of men as well. Second, as feminist scholars, we are attuned to the scholarly problem of discerning women’s voices or experiences from masculinist narratives. Jewish feminist historians like Peskowitz have shown in *Talmudic* texts that we learn more about the rabbis who speak about women than we do of the women themselves (Peskowitz, 1997). Hearing contemporary rabbis speaking about women’s experiences of divorce is similarly revelatory of their privileged perspectives. Third, and while it is the most obvious risk, foregrounding rabbinic voices necessarily risks replicating precisely those gendered power structures we seek to trouble.

Although this particular article focuses on rabbinic voices, our larger project aims at a “thick” ethnographic approach that learns from different respondents to develop a rich

and complex account of particular cultural contexts and phenomena (Shkedi, 2003). Our methodology takes seriously the ways in which this project's validity depends on a broad circle of stakeholders who represent different social positions and experience divorce practice from a range of locations (Hawkesworth, 2006). Our approach is informed by feminist standpoint theory and methods as it is "communities and not individuals who produce knowledge, and that 'truth' is 'in the discourse'" (Neitz, 2011: 60). Feminist standpoint theory is an epistemology, grounded in Marxist theory, that significantly engages the position and experience of women as both a way of knowing the world and a method through which that knowledge can be critically interrogated (Hartsock, 1983). Within our larger investigation of Jewish divorce in Canada, feminist standpoint theory directs our gaze towards gendered experience, how the process is itself gendered, and the heteronormativity that permeates that process. It also highlights the need to understand how men have participated in and produced knowledge about women, gender, and sexuality within the framework of Jewish divorce. Thus, our focus here on predominantly male rabbinic voices is both an important dimension of our larger research project, and in and of itself worthy of substantive feminist study. Drilling down to largely male rabbinic voices runs the risk of reinforcing their oversized influence. However, it is necessary to focus on their voices in order to trouble that very privilege.

Current research on Jewish divorce focuses on the Orthodox community as the locus of divorce because it is the site of *get* abuse and because other denominations claim to have resolved the problem of *get* abuse (Rakeffet-Rothkoff, 1995; Ross, 2004). *Get* abuse is the consequence of the inegalitarian structure of Jewish divorce. Traditionally, women who are bound to unwanted marriages are known as *agunot* (plural of *agunah*) – literally 'chained' women (Biale, 1995: 102). A woman could become chained to a marriage if a husband declines to give his wife a *get*, or if he is missing or presumed dead without confirmation and thus cannot give a *get*. This asymmetrical gendered process opens up the possibility of *get* abuse.

In contrast, this article hones in on rabbinic narratives across denominations from a particular city, resulting in a thick account of one community's interdenominational experience of divorce. We use Ottawa as an entry point for thinking about the Canadian context. From 2016 to 2020, we interviewed twelve rabbis from all denominations (two Chabad, three Modern Orthodox, two Conservative, three Reform, one Reconstructionist, and one with Orthodox training but identifying as non-denominational).⁴ Although non-Orthodox rabbis can be female, rabbis in Ottawa are predominantly male. Only two of the twelve we spoke to were female and only one was the primary rabbi for her congregation. Two of the rabbis, both male, had experienced Jewish divorce themselves. The rabbis ranged in experience and were aged from 32 to 76 years. Five of the rabbis were born in Canada, four in the US, and three in Europe. Ethnoreligiously, all of the rabbis we interviewed are Ashkenazi (there are no Sephardi or Mizrahi pulpit rabbis in Ottawa); thus, this study does not speak to Sephardi or Mizrahi rabbinic practice.

A further complicating factor for the Canadian context is the state-sanctioned Israeli Rabbinate's decisions in a variety of cases and public statements that assert authority over Jewish status, not only in Israel but also extending to the Diaspora.⁵ Given the Rabbinate's constitution as an Orthodox court whose rulings have increasingly reflected a preference

for stringency, we heard from our lay and rabbinic respondents that these resulted in heightened anxieties about the recognition of non-Orthodox practice and identities.

Jewish divorce in Canada: A primer

To make sense of these interviews, and the transdenominational impact of orthopraxy, we offer a brief introduction to the context of Jewish divorce in Canada.

What is Jewish divorce and what are the consequences of failing to divorce?

Jewish divorce is religiously possible because it is outlined in the Hebrew Bible (Deut 24:1–4), which sets up an asymmetrical gendered process where the husband grants the divorce to the passively receiving woman by giving her a written *get*. These characteristics are reinscribed in the rabbinic discussion in the Mishnah which reasserts the husband's central role in the divorce ritual and the necessity of his consent (but not hers) (BT Gittin 88b).

According to Jewish law, women cannot secure a religious divorce without a husband's consent. If a woman fails to receive a *get* she may not remarry. Her inability to remarry is not only personally tragic, it also signifies a systemic failure. Without a *get*, if a woman has relations with a man other than her husband, she commits adultery according to Jewish law (Biale, 1995: 183–189). Children of an adulterous union gain the religious status of illegitimacy (known as *mamzerim*) and cannot marry other Jews (Mishnah Kiddushin 3:12; Yevamot 4:12–13). This irreversible status is inherited in perpetuity (Deut 23:3). There is no similar consequence for a man (or his offspring) who engages in sexual relations or procreation without a *get* (as long as his partner is unmarried). Further, while a woman can refuse to accept a *get*, her refusal does not preclude the *beit din* from authorizing the divorce against her will.⁶

These foundational understandings, as expressed traditionally in *halakha*, still frame all modern Jewish understandings of divorce (Aranoff and Haut, 2015; Goldstein, 2007; Hachohen et al., 2004). The material context for the divorce process is the rabbinical court, which adjudicates all matters of personal status such as conversion and divorce. It is the *beit din* that establishes Jewish status and determines who is a Jew and who a Jew can marry. Prior to the modern period and the development of denominations, while women did become *agunot*, there also existed largely effective social pressures and *halakhic* remedies which the religious court could apply (Hachohen et al., 2004; Riskin, 1989).⁷

What is the denominational context for Jewish divorce in Canada?

The story of Canadian Jewish divorce is a modern one, rooted in modern denominational and demographic shifts within the larger North American context. After the Second World War, Canadian patterns follow the American experience of US Jewry coalescing into four denominations, which each have their own relationship to *halakha* and thus developed their modern divorce praxis. Orthodox Judaism is, as Tamar Ross argues, “a Judaism that consciously embraces observance of *halakha*, in the face of other options”

(Hacohen et al., 2004: 4). For Jewish divorce, as in all matters that require religious legal interpretation, Orthodox rabbis proceed from the understanding that *halakha* is divinely mandated, can only be interpreted through traditional processes, and cannot be driven by human concerns. It is not that other denominations do not embrace *halakha* or see themselves functioning within the tradition, but rather that non-Orthodox denominations explicitly acknowledge historical context (and forces) and value the role of the human interpreter in shaping Jewish practice. Denominational differences in Jewish divorce practice, and more critically in how to approach the problem of the inegalitarian structure of Jewish divorce, proceed from these orienting relations to *halakha*.

