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Sentenced to Marriage: Chained Women in Wartime

Sarah Gavriella Breger
University of Pennsylvania

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Sentenced to Marriage: Chained Women in Wartime

Abstract
On September 7, 1971, military chaplain Rabbi Aryeh Lev wrote a long and detailed letter to renowned Reform Rabbi Solomon Freehof describing the break-up of the Committee on Responsa (COR) of the Jewish Welfare Board. He explained how mainstream rabbinical organizations had slowly abandoned, and finally dissolved the Committee which had been on the decline since the end of World War II. During its golden years, between 1942 and 1945, the Committee on Responsa achieved something remarkable: all three major denominations in Judaism - Conservative, Orthodox, and Reform - worked together to make Jewish legal or *halakhic* decisions for servicemen in the American military. Today, fractious fighting between Jewish religious denominations makes it difficult to fathom how such a committee could have existed.

Disciplines
History of Religions of Western Origin

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Sentenced to Marriage: Chained Women in Wartime

Sarah Gavriella Breger, College '07
University of Pennsylvania

2006-2007 Penn Humanities Forum on Travel
Undergraduate Humanities Forum Mellon Research Fellow
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Excerpted from Senior Thesis submitted in partial fulfillment of the requirements for
Honors in Jewish History
Advisor: Dr. Sarah Gordon
Advisor: Dr. Arthur Kiron
Honors Director: Dr. Phoebe Kropp

For present day agunot

"Creator of heaven and earth, may it be Your will to free the captive wives of Israel when love and sanctity have fled the home, but their husbands bind them in the tatters of their ketubot. Remove the bitter burden from these agunot and soften the hearts of their misguided captors. Liberate Your faithful daughters from their anguish. Enable them to establish new homes and raise up children in peace.

Grant wisdom to the judges of Israel; teach them to recognize oppression and rule against it. Infuse our rabbis with the courage to use heir power for good alone.

Blessed are you, Creator of heaven and earth, who frees the captives.

English Prayer by Shelley Frier List

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And finally to my dear friends at Penn, for whom I am grateful more and more each day.

GLOSSARY

Note that transliteration of Hebrew into English is very complex, and writers do not follow a consistent pattern. Certain words are spelled in very different ways by different writers. I have generally kept to the Sephardic pronunciation used in modern Israel, but quotations from other writers and sources reproduce the spellings used by them.

Agunah (plural *agunot*). Literally chained woman; refers to a Jewish woman who, according to the Jewish laws of marriage and divorce, is chained or anchored to her husband and may never remarry. The state of being an *agunah* is called *iggun*

*Beit Din (*or *beth din*; pl. *batei din*). Literally "house of law"; refers to a religious court or tribunal usually comprises of 3 rabbis or one rabbi and two lay people to decide specific cases of Jewish law. Some *batei din* are permanent or standing, others are *ad hoc and* brought together for a specific case. The London Beth Din discussed in this thesis is the ecclesiastical court of the Chief Rabbi in Britain (there is a separate Beth Din in Manchester) and is composed of a fixed number of judges called *dayanim*. The Beth Din of America is the court established by the Rabbincal Council of America in 1960.

Get (pl; *gittin*). Literally "document" in Aramaic; refers to the Jewish divorce document, that a scribe writes according to a specific formulation in Aramaic and Hebrew on behalf of a man, which is then handed over or delivered to the wife. When the wife, or her agent, receives the get, the couple is divorced according to Jewish law.

Get al t'nai (sometimes called *t'nai get*). Literally "a get with a condition". A conditional *get.*

Hafka'at kiddushin. Invalidation or annulment of a marriage.

Halakha (or *halacha).* Literally "the way to go"; refers to the entire corpus of Jewish law. *halakkic* and *halakhically* are used with this reference.

Halitza. Literally "taking off of the shoe"; refers to the ceremony that frees a childless widow from the obligation of marrying a levir – usually her dead husband's brother (see *yibbum* below).

Harsha'ah. "Authorization" or delegation of a power of attorney in Jewish law.

Iggun. State of being an *agunah* (see above).

Ketubah (pl, *ketubot).* The Jewish marriage contract.

Kitvu U'Tnu. Literally "write and give". Based on Talmud (Gittin 76b-77a) a way of allowing a husband to give a divorce on his behalf indirectly in certain situations. The term is commonly used with respect to situations in which a husband authorizes a Beth Din not directly in its presence to write /sign / deliver a get to his wife.

Kohen (pl. *kohanim*). A male Jew of priestly lineage who, according to traditional Jewish law, is subject to specific rules regarding whom he is allowed to marry.

Kosher. Literally "fit" or "appropriate"; refers usually to ritually approved food according to Jewish dietary laws. The state of being *kosher* is *kashrut*.

Mamzer (pl. *mamazerim).* Literally *"misbegotten."* Offspring of a sexually forbidden relationship in Jewish law. This term is often mistranslated as "bastard" in the sense of being born out of wedlock.

Mamzerut. The state of being a *mamzer*.