Much of the public and modern scholarly discussion of divorce in Canada (and globally) examines Orthodox practice in light of the problem of the *agunah* and *get* abuse.⁸ It is *halakha*, regarded as fully authoritative in the Orthodox community, that establishes the framework that makes the *agunah* (and *get* abuse) possible, and quite simply, it is in the Orthodox community where we hear of most examples of *get* abuse. Our research interrupts this narrative by asserting that *get* abuse, even when it is framed as an Orthodox problem, is embedded in transdenominational contexts. Despite the ways in which Orthodox practice is often framed as normative, Orthodox Judaism is neither a majority in Canada nor the US.⁹ Scholars (and the rabbis we spoke to) often talk about how Canada skews a little more “traditional”. This refers to how, in each denomination, Canadians are more traditionally observant of *halakha*, and further, that there is a lag of perhaps 20 years in how Canadians follow US religious trends (Schnoor, 2011). While we assert the significance of denominationalism in Canada for divorce, we hear a Canadian preference for traditional practice in our interviews that transcends denominational boundaries and that functions to reinforce orthopraxy in the Canadian context. That being said, we must underscore the potent disjunction, articulated by the rabbis themselves across denominations, between the reality of a largely non-Orthodox (and increasingly unaffiliated) Canadian Jewish community and conceiving of Jewish divorce as an Orthodox problem.

A medium-sized Canadian city like Ottawa (that is large enough to encompass denominational diversity but small enough that interdenominational engagement is the norm) permits a “thick” description of the experience of divorce between and across denominations. We spoke first to local Ottawa rabbis because of their outsized influence on how Jews experience divorce. Across denominations, it is rabbis who interpret the law and oversee divorce practice.

Rabbinical courts

The rabbis we spoke to deliberate carefully about how a couple should divorce. Central to this question is what *beit din* is viable. The Canadian context for *batei din* is distinctive in terms of the ways in which the Jewish population is concentrated in cities. Ashkenazi practice is normative, with 80% of the population identifying as Ashkenazi; however, Sephardi practice can be accommodated.¹⁰ By default, Orthodox divorces overseen by Orthodox *batei din* will be recognized by all denominations. In many smaller communities, including Ottawa, there often is not a standing Orthodox *beit din*, and divorcing parties are referred to other cities either in person or by proxy for Orthodox practice.

Historically, Orthodox practice was often recommended by non-Orthodox rabbis in Ottawa; however, this is changing with recently appointed rabbis. Notably, the current Reform rabbi, Rabbi Daniel Mikelberg, who came to Ottawa after serving as a pulpit rabbi in Toronto and Vancouver, states unequivocally that he would not counsel a divorcing couple to go to an Orthodox *beit din* “because I could never send a couple to a place where both voices would not be honoured” (Mikelberg, 2020). With his experience with the (only Canadian standing) Reform *beit din* in Toronto, he plans to recommend the Reform *beit din* to divorcing couples.¹¹ The current Senior rabbi of the Conservative synagogue, Rabbi Eytan Kenter, has never, since his arrival in Ottawa, sent couples to Orthodox *batei din* but has always struck his Conservative *beit din* as needed, using a US-based Conservative *sofer* (scribe trained to write Jewish legal documents) to write the *get* itself. We heard from several non-Orthodox lay respondents that they themselves reached out to the (Orthodox) *beit din*, even without rabbinic direction, due to their understanding that Orthodox practice was normative.

How have the denominations responded to the inegalitarian nature of divorce?

All denominations have some response to the charge that Jewish divorce is inegalitarian and to the challenge of *get* abuse. The historical fact that all of the major denominations found their full expression in the US, and the demographic fact of the sheer disparity in size between the Jewish population in the US and in Canada, predictably shape US-centric denominational practices and narratives. Canadian rabbis are quick, however, to point out that Canada is different and that one cannot predict Canadian practice based merely on US denominational directives.

The Canadian Modern Orthodox response to the *agunah* problem is framed by the US-centred movement’s leadership and recognizes the injustice of *get* abuse while consistently drawing its solutions and strategies from *halakha* and tradition. For the modern Orthodox rabbis we spoke to, the prenuptial agreement is *the* solution. The Modern Orthodox rabbinate (Rabbinical Council of America) regards a husband’s consent as essential for a divorce to be *halakhically* valid and has advocated for the use of prenuptial agreements which do not compromise consent. The RCA prenup is a binding arbitration agreement where the bride and groom agree to submit to the binding authority of the *beit din*. The key to the RCA prenup is the daily financial penalty imposed on a groom who delays delivering a *get* once the *beit din* has adjudicated that he must do so.

In Canada, Rabbi Whitman’s project to develop a Canadian prenup responds to the reality that the US prenups simply do not work in Canada because the prenup functions as an arbitration agreement and cannot be recognized by Canadian courts. These agreements would not be upheld in Ontario and Quebec courts because they are religious arbitration agreements and those courts will not enforce them.¹² Still, the US-trained Rabbi Scher is optimistic:

I honestly believe that this *halakhic* prenuptial agreement is working incredibly well. I don’t know of any US Modern Orthodox rabbi that does not insist on [its] being written or being done before any marriage now. So far the success rate is a hundred percent, that every single marriage

that has had a prenup agreement, and that has come to an end, the woman has received the *get*. I can't make this claim for Canada, because the prenup doesn't have the same power in Canada. (Scher, 2016)

Acknowledging that prenups are not a pan-Orthodox solution, he continues, “. . . Unfortunately, there are segments of the Orthodox community that are still not signing those prenup agreements” (Scher, 2016).

Still, as a solution, the Modern Orthodox prenuptial agreement signals a sea change in the cultural conversation and practices around Jewish divorce and *get* abuse. Despite claims of 100% effectiveness, serious concerns about the prenups in general remain. First, prenups do not resolve “classic” *agunah* cases where a husband is missing or incapacitated; they are aimed at preventing *get* abuse. They cannot help those who married before the use of prenuptial agreements who cannot avail themselves of its terms.¹³ Second, prenuptial agreements do nothing to change the structural gendered inequalities that are embedded in *halakhic* divorce practice. Third, practically, if a man still does not agree to deliver a *get*, he can still refuse, and in the case of the RCA prenup simply pay the financial daily penalty, leaving the woman an *agunah*.

In Ottawa, the largest *haredi* community is associated with Chabad (the *Hasidic* movement that is best known for its outreach (*kiruv*) to less observant Jews), whose inclusive mandate has attracted a broad, and often much less traditionally observant, constituency.¹⁴ Both of the *Chabad* rabbis we spoke to have positive views of prenuptial agreements that are in contrast with the more common *haredi* position that such agreements may result in “*get me 'usah*” that is, “any *get* that is the product of duress or coercion” (Breitowitz, 1993). In fact, we spoke to them shortly after an Ottawa-wide information session held for rabbis by Rabbi Whitman to inform local rabbis about the status of a proposed Canadian prenup.¹⁵ Their participation in this meeting is characteristic of *Chabad* rabbis who are less insular than other *Hasidim* (or *haredim*) and may explain their relative openness to prenups in contrast to other *haredim*. Rabbi Blum has used both the modern Orthodox RCA prenup as well as Rabbi Whitman's Canadian prenup and believes that they are an important part of the solution. Rabbi Blum explains his optimism for the plight of *agunot*:

I think that the good things that are going on now is that rabbis are trying to figure out ways with prenups to ensure that the one who needs to receive the divorce has not been a hostage and so that we can put an end to the *agunah* situation. I think with that sense, there are a lot of positives going on . . . (Blum, 2016)

Still, the other *Chabad* rabbi we spoke to, Rabbi Botnick, although he thinks an effective prenup may be possible in the future, declines to use a prenup, pointing to how they are not always accepted in more stringent circles (here he refers to New York communities) and also that such prenups are not binding under Canadian law. Here we would like to draw attention to how the use or lack of use of prenuptial agreements changes the culture around both marriage and divorce. The use of prenuptial agreements requires a premarital counseling session around how a marriage might end and the role of the prenup in the prevention of *get* abuse. When asked about how he prepared a couple for marriage,

if he spoke about issues of *get* abuse, Rabbi Botnick replied that he did not, and that the couple should

be thinking only about one possibility and that is marriage is going to be forever, okay? No *other* possibility should enter their mind. We live in a time when the institution of marriage is so fragile that to allow someone to go into it, already entertaining the possibility that it isn't going to make it, I won't say assures that that happens, but it makes it a *lot* more likely. (Botnick, 2016)

Rabbi Botnick is not naïve about the risk of *get* abuse. He does see *get* delay and *get* denial happen and characterizes such behaviours as a “vicious mode” (Botnick, 2016) of behaviour. He does avail himself of *halakhic* tools to resolve such cases but these are circumscribed by his real concerns “not to make the problem bigger”, signaling his own anxieties about a *get* being invalidated by those who are more stringent and therefore risking the wife being accused of adultery and the conception of *mamzerim* (Botnick, 2016).

In Canada, as in the US, every denomination other than Orthodox will find a way to dissolve a marriage if a husband does not consent to giving his wife a divorce. The Conservative movement accomplishes this through its *halakhic* practices. These include the widely used Lieberman clause (included in the *ketuba*, the religious marriage contract which, among other things, specifies the husband's obligation to pay a specified settlement in the case of divorce), which allows either party to summon the other to the *beit din* for a divorce (and submit to their authority and guidance), the Conservative antenuptial agreement where the husband agrees to provide a *get* within six months of civil divorce or the marriage is annulled by the Conservative *beit din*, as well as a series of more extensive *halakhic* tools for dissolving a marriage.¹⁶ *Get* refusal is not possible in the Reform and Reconstructionist movements, which each assert the egalitarian principle of the right of women to initiate their own divorces as well the power of rabbinical courts to dissolve marriages where a spouse fails to consent.¹⁷

Similarly, only Orthodoxy retains the category of *mamzerut*. The Conservative Committee on Jewish Laws and Standards rendered the category of *mamzerut* “inoperable”, beginning in 1970 with evolving instructions to rabbis culminating in 2000 with the direction to neither inquire about nor accept evidence regarding *mamzerut* status (Spitz, 2002: 558). In asserting the validity of civil divorce, Reform Judaism has, from its inception, not required religious divorce, and this precludes the possibility of the status of *mamzerut* (*Central Conference of American Rabbis*, 1976). Reconstructionist Jewish sources also treat this as self-evident.

Shifting denominational rabbinic practice

Rabbinic stories expose the denominational fault lines, and symbolic boundaries, that underlie questions of personal status, stringency, and concerns for Jewish peoplehood (*K'lal Yisrael*) while also illuminating the variability and contingencies of Jewish religious divorce. Their stories richly capture the communal history and the varieties of rabbinic practice and experience. Lamont and Molnár explain, “symbolic boundaries are conceptual distinctions made by social actors to categorize objects, people, practices, and even time and space. They are tools by which individuals and groups struggle

over and come to agree upon definitions of reality” (Lamont and Molnár, 2002: 168). We use symbolic boundaries to signal how rabbis distinguish their understandings of shared and different practices and identities. We found that denominational identity or practice are not stable and denominational boundaries are both fluid and porous. Rabbis may be trained in one denomination, and later serve in another denominational community. Synagogues may shift denominational affiliations over time. For a variety of reasons, including marriage and other life choices, individuals (and their children) move in and out of denominational settings, while also acting in ways that potentially change their *halakhic* status. Religious status and religious marital status affect the ability of Jews to marry each other.

Ottawa rabbinic narratives illustrate how shifts in denominational rabbinic practice can be understood as responses or resistance to troubling orthopraxy. Shifts in practice are most evident in the striking contrast between stories from Ottawa’s past and its present which often concern questions about how and where someone might divorce. Our earliest story comes from the 1970s, told to us by the late Rabbi Emeritus Reuven Bulka (1944–2021), a much beloved and well-respected leader of the Canadian Jewish community. He describes how when he was a young (Modern Orthodox) rabbi in Ottawa he had the case of a man, whom he describes as intransigent, who was refusing to give his wife a *get* (Bulka, 2016). With no local *beit din*, Rabbi Bulka enlisted the assistance of the Rabbinical Court in Montreal. He describes how when they had intelligence that the recalcitrant husband would be at his home in Ottawa, “we actually barged into his home, through his bedroom window, and sat there and said ‘we are not leaving here till you authorize the *get*’”. This “cloak and dagger” story continues as Rabbi Bulka describes how, concerned that the man might revoke the divorce and render it invalid, the others “zipped off to Montreal, wrote the *get*, and it was transmitted to the lady” while they stayed with the husband until it was complete. Today, much of the increased Orthodox *halakhic* stringency around Jewish divorce is around the question of coercion that might render a divorce invalid. Rabbi Bulka’s position at the time was clear, this was not coercive: “We said we are not leaving; we did not hold a gun to his head.” In 2016, we asked the then rabbi emeritus if would do it again. He demurred. “I am not sure”, he then replied, and laughed that one might get arrested. Coercion, however, *is* the issue. At the time, there were well-known cases in the Orthodox world where a husband later recanted and claimed coercion to another *beit din* who invalidated the divorce. The conflation of correct practice with stringency displaces women, their agency, and their concerns in these rabbinic stories. A woman can be chained again, and troubling orthopraxy opens the door for additional extortion. As we contrast Rabbi Bulka’s narrative with more recent stories, we target the shifting norms around denominational divorce practice that are driven by anxieties about Jewish status, unity, and continuity (*K’lal Yisrael*). We note how egalitarianism and the impulse for increased stringency each push and pull at the symbolic boundaries that are at stake in Jewish divorce.

Interdenominational cooperation is a celebrated strength in Ottawa that has transformed over time. Rabbis spoke about a history of collegiality and mutual respect that continues to this day. Newcomer Reform Rabbi Daniel Mikelberg reflected on how in medium-sized cities like Ottawa and Vancouver, “when you are looking for collegial support, you’re looking across denominations” (Mikelberg, 2020).