Mesurevet get (pl. *mesurevot get).* Woman who has been refused a *get* by her recalcitrant husband. A victim of *get* refusal.

Minui Shlichut. Appointment of agency. The term *minui shlichut shelo bephanav* refers to a husband who appoints a proxy indirectly: i.e. not in his presence.

Sha'at hadchak. Literally "hour of emergency"; refers to a time in which according to even the strictest interpretations of Jewish law certain leniencies are allowed.

Takanah. Rabbinic ordnance or legislative act, such as that of Rabbi Gershom of Maintz (10th century) who enacted that a woman or her proxy has to accept the divorce document from the husband or his proxy; i.e. precluding divorce without the consent of the wife in most situations.

Teshuva (pl; *teshuvot*). A rabbinical responsum.

Yeshiva (pl *yeshivot*). Traditional Talmudic academy headed by *Rosh Yeshiva*.

Yibbum. A levitate marriage. According to the Pentateuch, a woman whose husband has died is obliged to marry her husband's brother to maintain her husband's name. The woman is termed a *yevama*, the brother is termed a *yavam*. The woman is released from the status of being an *agunah* in this situation by the *halitza* ceremony (see above).

INTRODUCTION

On September 7, 1971, military chaplain Rabbi Aryeh Lev wrote a long and detailed letter to renowned Reform Rabbi Solomon Freehof describing the break-up of the Committee on Responsa (COR) of the Jewish Welfare Board.[1] He explained how mainstream rabbinical organizations had slowly abandoned, and finally dissolved the Committee which had been on the decline since the end of World War II. During its golden years, between 1942 and 1945, the Committee on Responsa achieved something remarkable: all three major denominations in Judaism—Conservative, Orthodox, and Reform—worked together to make Jewish legal or *halakhic*[2] decisions for servicemen in the American military. Today, fractious fighting between Jewish religious denominations makes it difficult to fathom how such a committee could have existed.

The Committee's formation can only be understood in the specific circumstances and religious climate of World War II, which created intense pressure for Jewish unity in support of the war effort against the Nazis. Yet, even within that environment, one controversy caused great tension and threatened to tear the group apart. That controversy involved the question of wartime *agunot*,[3] and is the subject of this thesis. The controversy underscored the need for the Committee, while simultaneously testing the

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[1] Aryeh Lev to Solomon Freehof. 7 September 1971. Freehof Files, Rodef Shalom Congregation, Pittsburgh "Responsa Correspondence Aug Sept Oct 1971."

[2] *Halakha* is the term used for the entire corpus of Jewish law. The terms *halakha*, *halakhic* and *halakhically* will be used in the thesis with this reference.

[3] *Literally*, "chained women". The term comes from the Hebrew word for "anchor" and refers to women who according to Jewish law are chained or anchored to their husbands and may not remarry.

limits of its efficacy. To understand the totality of the controversy we must first understand the complex religious history of the *agunah*.[4]

The *Agunah*

According to Jewish law, a marriage bond can only be dissolved in one of two ways: by the death of one of the parties or by means of a *get*, or a Jewish divorce document written on behalf of the husband, and delivered by him or his proxy to his wife.[5] Although, the husband is the one to initiate the process and grant the wife the bill of divorce, the woman must accept the bill of divorce for the divorce to be valid.[6] If a man is nowhere to be found (or refuses to give the *get*), the woman becomes an *agunah*; she is chained to her husband and cannot remarry. The ramifications of remarriage without receiving a valid Jewish divorce are manifold and harsh. If she remarries, she becomes an adulteress under technical Jewish legal terms, any children she has are

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[4] *Agunah* is the singular of *agunot.* The general topic of the *agunah* in Jewish law is an extremely complex one, and there is voluminous literature on the subject. Two recent volumes that I am indebted to are Irving A Breitowitz, *Between Civil and Religious Law: The Plight of the Agunah in American Society* (Greenwood Press: 1993) and Michael Broyde, *Marriage, Divorce and the Abandoned Wife in Jewish Law: A Conceptual Problem of the Agunah Problem in America*, (New Jersey: Ktav, 2001).

[5] The term "*get*" means "document" in Aramaic, but in Jewish law refers to the writ of divorce, written by a scribe in Hebrew and Aramaic, for the purpose of ending a marriage. The plural of "*get*" is "*gittin*". *Gittin* is the name of one tractate of the Talmud that is the major source of the complex area of Jewish law as developed in codes and responsa dealing with the ending of a marriage.

.[6]According to Deuteronomy 24.1-2: "When a man takes a wife and marries her, if it then comes to pass that she finds no favor in his eyes for he has found something unseemly in her, he shall write her a document of divorce and give it into her hand, and send her out of his house." I have followed standard bibliographical form for references to the Bible, Talmud and early Jewish sources. All translations are my own.

In actuality the clause of the wife needing to accept it, is a relatively new innovation. It was created by the *Takanah* (ordinance) of Rabbenu Gershom in the 10th century in an attempt to put men and women on a more equal footing.

mamzerim.[7] The *mamzer* is not just subject to social stigma; legally he or she cannot marry another Jew unless that Jew is also a *mamzer*.[8] This status continues through all future generations.[9] The status of *mamzerut* cannot be nullified retroactively even by a belated *get* and a woman cannot be married to a man with whom she has had an adulterous relationship. If the husband reappears she is forbidden to both men.[10]

Through the centuries, rabbis have been sensitive to the dire predicament of Jewish women whose husbands had disappeared and looked for leniencies to relieve the women's situations;[11] for example relaxing of the standards of evidence required to prove death, and expanding the pool of acceptable witnesses.[12] These leniencies are particularly important in Jewish law, which does not recognize a presumption of death arising from prolonged absence.[13] However, the implementation of such leniencies created tensions that had to be balanced with immense respect for the sanctity of marriage and fear that

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[7] *Mamzerim* is the plural for *mamzer*, a term literally translated as "bastards," but which is used to refer to the offspring of a sexual relationship forbidden by the Torah. *Mamzer* does not refer to one born out of wedlock, but to the offspring of an incestuous or adulterous relationship. Adultery in Jewish law refers specifically to a relationship between a married woman and a man whether married or not.

[8] See the preeminent Jewish legal code written in the 16th century, *Shulhan Arukh Even Ha'ezer* 4:1, 13, 22.

[9] This is based on Deuteronomy 23:3: "no-one misbegotten shall be admitted into the congregation of the Lord. Even unto his tenth generation none of his offspring shall enter into the assembly of the Lord."

[10] Tractate *Yevamot* 87b: "A woman whose husband had gone to a country beyond the sea and on being told "your husband is dead" married, must, if her husband subsequently returned, leave the one as well as the other."

[11] As just one example, Rabbi Yehezkel Landau in eighteenth century Prague wrote: We are commanded to search all possible grounds of leniency in order to alleviate the plight of the *agunah.* (Responsa *Noda be-Yehuda, Even Ha'ezer* Part 1, sec. 29) quoted in Aviad HaCohen, *The Tears of the Oppressed*. (Jersey City, NJ: Ktav, 2004) 14. HaCohen shows that major *halakhic* authorities in the past including those who were generally stringent and conservative in their decision-making considered it of the highest importance to explore all possible avenues to allow an *agunah* to remarry.

[12] *Mishna Yevamot*: 16:7.

[13] Breitowitz, 3. In contrast, in the United States various states have adopted so-called "Enoch Arden" laws to deal with the problem of an absent spouse and the presumption of death. The literary reference, of course, is to Tennyson's poem of that name.

excessive leniency could worsen the situation of the women— and any future offspring— if the husband were to re-appear.[14]

The problem of *agunot* can take many forms. One of the most disturbing is that of a recalcitrant husband who refuses to give a bill of divorce to his wife. Since a husband can only give his wife a divorce through his own free will, an unwilling husband cannot be coerced through legal means or otherwise to give a divorce.[15] Many *agunot* today are women whose husbands refuse to give a divorce for reasons such as financial extortion, child custody, or personal revenge.[16]

Another instance of *iggun*[17] occurs when a husband vanishes without a proof of his death. As Jews throughout history have been traders and merchants, this was not an uncommon occurrence. Traders would leave their homes for business and remain out of contact for years, placing their wives in a permanent state of limbo.[18] Sometimes this would be by choice on the part of the husband. At the turn of the 20th century there was a

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[14] The reappearing husband, and its consequences, is a motif that occurs many times in literature. See the classic stories of Nobel prize-winning author SY Agnon,“ The Crooked will be made Straight” and “The Agunah”, and in a non-Jewish context “The Return of Martin Guerre” by Natalie Zemon Davis.

[15]Modern secular courts have been grappling to find a state imposed solution to this problem as well. For a full study of the different proposals see Marc Feldman, “Jewish Women and Secular Courts: Helping a Jewish Woman Obtain a Get,” *Berkeley Women's Law Journal* (1989-1990): 139-169 and Debbie Eis Sreter, “Nothing to Lose but their Chains: A Survey of the Aguna Problem in American Law” *Journal of Family Law* 28 (1989-1990): 703-726. For an international law approach see Marc S. Cwik, “The *Agunah* Divorce Problem in Jewish Society: Exploring the Possibility of an International Law Solution,” *Wisconsin International Law Journal* 17 (1999): 109-144.

[16] Today the majority of *agunot* are technically in this category. They are *mesurevot get*- women who have been refused a *get* by their husbands and are victims of *get* refusal. This is not the topic of my thesis.

[17] *Iggun* is the state of being an *agunah.*

[18] In one situation found in the Cairo Geniza, the husband's absence was so prolonged his wife wrote to him requesting a divorce. The husband responded “Now if this is your wish, I cannot blame you. For the waiting has been long. And I do not know whether the Creator will grant relief immediately so that I can come home, or whether matter will take time, for I cannot come home with nothing. Therefore I resolve to issue a writ which sets you free. Now the matter is in your hand. If you wish separation from me, accept the bill of repudiation and you are free. But if this is not your decision and not your desire, do not lose these long years of waiting: perhaps relief is at hand and you will regret at a time when regret will be of no avail.” S.D.Goitein, *Letters of Medieval Jewish Traders Translated from the Arabic* (Princeton: Princeton University Press, 1973) 222-227.