That support takes many forms, historically; in a medium city like Ottawa that collegiality included serving on another *beit din*. We were not surprised to hear of Conservative rabbis serving on Reform *batei din* or an unaffiliated rabbi with Orthodox *semicha* (rabbinic ordination) assisting on a Conservative *beit din*. We were, however, intrigued to hear how in Ottawa historically cooperation extended to inviting Conservative rabbis to serve on Orthodox *batei din*. In the past across North America, Orthodox rabbis were willing to work with Conservative rabbis, because many Conservative rabbis came to the Conservative movement after receiving their training from Orthodox seminaries. In Ottawa, Conservative rabbis were known to serve on Orthodox *batei din* and as witnesses (particularly for the purposes of conversion).¹⁸ With Orthodox *semicha* and the fact that Conservative rabbis were known to be “*shomer*”, or *halakhically* observant, Conservative rabbis met the requirements of both rabbinic authority and piety to serve on the Orthodox *beit din* (or as a witness). As the Conservative movement grew, Conservative rabbis more often received their training from Conservative seminaries instead of Orthodox *yeshivot*. This led to increased Orthodox questioning about the legitimacy of Conservative *semicha* and rabbinic piety and observance. The ordination of female rabbis by the Conservative movement also meant that there was an entire cohort of Conservative rabbis who could never serve on a *beit din* by Orthodox standards. Despite all of this, cooperation on this issue persisted longer in Ottawa than in other locales, perhaps because of the personalities, personal philosophies, and *semicha* of the local rabbis as well as the practical need for that cooperation. That shared Ottawa practice has all but disappeared over time, reshaping the terrain of interdenominational cooperation and signaling a shift in the symbolic boundary of who belongs within a shared community of practice (i.e. who is a legitimate rabbi, judge, or acceptable witness).

We heard from Reform rabbis of a history of variable practice over the last 25 years in Ottawa that illustrates how Reform rabbis (and the Reform movement more generally) have both resisted and responded to the Orthodox gaze and troubling orthopraxy. They described how their movement and the conversation about divorce has changed, in the larger Jewish community, in the secular world, and in their denomination. From a US perspective, the conversation has moved from less concern about the consequences of non-*halakhic* divorce to a growing awareness of the need for spiritual closure, and more urgently, towards concern about the intergenerational impact of non-*halakhic* divorce practice.¹⁹ Since the 19th century, the US-based Reform movement has grappled with the question of whether a *halakhic* divorce was even necessary (Jacob, 1980). Against the backdrop of American understandings of the separation between Church and State, the Reform movement affirmed that a civil divorce was sufficient because of the principle of “*dina d’malchuta dina*”, or “the law of the state is binding”. Individual Reform rabbis (in the US and Canada) were always empowered to recommend *halakhic* divorce processes either under their own auspices or by sending divorcing couples to Conservative or Orthodox *batei din*. Today, on the Canadian Council for Reform Judaism website, the section on Jewish divorce notes that the Reform Rabbis of Canada (which serves as a rabbinical council across Canada) provides (Reform) *gittin* (*Canadian Council for Reform Judaism*, 2014).

While denominational flexibility opens up a space for an evolving plurality of divorce practice, stories from Ottawa point to the importance of local context. In Ottawa,

rabbis also face a reality that is informed by local history and communal norms. Ottawa rabbis describe how in the more traditional Canadian context there has always been consistent advocacy for religious divorce whenever possible, especially in the case of women of childbearing age. Rabbi Emeritus Steven Garten is pragmatic about advising divorcing couples to secure the most universally accepted, that is the most *halakhic get*, possible: “in terms when it comes to *gittin* [pl. of *get*], I tell people that if you’re starting a new family you do not know what the future holds for your child, and you should maximize the possibility of that child being integrated into the Jewish community” (Garten, 2016). These tensions are exacerbated by the egalitarian dimensions of divorce practice that rabbis recognize are inconsistent with the Reform movement’s contemporary understandings of gender roles. The same synagogue’s newest rabbi, Rabbi Mikelberg, has precisely the same concerns and explicitly draws the line at recommending Orthodox practice. “I would never send a candidate to an Orthodox institution for proceeding with the *get* because I could never send a couple to a place where both voices would not be honored and heard” (Mikelberg, 2020). Garten and Mikelberg affirm the legitimacy and Jewishness of Reform divorce practice, and reject the category of *mamzerim* as repugnant. Both are balancing their commitment to egalitarianism against their understandings of tradition, their rabbinic responsibility to future generations, and to *K’lal Yisrael*. Rabbinic stories about divorce speak to ways in which troubling orthopraxy, stringency conflated with correct practice, can conflict with their own personal and denominational understandings of gender justice and the status of egalitarianism in Jewish life as a theological and ethical value.

***K’lal Yisrael* and egalitarianism**

I guess what matters is *K’lal Yisrael*. Things can get messy and we have to do the best that we can. (Mikelberg, 2020)

Jewish divorce practice is so fraught because failure to divorce correctly endangers the ability of Jews to marry each other in future generations and therefore imperils *K’lal Yisrael*. In a document outlining guidelines for conversion, the Reconstructionist Rabbinical Association makes a powerful statement regarding the relationship between *Am Yisrael*, Jewish Peoplehood, and Jewish practice:

As Reconstructionist rabbis, we understand Jewish identity to begin with a sense of belonging to and being part of the Jewish people. Our participation in the cultural, religious and spiritual traditions of Jewish civilization leads us to engage with Jewish ritual and ethical behavior, as well as with Jewish spiritual practice. (RRA, 2009: 10)

All questions of Jewish status are not only personal, but they also have profound import for *K’lal Yisrael*. *K’lal Yisrael* is not only descriptive, it is also deeply rooted in Jewish culture and tradition, expressing the normative existential and theological conviction that Jewish continuity and unity are inextricably linked. *K’lal Yisrael* and egalitarianism work together and against each other, forging a crucible for divorce practice itself.

Egalitarian concerns are critical to progressive denominational identities, but they are also at play in Orthodox circles where feminist critiques are taken seriously even if refuted in the most traditionalist communities. We see in Ottawa how the challenges of egalitarianism play out in Modern Orthodox congregations, where modern Orthodox rabbis and their congregations very much engage with a secular world that normalizes women's agency and autonomy. Ottawa Modern Orthodox synagogues have women hold key institutional and educational roles, engage in conversations around the title of rabbi for women, and regularly promote women's issues and concerns in synagogue programming. Invoking *K'lal Yisrael* and the need for universally acceptable divorce practice, the egalitarian nature of Jewish divorce is formally acknowledged but structurally unchallenged in the Ottawa Modern Orthodox community. Rabbi Idan Scher is clearly proud of the "100% success rate" of women receiving their *gittin* in marriages that began with the RCA prenuptial agreement (Scher, 2016). If the principle of *K'lal Yisrael* is aimed at the unity of the entire Jewish people, the solution of prenuptial agreements does nothing to address *get* abuse in the *haredi* world or in cases that did not include prenups. From the point of view of egalitarianism, it further does nothing to change the structural gender injustice of Jewish divorce itself.

The wedding and divorce practices of one Conservative rabbi throw this tension into sharp relief. For weddings, Rabbi Kenter fully accepts female witnesses and recommends the Conservative prenuptial agreement that proceeds from Conservative commitments to egalitarianism. However, for divorce, because of concerns for *K'lal Yisrael* and awareness that non-Orthodox practice could invalidate the *get*, he recommends "traditional" practice including male witnesses. This choice is very deliberate; he explained his rationale: "I attempt to the best of my ability to assure that no *get* is not accepted because of a choice that I made" (Kenter, 2016). However, he speaks with pride that he affirms egalitarianism by consciously interrupting Orthodox norms in choosing a female scribe to write the *get* (which is fully acceptable by every standard of *halakha*).