"phenomenon of husband desertion" among East European Jews coming to America.[19] Husbands would come to the New World and get swept up in their new lives, leaving their wives and children on the other side of the ocean. In 1908 a woman publicly wrote to her husband in an advice column called Bintel Brief in the New York *Forward*, the largest Yiddish newspaper in America, "Max: The children and I now say farewell to you. You left us in such a terrible state. You have no compassion for us…Who will support us?"[20]

Declaration of a person's death requires proof, the most common form of which entails eyewitness testimony about the person's death before the Jewish courts.[21] There are cases however, where it is impossible for a witness to have viewed the husband's death. The Talmud obviously did not anticipate modern examples of large-scale tragedies such as the sinking of the Titanic on April 12 1916,[22] the World Trade Center attacks in 2001,[23] or indeed of the concentration camps of Nazi Europe. In these cases, many individuals died in the absence of actual witnesses. To solve this problem special *Beit Dins*[24] or Jewish courts were set up and ruled on a case-by-case basis about whether or

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[19] Reena Sigman Friedman, "Send me my Husband who is in New York City: Husband Desertion in the American Jewish Immigrant Community, 1900-1926" *Jewish Social Studies* vol. 44 (Winter 1982): 1-28.

[20] *A Bintel Brief: Sixty Years of Letters From The Lower East Side to the Jewish Daily Forward*. Ed. Isaac Metzker (New York: Doubleday and Company 1971) 84-85. According to a 1931 study of Bintel Brief letters in 1931, ten percent of all letters published were related to desertion. In addition to the Bintel Brief, *the Forward* also featured a "Gallery of Missing Men," in which deserted women would submit pictures of their husbands to be published in order to shame them into returning home. *The Forward* would also print desertion notices sent in from the National Bureau of Desertion that would give a brief description of each desertee. Lillian Mathless, "Report on a study of two hundred desertion letters in the "Bintel Brief" of the "Jewish Daily Forward": with supplementary material bearing on the problem of desertion." (Diss, The Training School for Jewish Social Work, 1931) 20-24.

[21] Tractate Yevamot 89a.

[22] Yaacov HaCohen, *Sefer Beit Yacov*, Siman 59.

[23] Jonas Prager, "The World Trade Center Tragedy and the *Aguna* Issue" *Journal of Halacha and Contemporary Society*. 44 (2002) 5-30.

[24] *Beit Din*, literally "house of law" is the term used for a rabbinic court or tribunal. The correct plural is *Batei Din*.

not the husband could be declared dead. In the case of the World Trade Center attacks, for example, the courts recreated each man's final day including emails and phone calls to try to place him in the Trade Center at the time of the attacks.

The Wartime Agunah and the Conditional Divorce

The wartime *agunah* was not a new phenomenon in the 19th or 20th century. A soldier could be captured, or could be lost in battle without his body being recovered or witnesses being able to attest to his death. This situation is first mentioned in the Talmud in connection with King David.[25] When the biblical David saw the stunningly beautiful Batsheba for the first time, he was so infatuated that he forgot his seventeen other wives and his countless concubines.[26] David quickly sent Batsheba's husband Uriah to the battlefront and took Batsheba as another of his wives. Yet David is not remembered as an "adulterer" or a "murderer" but rather as a "sage." According to the Talmud, David ordered all of his soldiers to divorce their wives before heading off to war in order to prevent them from becoming *agunot* in case their husbands became missing or did not return from the battle.[27] According to one interpretation, the divorce was conditional and only became effective retroactively if the husband did not return.[28] According to another interpretation the divorce was absolute, and the two could remarry when the husband

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[25] Tractate Ketubot 9b, Tractate Shabbat 56a.

[26] II Samuel 2-15: "And it came to pass one evening, that David arose from his bed, and walked upon the roof of the king's house: and from the roof he saw a woman bathing; and the woman was very fair to look upon. And David sent and inquired after the woman. And one said, Is this not Batsheba the daughter of El'iam, the wife of Uriah the Hittite? And David sent messengers, and took her; and she came into him, and he lay with her….And it came to pass in the morning, that David wrote a letter to Joab, and sent it by the hand of Uriah. And he wrote in the letter, saying, Set Uriah in the forefront of the hottest battle, and withdraw from him, so that he may be hit and die."

[27] Ketubot 9b and Shabbat 56a "Whoever went out to fight a war of the House of David would write a bill for his wife."

[28] Rashi Shabbat 56a.

returned.[29] Thus according to the Talmud, Batsheba was not married to Uriah when David initially slept with her, and therefore they did not commit adultery. If they had, she would have been forbidden to David after Uriah's death. The Talmud in *Sotah 27b* clearly says that when a woman becomes forbidden to her husband as a result of adultery, she also becomes forbidden to the man with whom she committed adultery. The rabbis did not say that David did not sin in this incident, but did claim that the union was not an adulterous one.[30]

In a medieval commentary on the Bible called the Ba'al HaTurim, the 13th century Rabbi Yaacov ben Asher[31] actually puts the conditional divorce even further back in its origin arguing that the practice was introduced by Moses before the conquest of the Promised Land. According to Yaacov ben Asher, Moses's conditional *get* was designed to relieve the women from *yibbum*[32] if the husband died. According to Jewish law, a woman whose husband dies is subject to *yibbum* or a levirate marriage if they are childless i.e. her husband's brother has to marry her with the express purpose of perpetuating the name of the deceased,[33] or they must perform a release ceremony known as *halitzah*[34]. When a husband's brother cannot be found, is a minor, or refuses to grant *halitzah*, then the woman is 'chained' and is an *agunah*.

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[29] Tosafot 56a.

[30] The Rabbis in the Talmud interpreted a passage from the book of Samuel in which King David's father Jesse sent David to deliver food to his brothers and take from them their "pledge"(1Samuel 17:18 – the Rabbis interpreted the pledges as the conditional bills of divorce and wrote that when David became king, he instituted the practice he had learned from his father in his kingdom**.** See the 14th century Spanish Rabbi Yom Tov Ibn Asevill's (RITVA) commentary to Ketubot 9b.

[31] See *Ba'al Haturim* 's commentary to Numbers 32:21. All these derivations and their implications are explained in Zevin, Rabbi Shlomo Yoseph. *Le'or Hahalakha* (Jerusalem: 2004) 65

[32] *Yibbum* is a levirate marriage, the woman is known as a *yevamah.*

[33] Deuteronomy 25;10.

[34] Literally means, "removal of the shoe" which is part of the ceremony freeing a childless widow from the obligation of marrying the levir or *yavam*.

We have evidence of conditional bills of divorce being given at many points in Jewish history. It was acknowledged to be a complicated strategy in Jewish law, but one that was approved of to protect the state of the women. Often a husband would give his wife a conditional *get* when he went overseas. There is evidence in Geniza materials[35] regarding medieval traders who did this, and sometimes the obligation that a man prepare a conditional bill of divorce was stipulated in betrothal contracts.[36]

According to the Jewish law of agency, the husband could write or have the conditional *get* written and give it to his wife, or he could also appoint an agent giving written authorization that the agent write or have written a conditional *get* on behalf of the husband and deliver it to his wife in the event that he did not return home by a stipulated date.

Until the end of the 19th century, Jews were rarely in military situations and so these conditional bills of divorce mainly were granted in the context of dangerous travel or travel overseas. There were differing rabbinical opinions as to the methods and the validity of these bills. Because of the complexity of the conditional bills in Jewish law, and the fear that if the technical rules were not followed fully then the validity of the document would be compromised, many authorities preferred to use a non-conditional

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[35] A *geniza* literally means a hiding place and is used to describe repositories of sacred texts that are not thrown away because of the prohibition to erase the name of God. Usually such texts are buried in a cemetery. By "the Geniza", we now refer to the famous *geniza* in Cairo, found in an old synagogue at the end of the 19th century, containing over 200.000 documents. These are now in different libraries in Europe, Israel, and America and have been found to be a remarkable source of knowledge about all aspects of Jewish life.

[36] S.D.Goitein, Mediterranean Society: *The Jewish Communities of the Arab World as Portrayed in the Documents of the Cairo Geniza* 3, 144; S. D.Goitein, *Letters of Medieval Jewish Traders Translated from the Arabic* (Princeton: Princeton University Press, 1973) 316-319.
Many people I spoke to had heard cases of parents or grandparents preparing for a voyage overseas or a dangerous journey who did this. Rabbi Waldenberg, *Tziz Eliezer*, a major *halakhic* authority in Israel who died recently, recommended in his responsa that husbands leaving the country even today in certain situations should write such a document and deposit it with the rabbinical authorities. My own rabbi supervised the recent writing of such a document by a congregant going to China.

bill of divorce to be deposited when the person left for overseas. Thus the couple would actually be divorced and when the husband returned they would remarry. One problem with this was that if the husband was a *kohen* (of priestly descent), he could not remarry his wife because a *kohen*, in Jewish law, is not allowed to marry a divorced woman. The agency method, by which the husband did not give an actual divorce but rather an authorization for one to be written if he did not come back, was not always reliable. The named agent could die or disappear in the interim period. This latter document, which we will see was often used in war situations later, is known as a *harsha'ah* (authorization) or *minui shlichut* (appointment of agency) rather than a *get al tnai* (a conditional get). All these different issues became part of the debate surrounding wartime conditional *gets* in World War II.[37]

The Conditional Bill of Divorce in 19th and 20th Centuries

By the end of the 19th century, rabbis faced new situations, including forced conscription into the Russian armies, particularly during the Russo-Turkish War (1879) and Russo-Japanese War (1904-5). They searched for the most effective ways to protect the wives of those at the front. Some authorities urged soldiers to give unconditional bills of divorce i.e. actually divorce their wives before they went to fight. If the husband