Because of their denominational and personal egalitarian values, neither Reform nor Reconstructionist rabbis accept the possibility of either *agunot* or *mamzerim*. In their view, the root cause of these injustices is not theologically ordained, but is historically constructed. In both denominations, the egalitarian principle demands a reframing of Jewish divorce law where it is possible for women to initiate divorces and, when needed, for rabbis to authorize divorces without a spouse's consent (in cases where a spouse is unethically denying a *get*). In Canada, with a preference for traditional Jewish practice, Canadian rabbis have been much more likely to assert the need for a *get* than their US counterparts. This does not risk *get* abuse as the Reform and Reconstructionist divorce process is explicitly egalitarian. Egalitarianism, as a matter of Jewish theology and ethics, demands a reset of normative divorce practice. This reset, however, when viewed through the Orthodox gaze, is inevitably a threat if not a rupture of *K'lal Yisrael* because of its potential impact on Jewish status and the ability of Jews to marry each other. However, as the following story demonstrates, the normative Orthodox policy of not accepting non-Orthodox divorce can also be viewed as deeply damaging to *K'lal Yisrael*. Rabbi Garten recounts how a couple had divorced, with his guidance, through a Conservative divorce process. The woman wished to remarry with a particular Orthodox rabbi officiating, and when the ex-husband was unwilling to cooperate, Rabbi Garten

was asked to intercede on her behalf. The ex-husband declined again, declaring that they were divorced Jewishly. Garten reflects, “[i]s that an *agunah*? I don’t consider [her] an *agunah* . . . she had a divorce, she had a *get*” (Garten, 2016). This is a rabbi who describes himself as from the “right-wing of the Reform movement” and a more “traditionalist” Reform rabbi. He has always advocated for religious divorce but, and this is also traditional and fundamental to Reform Judaism, he also asserts the legitimacy of non-Orthodox divorce (such as the Conservative divorce in this story) and unequivocally affirms an egalitarian understanding of Judaism and Jewish practice. When asked to reflect on his practice in light of questions of *K’lal Yisrael*, Mikelberg thoughtfully responded:

I guess, the way I deal with that is, to the best of my knowledge, everyone except for the Orthodox recognizes Reform Get, so to the best of my knowledge, Conservative rabbis do recognize Reform Get. And I have rationalized for myself that if that’s not the case . . . I have recognized for myself that Orthodoxy does have their own set of rules instead of standards. And nothing I do is going to be accepted in that direction. I’ve come to terms with that, and I’m okay with that. And I also trust that for my couples, or my dissolving couples, if they find themselves down the line needing a more traditional Get and the avenue is there for them to do so, I’m certainly okay with that. That’s not an avenue that I could pursue for them but it’s certainly an avenue that I could direct them to the right place. (Mikelberg, 2020)

Reconstructionist responses to *get* abuse proceed from denominational conceptions of the “relationship between Jewish law, Jewish practice and the primacy of core Reconstructionist values around egalitarianism and social justice” (Cedarbaum, 2016). As Cedarbaum notes, because Reconstructionist Judaism has its origins in Conservative Judaism, Reconstructionist Judaism tends to have a “strong claim that *halakha* is binding but is also characteristically more radical in its interpretation” (Cedarbaum, 2016). In the context of divorce, we hear from Rabbi Elizabeth Bolton, this joint commitment to core Reconstructionist values and a serious but ultimately radical engagement with the *halakha*. Her calculus of how a couple might religiously divorce begins with the *ketuba*:

the reason I ask couples if they have a *ketuba*, even a *ketuba*-like document, is because when you are intending to create another intimate partnership and you’ve had an intimate partnership that you celebrated publicly, in community and family, that there is a psychic, emotional, and spiritual value to . . . [acknowledge] that change . . . (Bolton, 2017)

This is a radical reframing of the *halakhic* question about the relation between *ketuba* and *get*. While Rabbi Bolton sees this question as “neo-*halakhic* (hence both significant and open to a retooling informed by specific egalitarian values)”, she and the other non-Orthodox rabbis we spoke to were very pragmatic about the issues raised by non-Orthodox *gittin* (Bolton, 2020). Given their commitments to egalitarianism, what is so interesting about both the Reform and Reconstructionist rituals, from the perspective of thinking about troubling orthopraxy, is that they come with “warning labels” from rabbis that divorcing couples must be educated that non-Orthodox divorces do not satisfy Orthodox requirements for a *halakhic get* (Simeon, 2012; Stein, 2001). This exemplifies how the Orthodox gaze demands Orthodox standards around *halakha*. This in turn triggers non-Orthodox concerns for *K’lal Yisrael* and an acknowledgement that

non-Orthodox practice will not be universally accepted. Reform Rabbi Morais's explanation shows how this dynamic has been internalized in non-Orthodox thinking:

[Using Reform practice] creates certain problems potentially for couples as they divorce and remarry and have kids . . . here is the scenario: I grant a divorce to a nice young couple when they have no kids but [that is] fine. So, they then have this Reform *get* from me . . . they then move on, they get married, they have children, these children grow up and they choose to participate [in Jewish life] more traditionally. Their more traditional community won't accept their parent's previous *get* and in theory their parents are still married to a previous partner . . . (Morais, 2016)

As we shall discuss, this is an example of how orthopraxy and anxieties about *K'lal Yisrael* work together to push and pull at egalitarian practice.

A blunt question and symbolic boundaries

As scholars, we centre gender justice in our analysis by asking the blunt question, what would a rabbi do when faced with a potential *agunah*? Would they find a solution and free her from a dead marriage? Responses varied depending on the relationship to egalitarianism, questions of social justice, *halakha*, and the range of *halakhic* choices denominationally available to each rabbi and further clarified how these questions inform symbolic boundaries between and among denominations.

This blunt question pushed *haredi* and Modern Orthodox rabbis to affirm the integrity of the *halakhic* system and admit that *agunot* was a tragic possibility. The late Modern Orthodox rabbi, Rabbi Bulka, acknowledged that individual *batei din* and individual rabbis are largely helpless in the face of a recalcitrant husband today. Bulka advocated on behalf of *agunot* for more than 50 years. He had an active role in the leadership of the RCA and was involved in the development of Section 21.1, the section of the Canada Divorce Act that is aimed at addressing *get* abuse. He illustrated the persistence of the problem, "The *beit din* [would] say [to the husband] 'you have to give the *get*', and he says, nothing doing,' so what can we do?" (Bulka, 2016). Still, Rabbi Bulka was unequivocal about the untapped collective power of rabbis to prevent *get* abuse,

You can't look me in the face and say to me that if every single rabbinical court that had to do with divorce got up and said two things, number one no ransom, number two, no membership in the Jewish community, and if you die you're buried outside the Jewish cemetery, who is going to be a recalcitrant husband? There won't be any, so in a sense with all of the solutions that were looking at on the outside right, if the rabbis were as rabbis should be, we wouldn't have this problem, we would not. (Bulka, 2016)

Historically there were *halakhic* solutions to such cases as well as a will to advance *halakhic* strategies to respond to changing circumstances. This is the cost of troubling orthopraxy, where traditional rabbinic autonomy and innovation are stifled, and women remain chained.