[37] The historical use of the conditional bills of divorce in wartime and in analogous situations is discussed in *Gitei Milchama* (Wartime *Gets)* by the noted Israeli *halakhic* authority, Rabbi Shlomo Zevin in *Le'or Halacha*, (Jerusalem, 2004) 64-83 and in an article with an identical title by Rabbi Shilo Raphael in *Mishkan Shilo*,(Jerusalem, 1995) 153-162, previously published in the 1969 edition of the rabbinical periodical *Torah Shebe-al Peh.* Rabbi J. David Bleich draws on the latter work in his brief discussion of this issue in *Contemporary Halachic Problems 1* (Ktav 1977) 150-4. Because the focus today is on the *agunot* who are the victims of recalcitrant husbands, the topic of missing husbands has received little attention in the secondary literature.

returned, they could remarry.[38] Evidence from the responsa literature[39] and from memoirs indicates that this was done at the time of World War I. An example of the latter is the memoir of Rav Yusele Peimer the rabbi of Slutz:

> After the outbreak of the First World War, hundreds of young Jewish men were mobilized and had to leave their beloved wives and children. It was the custom to give them a divorce document- This was done to prevent the following- If a Jewish solider was captured or missing in action or died his wife became an agunah (widow). She could not remarry ever. Therefore she was given a conditional divorce document stating that if her husband did not return from battle by this and this date she was automatically divorced from the date of the conditional document. Reb Mordechai Jacob, the scroll writer and Reb Shimon wrote the documents.[40]

At the time of the Russo-Japanese War, some authorities such as Rabbi Malkhiel Zvi Tannenbaum, attempted to deal with a situation of mass conscription, in which soldiers were not able to appear before a rabbinical court in person to appoint functionaries as scribes, witnesses for the drawing up of the divorce and agents to deliver the bill. Rabbi Tannenbaum allowed the appointment of scribes and witnesses in the presence of any two individuals even if the functionaries named were not present in person.[41] Through World War I, rabbis struggled to make use of the ancient Talmudic formulations

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[38] But if the husband was a *kohen*, this is not possible, as a *kohen* is not allowed to marry a divorced women and his wife would now be divorced In her research into the archives in Russia, Ukraine and Lithuania in the 19th century, ChaeRan Freeze discovered metrical books from Kharkov that showed "that some husbands, mostly Jewish soldiers, divorced their wives before they left for military duty and remarried on their return". ChaeRan Y. Freeze, *Jewish Marriage and Divorce in Imperial Russia* (Hanover: Brandeis University Press, 2002) 236, 364 n.139.

[39] See Zevin 2004, op.cit p.69-81and Raphael 1995 op.cit p157-159.

[40] H. A Peimer, Rav Yusele Peimer, *Memories, Slutzk and Vicinity Memorial Book* ed. N Chinitz, Sh. Nachmani, Yizkor Book Committee (Tel Aviv: 1962) 340. Translation is available on the website < http://www.jewishgen.org/Yizkor/slutsk/slu336.html > (22 March 2006).

[41] *Divrei Malkhiel*, Responsa quoted in Shilo op.cit p.157-159, and Bleich op cit.p153.

incorporating acceptable laws of agency, and laws of conditional agreements to protect the wives of soldiers in battle.[42]

The Conditional Bill of Divorce in World War II

Although the conditional bill of divorce has had a long history in *halakha*, it was only in World War II that the subject garnered widespread attention. There was almost a frenzy surrounding the efforts of rabbis to encourage Jewish soldiers to sign this document. In my view, the increased focus on the conditional bill of divorce was largely a direct reaction to the destruction of World War I. Even today World War I remains one of the most devastating wars of the modern era. The rise of new technologies and ways of fighting such as airplanes, submarines, and prolonged trench warfare changed the way in which war was perceived.[43] All of these factors increased the number of missing persons.

The casualties of World War I were astronomical. Millions of civilians died, in addition to the nine million soldiers who died in battle.[44] There were countless missing soldiers as well. This vast devastation had a psychological effect on its survivors. A whole generation of men was lost in battle. With a new conflict canvassing Europe by the late 1930s, rabbis, conscious of the immense problems that faced Jewish women in World War I and its aftermath, tried to prevent *agunot* at all costs.

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[42] Among the rabbis who did this were the Rav of Munkatch in *Minchat Eliezer*, R Shmuel Engel in Collected Responsa: Vol 6 (Bardeyev: 1931) folio 25 and R Meir Arik in *Divrei Yoshar* all of whose responsa contain many examples pertaining to wartime situations. There is anecdotal evidence that "some great Russian rabbis visited the soldiers before they left for the front and persuaded the Jewish soldiers to issue a *get* or conditional divorce so as to free their wives from the status of *agunah* if they did not return" See Robert Gordis, "A Different Kind of Hostage ", *Moment* (April 1987) 59-60. Unfortunately Gordis gives no sources for the rabbinic visits to the troops.

[43] See generally John Keegan, *The First World War* (New York: A Knopf, 1999) 1-25.