Conservative, Reform, and Reconstructionist rabbis all asserted that they would find a solution for every *agunah* – for every woman who sought to remarry Jewishly. With

their own strong commitments to *halakha*, Conservative rabbis relied on their own movement's *halakhic* tradition to find solutions that they viewed as both legal and just. Rabbi Eytan Kenter explains how in his own rabbinical training, he was given a range of *halakhic* tools to prevent *agunot* "to the best of my ability" (Kenter, 2016). Although the first line of the defense for the Conservative movement is always the pre-marital agreement (whether the Lieberman clause or an ante-nuptial agreement), Rabbi Elliott Dorff, Chair of the Rabbinical Assembly's Committee on Jewish Law and Standards, is explicit that even in cases where no pre-marital agreement exists, Conservative rabbis will not allow a woman to remain an *agunah* because a husband refuses to grant a divorce. In such a case, the Rabbinical Assembly's *beit din* will first annul the marriage, and then, because divorce is standard to dissolve the marriage even in the case of annulment, the *beit din* further requires the husband to give his wife a *get* (Dorff, 2017). Conservative rabbis claim their process as *halakhic* even though they recognize that Orthodox interpreters would reject that claim. While we as scholars see the tensions in his practice where, for example, Rabbi Kenter declines to use female witnesses in *gittin*, he asserts that his practice is fully egalitarian and *halakhic*; "One of my underlying principles is that my commitment to egalitarianism does not come at the expense to my commitment to *halakha*, that I think the two of them can exist in concert" (Kenter, 2016).

For Reform and Reconstructionist rabbis, especially, this is a straightforward calibration: each denomination has its own rituals for formally ending Jewish marriages to allow Jewish remarriage. They would claim that their response is in continuity with tradition even though they would fully admit that their practice is not *halakhic* by Orthodox standards. Reform and Reconstructionist rabbis assert that their practice is an evolution of *halakha*, albeit radical, in the egalitarian interest of freeing the *agunah*. Such solutions are in ethical continuity with the Jewish tradition's values of human dignity and social justice. And while they will engage with traditional *halakhic* processes as much as their conscience permits in the interest of *K'lal Yisrael*, for Reform and Reconstructionist rabbis, the gendered asymmetry of Jewish divorce is emblematic of the disconnect between traditional *halakhic* processes and modern understandings of Jewish values. This is illustrated powerfully in a story from Reconstructionist Rabbi Elizabeth Bolton. She describes one case where a civilly divorced ex-husband wished to remarry and sought a *get* before proceeding. The *ketuba* had not been Orthodox, and so Rabbi Bolton was not recommending an Orthodox *get*. The wife did not agree to participate. Recall that if a wife does not consent to accept a *get* in an Orthodox case, the *beit din* can override her lack of consent (see Note 11). However, Rabbi Bolton did not avail herself of the traditional *halakhic* solutions that are rooted in the gendered injustice of *halakhic* practice that reinscribe women's passivity in the divorce ritual. For Rabbi Bolton, for ethical and spiritual reasons, for *Jewish* reasons, neither party should be able to chain the other party to an unwanted marriage. Rabbi Bolton subversively turned to the model of the proxy instead. In completing the *get* in this way, Bolton explains the wife "knew that it was going to take place without her involvement. That . . . was—as far as I was concerned, necessary. Her *get* could not be dissolved without her knowledge. But it was going to be dissolved without her participation" (Bolton, 2017). When queried about the wife's consent here, Rabbi Bolton argued that the wife did consent: "consent, in other words, consent meaning, I'm not blocking my ex-spouse's desire to do this. It has no meaning for me. I don't

care.” This is very different, for example, from a story we heard from one Orthodox rabbi who, when faced with a similar lack of consent by a wife, discreetly signaled to us that her refusal could also be overturned through other *halakhic* means that would inevitably be damaging to her reputation should that solution become public. The mere threat of such strategies resulted, in that case, in the woman consenting despite her original refusal. Reflecting on the inequalitarian structures of Jewish divorce, we are struck by the different valances that are attached to men’s vs women’s consent in these cases.

Stringency and K’lal Yisrael

“It’s my sense that we live in a binary world, we are Orthodox and non-Orthodox . . .” (Garten, 2016)

Modern Orthodox and Chabad rabbis acknowledge that there are *halakhic* solutions to husbands delaying or refusing to grant a *get* that they believe are valid. However, they will not resort to these solutions because there are those who are more stringent who might deem the divorce invalid if they are applied. For Chabad rabbi Yehushua Botnick, this reality makes it self-evident that one should observe rigorous Orthodox practice. He confirmed that the central calculus was what will be most broadly accepted in his own estimation of the economy of Jewish divorce:

It also makes sense purely from a practical viewpoint. In business, for example, a successful businessman knows to market what there is demand for. Whether he needs or appreciates a particular set of extra features is irrelevant. He will market what the broadest group of customers want. It doesn’t make sense to apply a different standard to religious matters. Take *kashrus*, for instance: if a *kosher* restaurant opens up but maintains weak *kashrus* standards, it will effectively have cut off its potentially most loyal clientele. On the other hand, if it caters to the highest standards including *kashrus* standards, the people who care most about *kashrus* will also patronize that vendor. Most people who think the matter through realize that the point is even more compelling with regard to *gittin*. Once a couple is prepared to go through with a *get* with all that entails, including facing the emotions as well as arranging for and covering the cost of writing and delivering a *get*, they want to make sure that it’s going to be recognized anywhere that they, their children or grandchildren might need it to be accepted. (Botnick, 2017)

By framing the question using the metaphor of the most pragmatic consideration of all, the financial, this rabbi is pointing to the logic by which troubling orthopraxy normalizes stringency through appeals to *K’lal Yisrael*. Although this rabbi, and others we interviewed, present this question of orthopraxy as pragmatic (universal, inclusive, and mutually agreed to), it is, in fact, unidirectional – an Orthodox gaze that sees its practice as correct and real where the competing standards of other non-Orthodox groups can and should be subsumed to that orthopraxy. Rabbis who take this position understand that they may be doing violence to the other’s religious or ethical standards but feel they have the choice.

Questions of stringency and *K’lal Yisrael* inevitably turned to questions of personal status and examples of conversion instead of divorce. In particular, both Modern Orthodox rabbis Bulka and Scher were acutely aware of the controversies around the

Israeli Rabbinate invalidating diaspora conversions. In conversation it was clear that for Rabbi Bulka there was overlap between these two issues, as he explains:

it's gotten a little bit out of hand. Because maybe with good intentions, to say we are going to take the high road, and insist on the highest possible standard, or something close to it. When in effect you don't really need to. There are so many responsa that allows for flexibility in this. (Bulka, 2016)

Modern Orthodox rabbis acknowledge that this conflation of stringency with correct practice is disturbing and has far-reaching consequences. We can hear in their accounts their efforts to negotiate their own commitment to *halakha* and *K'lal Yisrael* against the realities of their congregations' history of the practice, their own denominational policies as articulated by the RCA, shifting standards of stringency across the Orthodox world, and ultimately Israeli rabbinate policies that threaten invalidation of their own practices.

As we have seen, troubling orthopraxy disturbs not only Modern Orthodox divorce practice but reverberates through other denominations as well. Conservative rabbi Eytan Kenter explains his own choices to try to be accepted according to Orthodox standards as driven by the demands of *K'lal Yisrael*. Yet Kenter also recognizes that there are always more stringent positions such that there is no consensus of correct practice. He elaborates:

Again, that doesn't mean that everyone has to accept everything, because I can only go so far to the right with things that I'm able to do just by the nature of who I am and who would accept me anyway, and I can only go so far to the left and still be within my own personal *halakhic* comfort zone so it doesn't mean that there are no limits to these things, but the more people want to make their limits larger rather than make their limits smaller the better served I think we'll all be. (Kenter, 2016)

For many non-Orthodox rabbis we spoke to, there is frustration that increasing stringency in the Orthodox world is contributing to a sharper demarcation between their own practice and Orthodox practice. This is manifestly painful to non-Orthodox rabbis who see themselves as working in the interest of *K'lal Yisrael*.

For all the Ottawa rabbis we spoke to, the unity of the Jewish people (and their ability to marry each other) is at risk. Given the normalization of stringency among the *halakhically* observant and the ways in which that stringency is increasingly alienating to the non-*halakhically* observant, we asked what the future would bring? One non-Orthodox rabbi first responded with the rhetorical challenge, "Let them go. Let it be a separate ship", but continued to frame the problem in ethical terms, "if there's no wake up, if there's no epiphany [to make a real change] . . . at least for the diaspora Jewish world, people will continue to go with their feet". This warning of a *halakhic/non-halakhic* fault line in the Jewish world, echoed in different ways by rabbis from all denominations, speaks to deeply rooted communal anxieties that the Jewish people face an existential threat: a broad collapse of *K'lal Yisrael*.

Conclusion

So, I believe that there is more that we share than what separates us and that we all are brothers and sisters. But that doesn't mean that we do things all the same. But that doesn't mean we don't quarrel along the way. It certainly doesn't mean that we don't find ourselves in scenarios that can be really painful. (Mikelberg, 2020)

As non-Orthodox Jewish feminist scholars, we assert that the seeming intractability of *get* abuse in Canada and abroad is inextricably intertwined with the inegalitarian structures and processes of Jewish divorce that we have presented in this article. As we have argued, divorce practice is bound up with the conflation of stringency and orthopraxy which in turn reinscribes inegalitarian dimensions within a transdenominational context. Impulses for orthopraxy foreclose future strategies while also constraining historical remedies which may have functioned in the past (Ross, 2004; Warburg, 2013). The struggle to balance the imperatives of *K'lal Yisrael* and the value of egalitarianism is acute for these Canadian rabbis, who feel the weight of a preference for orthopraxy in their own communities as well as the transnational pressure for increased stringencies that continues to reverberate throughout the Jewish world.

Attending to the Canadian experience of Jewish divorce through a denominational lens does important work in disentangling systemic and local factors. Developing original ethnographic data from Canadian rabbis from Orthodox and non-Orthodox settings alike makes visible how framing *get* abuse as an Orthodox experience obscures how the inegalitarian nature of Jewish divorce extends beyond the confines of the Orthodox world and illuminates the structures of Jewish divorce practice itself. Canada's denominational history and landscape, its concentration and dispersion of Jewish communities, and its specific civil limits on prenuptial agreements shape Jewish divorce in distinct ways.

This Canadian story is very much the story of how rabbis, across denominations, wrestle with egalitarianism and *K'lal Yisrael*. Although rabbis always decry that any *agunah* is a tragedy, rabbinic constructions of that tragedy vary in ways that corresponded to their denominational commitments and relationship to *halakha*. Those with the strongest commitments to stringent interpretations of *halakha*, driven by traditional processes, are more likely to view *get* abuse as a matter of "bad seeds" – individual bad faith actors. Conversely, those whose commitment to *halakha* includes a historical understanding of *halakha* as developing in human contexts tend to view *get* abuse as enabled by unnecessary stringency and rabbinic inadequacy that fails to make use of all available solutions. Between these poles is a spectrum of responses on what can be done to prevent, and resolve, *get* abuse. As one might expect, this spectrum of responses has a strong correlation with the calculus of the weight of the claim of egalitarianism vs the weight of the claim of *K'lal Yisrael*.

We assert that each position represents conscious theoretical and methodological *halakhic* choices. We resist ahistorical accounts of "tradition" that obscure the processes that produce diversity of practice (both within and outside of Orthodoxy) and which further naturalize Orthodox paradigms. What is so interesting is how the Orthodox gaze frames the demands of *K'lal Yisrael*. Troubling orthopraxy pushes for stringency as correct practice while pulling more progressive practice to pragmatically accede, where possible, to the necessity of "universal" correct practice in the name of *K'lal Yisrael*. The

irony is that the rigidity inherent in this dynamic necessarily results in cleavages in *K'lal Yisrael* where some Jews cannot inhabit Orthodox practice, and they or their children are no longer recognized as having Jewish status and being within *K'lal Yisrael*.

Jewish divorce impacts women in particularly gendered ways but is largely interpreted and practiced by male rabbis. Women bear the burden of the unresolved tension between the claims of egalitarianism and *K'lal Yisrael*. Rabbinic behaviour is key to parsing these tensions and untangling the gendered, systemic, and procedural context of Jewish divorce. We hear troubling orthopraxy, operating in multiple directions – sometimes driven by rabbis themselves, sometimes driving rabbis to respond, and always shaping a landscape which rabbis must negotiate. Given their outsized influence on the process, we found that rabbinic stories illuminate how orthopraxy both drives and is driven by their concerns. Their stories are a window into the complexities that laypeople and clergy are trying to navigate. Focusing on rabbis, who stand as authoritative voices for the tradition, allows us to target the ways in which the divorce process is profoundly gendered and surprisingly contingent. This in turn points us towards hearing these voices within a framework of hegemonic masculinity which enables us to disrupt traditional narratives that frame “Judaism” (and Jewish practice and knowledge) as natural, unified, unchanging, and coherent.²⁰ Finally, listening to rabbis allows us to hear, contrary to hegemonic naturalizing impulses, how rabbinic voices are also constructed, mediated, gendered, and contextual. In doing so, we trouble orthopraxy, making visible the internal hierarchies of value, authority, and authenticity that are key to both upholding and challenging divorce praxis.

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Notes

1. By mutual agreement, rabbis are normally named unless they requested that specific answers be anonymized. All other interviews were confidential and anonymous; the names of interviewees were withheld by mutual agreement.