[44] See Martin Gilbert, *The First World War: A Complete History* (New York: H.Holt, 1994) 540-1, for a breakdown of casualties by country. Also see First World War.com <http://www.firstworldwar.com/features/casualties.htm> (22 March 2006).

Modern warfare itself complicated the issue of the conditional bill of divorce. The conditional bill of divorce was conceived at a time when people went off great distances to war and then only returned at the end of the hostilities. The introduction of furloughs and the ease with which soldiers were granted leaves created many problems for *halakhic* authorities as marital relations, and even being alone with one's wife, can invalidate the bill of divorce.[45] Therefore there needed to be discussions on how to deal with the conditional bill of divorce.

Rabbis from England, Israel, and Europe wrestled with these problems immediately after the commencement of hostilities in 1939. Chapter One of this thesis will show how these rabbis employed various methods to encourage men to sign this document. The chapter traces correspondence between the leading *halakhic* (Jewish legal) authorities of the time including the Chief Rabbis of England and Pre-Independence Israel. I document how these rabbis created numerous leniencies in the law in order to obtain as many signatures as possible. Their extreme worry was a response to the devastation that occurred in World War I. The rabbis used their influence to galvanize Jewish communal groups and newspapers to take up this cause as well. By contrast, rabbinic authorities in America actively chose not to promote the conditional bill of divorce in the American armed forces.

Chapter Two examines the rise of the American Committee on Responsa (COR) during World War II. The Committee on Responsa was a subset of the Committee of Army and Navy Religious Activities (CANRA) of the Jewish Welfare Board (JWB). In charge of the religious needs of the American troops, CANRA distributed food for

[45] Bleich, 153.

Passover, published a prayerbook, and helped to organize prayer services for the troops. The Committee on Responsa was formed to help answer religious and *halakhic* questions of chaplains. Together CANRA and its subcommittee COR worked to present a united front to the world and to reduce antisemitic sentiments of the time. The COR worked to maintain unity across the religious spectrum and to ensure that Jews were considered true patriotic citizens by American society at all costs, and those two considerations often governed their decision making process.

A key example of this was the conditional bill of divorce—the *get al t'nai*. The conditional bill of divorce was a point of great contention for the COR. Chapter Three examines the controversy surrounding the conditional bill of divorce among the members of the COR. Bitter arguments broke out between members of the committee Leo Jung (Orthodox), Solomon Freehof (Reform), and Milton Steinberg (Conservative). Religious denominationalism reared its head in this debate and the concept of unity was put to the test. Eventually the opponents of promoting the conditional bill of divorce won out.

This research project developed from a fascination with the intersections of tradition and modernity. As a student of history and as a Jewish feminist, I personally have experienced the tensions between Jewish law and constantly changing circumstances and looked forward to examining how others handled this dichotomy.

Like its subject, this project was also caught between the past and the future. Had I pursued this project ten to twenty years ago, more of the principal players (rabbis and soldiers) would still have been alive, or in better health to answer questions. The 'greatest generation' is slowly fading away: many veterans of World War II who are alive now and to whom I spoke were only 18 years old and unmarried at the time of their wartime

service. It was nearly impossible to find chaplains with enough cognizance to be interviewed. Time after time I located a chaplain only to find that he was in declining health and did not remember enough to speak with me. I finally did locate the sole surviving Jewish chaplain from World War II in England who is now aged 94. Although phone interviews proved impossible, my mother who was in England at the time, went to see him at my request and asked him questions for me. The information he gave was particularly significant because so many of the records of the London *Beth Din* were destroyed by bombing during World War I.

Because signed forms were destroyed on a soldier's safe return from the front, it was difficult to locate a copy of a signed one. I was fortunate to trace one belonging to an American World War II veteran living in Scranton, Pennsylvania, who had signed it on June 23 1944. It was interesting that he and his wife treasured this document and had given copies to their children as a mark of their love and abiding affection for each other.[46]

This project might also be easier to undertake ten years from now when all available letters and papers from that time period have been organized and archived. I was fortunate to discover a treasure trove of material at Temple Rodef Shalom in

[46] In a conversation with Mrs. Mildred Harris (20 March 2007), I learned that in summer 1944 her husband Sam, who was 22, had been waiting in a military base outside Washington for orders to go to Europe with his infantry unit. They were from Scranton, Pennsylvania, were Orthodox and had been married a year. She was staying with her brother, a Conservative rabbi in Washington. When her husband got his orders, it was her brother who strongly encouraged her husband to sign such a document for her protection. She recalled that there had been a case of a woman in Scranton who had remained an *agunah* from World War I and she thinks this was a factor in their decision. Her brother had recommended that they go to Rabbi Joshua Klavan, an Orthodox Rabbi in Washington, a renowned expert in Jewish law, to have the document drawn up. Rabbi Klavan did not use a printed form but wrote the text out in his own Hebrew handwriting. Mr. Harris signed and dated it in Hebrew and English. She did not remember where the document was for the duration of her husband's absence, but when he came back, after having been wounded in the Battle of the Bulge and hospitalized, he had not destroyed the document but they had kept it through the years.
I am grateful to Mr. and Mrs. Harris for sharing a copy of the conditional *get* with me, and also to Rabbi Hillel Klavan, son of Rabbi Joshua Klavan, himself a retired rabbi in Washington for directing me to the Harris family. He had known about the form because he had once been shown it by Mr. Harris.