2. The term “Orthodox” first comes into denominational use through the term neo-Orthodoxy during the history of 19th century German religious reform which saw the development of the modern denomination of Orthodox, Conservative, and Reform Judaism. Non-Orthodox Judaism includes the Reform, Conservative, and Reconstructionist denominations and any Jewish community that sees itself engaging *halakha* in ways that diverge from the Orthodox model.
3. *Haredi*, literally one who “trembles” (biblical origins: concerned/trembles at the word of God, Isaiah 66:2, 66:5), is an Israeli term that has replaced “Ultra-Orthodox” in North American Jewish and scholarly discourse. Ultra-Orthodox is viewed as a pejorative term by these groups who regard their own practice as normative, and who further resent the implication of excess piety as much as the possibility that there are other Orthodox Judaisms that are legitimate.
4. Interviews were semi-structured, combining pre-determined questions such as demographic and biographical information, with open-ended questions to allow respondents to answer from their own understanding (Kvale, 1983). This format allows respondents some ability to approach the problem of Jewish divorce in Canada from their own perspective, while at the same time giving the researchers certain consistent demographic and procedural data (Gorden, 1987; Kvale, 1983; Richardson et al., 1965; Spradley, 1979). Data were collected through qualitative interviews (and follow-up phone conversations and email exchanges) using ethnographic and oral historical methods. Where ethnographic methods facilitate data analysis focusing on the religious and cultural contexts of *get* abuse (Thomson and Perks, 2006), oral historical methods enable data analysis aimed at locating this phenomenon as a historical process (Armitage and Gluck, 1998).
5. One example of this tangled relationship is the story of the Conference of European Rabbis appealing to the Israeli Rabbinat to help them find solutions for *agunot*. This appeal resulted in a temporary three-year law being passed by the Knesset in 2018 that gave Israeli rabbinical courts the authority over non-Israeli recalcitrant husbands in Israel. This law allowed the court, on a trial basis, to put sanctions on these men while in Israel (*Jewish Telegraphic Agency*, 2018).
6. Rabbinical courts may authorize a divorce without a woman’s consent under the following conditions: mental illness or incompetence such that she cannot receive the *get*. An Ashkenazi court may impose a divorce without a woman’s consent through *heter mea harabbanim* (literally consent of 100 rabbis). Sephardi courts only require the consent of one rabbi to override her refusal (Fishbayn, 2008: notes 47, 48). The requirement for women’s consent became normative in the Ashkenazi Jewish world through the *herem* (Jewish legal decree or injunction) of Rabbeinu Gershom. This *herem*, declared at the beginning of the 11th century, forbade polygyny and divorce without a woman’s consent. The *herem* did not extend to Sephardi Jews, who also permitted polygyny into the modern period. Modern Israeli law mandates a woman’s consent regardless of one’s Ashkenazi or Sephardi status (Talhami, 2013: 81).
7. The *halakhic* problem of the *agunah* first appears in rabbinic literature in the Tannaitic period (10–220 CE) (Hacohen et al., 2004: vii) and continues to be an issue addressed by rabbis and the Jewish community, through the medieval period (Ashur, 2012), through the early modern period (Kaplan, 2017) to the early 20th century in America (Miller, 1997) to the present day.
8. Although it is outside the scope of this article to discuss in detail, Canada’s distinct civil context for Jewish divorce also includes Section 21.1, a provision in the Canada Divorce Act (1990) that came about through lobbying by activists to provide a civil strategy for addressing *get* abuse. Simply put, 21.1 allows a spouse, who currently has a divorce proceeding before the court, to file with the court an affidavit that there is a religious barrier to remarriage in their case. If the barrier is not removed, the Court can dismiss the applications filed under the act by the spouse who is refusing to remove barriers to divorce. In our interviews, the mostly US-trained rabbis were largely unfamiliar with Section 21.1, and further prioritized completing

- civil divorces before they would consider religious divorce. This is true across the denominational spectrum and thus we found little impact of 21.1 on divorce practice in Ottawa.
9. As Brym et al. summarize, the largest denomination in Canada is the Conservative movement (26%), followed by all Orthodox, including Modern Orthodox, *Haredi*, Hasidic, and Chabad (19%), closely followed by Reform (16%), and Reconstructionist with a very small minority (3%). Note that the Orthodox cohort includes Sephardi and Mizrahi Jews, who generally do not affiliate denominationally (Brym et al., 2018).
 10. While the process is largely the same, there are some differences between Ashkenazi and Sephardi divorce practices (mostly in terms of the *get* spelling and shape of the letters). Without a standing Orthodox *beit din*, Ottawa Sephardi Jews are regularly directed to the *beit din* in Montreal (which includes a large Sephardi community). The Montreal *beit din* includes Sephardi rabbis allowing for Sephardi practice (in English or French) whenever necessary. With its own Sephardi association and the largest Sephardi community in Canada, Toronto's Sephardi community also has the Sephardi Kehila Centre, which includes a *beit din* for conversion and divorce.
 11. As we will discuss below, US Reform practice deems civil divorce sufficient for Jewish remarriage, whereas Canadian and other non-US Reform rabbis are more likely to require religious divorce practice. See CCAR Responsa 5756.15 for a concise historical summary of Reform arguments against viewing divorce as a purely civil matter (CCAR, 1995). Arguments against viewing divorce as exclusively civil point to the ways in which *halakha* understands divorce as a matter of personal status, as well as theological and pastoral arguments about the need for a religious response to the end of a religious marriage.
 12. The RCA encouraged the use of prenuptial agreement in the 1990s, with resolutions to that effect in both 1993 and 1996, which began to be used in Canada. By 2006, the RCA declared that rabbis should not officiate at weddings without the inclusion of prenuptial agreements (RCA, 2006), and in 2016 it mandated the use of a "rabbinically sanctioned prenuptial agreement" in all *ketubot* in 2016 (RCA, 2016). In Canada, Rabbi Whitman is developing a Canadian prenu that would work with Canadian law (Lungen and Reporter, 2016).
 13. For a discussion of issues with the RCA prenu see (Weiss, 2017).
 14. Chabad, also known as Chabad-Lubavitch or Lubavitch-Chabad. Although all *Hasidic* movements are Orthodox, and here we include them within *haredim*, the Chabad role in outreach means that Chabad rabbis regularly interact with their own Lubavitch community, who are highly observant with strict interpretations of Jewish law (and they hold themselves to such standards), as well as those who might be quite secular and have an attenuated relationship to Jewish law and practice. Chabad synagogues and supplemental schools attract non-Orthodox Jews with a compelling message of traditional authenticity, welcome, and inclusiveness as well as free or comparatively inexpensive programming and schooling. Ottawa's Chabad institutions are flourishing and serve a broad spectrum of the Jewish community, including non-Orthodox and otherwise unaffiliated Jews.
 15. There are inklings that prenuptial agreements may become more acceptable in the *haredi* community. *Tablet* magazine, a mainstream Jewish online publication, pointed to this development as a sign that we are on the brink of change: *Hamodia*, an online Brooklyn *haredi* newspaper published an article about a November 2014 conference that brought together rabbis who adjudicate divorce. "In a publication so Conservative that pictures of women are never shown, . . . one obscure sentence, four paragraphs from the top, heralds' historic relief for women: 'HaRav Shmuel Fuerst, *dayan* of Agudath Yisrael in the Midwest, spoke about *Klal Israel's* pressing need to institute the ubiquitous use of prenuptial agreements'" (Siegel, 2015). In 2015, the Yasher Coalition was formed to develop a more inclusive prenu that would be acceptable in *haredi* communities (Friedlander, 2016). Since then, several *haredi* rabbis, including Rabbi

- Moshe Sternbuch, who was vociferously opposed to the RCA prenup, have signaled their support for the Yasher Coalition prenup (Rav Mosher Sternbuch et al., 2021).
16. For the text and history of the Lieberman clause in Conservative Judaism and Orthodox responses see Steiner (2017). For the text of the Conservative Ante-Nuptial agreement see (Dorff, 2017).
 17. Female initiated *gittin* ceremonies date back to 1979 in the Reconstructionist movement (Teutsch et al, 2005). The formal position of the Reform movement is that civil divorce is sufficient to end a marriage and permit a new Jewish marriage. However, the movement has always permitted individual rabbis to pursue religious divorces, and these would normatively be egalitarian processes.
 18. Conservative rabbis were also welcomed onto Reform *batei din* when they were struck. Conservative rabbis fully meet all requirements of legal expertise and training and shared moral and ethical commitments that would make them open to participating in Reform processes.
 19. For example, the Reform movement developed the “Ritual of Release” (*Seder P’reidah*) as an optional ceremony in 1983 to provide a spiritual and pastoral framework for divorce.
 20. For hegemonic masculinity see (Cheng, 1999). For methodological issues around the constructed nature of religion a see (Lincoln, 1996).

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