Pittsburgh. One of the largest Reform synagogues, Rodef Shalom, houses the letters and correspondence of Solomon Freehof, the head of the Committee on Responsa during World War II. The archives were only opened two years ago and I was privileged to be their first visitor. To supplement his unique reflections, I also read countless memoirs of American chaplains from this time period. Their stories are remarkable and not widely known.[47] Their dedication to the well being of the troops and the lengths they were willing to go to attain it is extraordinary.[48] I hope this thesis will serve as a small tribute to these unsung heroes. The archives of the American Jewish Historical Society including Milton Steinberg's papers and the CANRA minutes also proved particularly helpful, as did the archives of the Jewish Theological Seminary and Yeshiva University.

Many American Jewish historians see World War II as a turning point for Jews in America, after which Jews began to feel comfortable exerting their political rights as citizens and comfortable in the surrounding culture.[49] If this is true, we must note that this achievement occurred in a period of religious unity. While the religious rifts are clear, CANRA leaders struggled to put them aside for the good of the Jewish people and the country in a time of crisis.

As for the *agunah* crisis, it is sadly far from over in America and elsewhere. It has taken on different shapes and nuances, but the core injustice remains the same. The issue is so contentious that at a conference of Orthodox Jewish feminists this February, one female religious leader called for protests and "civil disobedience" against rabbinic

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[47] Many of these memoirs of US Jewish Chaplains are listed in my bibliography.
[48] Eight US chaplains were killed in active duty
[49] See Deborah Dash Moore, *GI Jews: How World War II Changed A Generation* (Cambridge: Harvard University Press 2004), and Edward S. Shapiro, "World War II and American Jewish Identity" *Modern Judaism* vol.10, no 1 (Feb. 1990) 65-84

authorities.[50] It is my hope that this study of certain historical aspects of the *agunah* problem will lead to greater awareness of the issue, which will in turn place pressure on those in power to find solutions and look to all the possible remedies of the past that might help to relieve the problems that *agunot* face today.

[50] Tova Hartman, Opening Session 10th International Conference on Feminism and Orthodoxy, February 11 2007 New York.

CHAPTER 1

THE CONDITIONAL BILL OF DIVORCE CONFRONTS MODERN WARFARE

We cannot understand the approach of American rabbis to the use of the conditional bill of divorce in wartime without reviewing the views and actions regarding this issue in Jewish legal circles worldwide. For Americans, World War II only began after the Pearl Harbor attack on December 7 1941, but in Europe the war had started over two years earlier. On September 1 1939, the very day of the declaration of war with Germany,[51] the Chief Rabbinate in British Mandate Palestine convened in Jerusalem to discuss an issue of crucial importance. Chief Rabbi Isaac Herzog (1889-1959) emerged from this meeting determined that every married soldier leaving for war be required to sign a *get al t'nai* – a conditional bill of divorce—for his wife.[52] The speed and the unanimity with which this ruling was decided were unusual for a rabbinical group. Herzog and his colleagues were not the only rabbinic authorities to make a definitive statement early in the war regarding the issue of *get al t'nai*: rabbis in England and Europe concerned themselves with this issue as well. The urgency and seriousness of the discussion is remarkable considering the myriad of other troubles facing Jewry during this period. The conditional bill of divorce became a focal point for these rabbis in a way it never was in previous wars. I would suggest that the increased attention to this issue was in response to the huge *agunah* crisis that emerged at the end of World War I. The fear of the same problems occurring again led rabbis in British Mandate Palestine, England, and Europe to immediately address the matter even before the war started. Their

[51] Dated *Erev Shabbat, Parshat Ki Tavo* (Friday, Torah portion *Ki Tavo*). According to the Encyclopedia Judaica calendar (Jerusalem: Vol 1 1972), this corresponded to September 1, 1939.
[52] Isaac Herzog, *Shut Heichal Yitzhak, Even Ha'ezer*, Part 2 Siman 35, 36 (Jerusalem: 1967).

correspondence shows the urgency of the issue, the willingness to be less stringent in certain procedural aspects of the divorce laws, and the reception of these conditional bills of divorce by the Jewish community.

The Aftermath of World War I

A convergence of several factors in World War I caused an *agunah* problem of unprecedented proportions. The length and devastation of World War I had caught the world by surprise. The Great War killed nine million soldiers, wounded 21 million, and left at least 12 million civilians dead.[53] In addition, many soldiers died whose bodies were never identified. Buried in mass graves or left on the battlefield, their families never knew for certain what happened to them.[54] The introduction of submarines and planes created new types of warfare in which soldiers could disappear without a trace. Trench warfare was another distinguishing factor of World War I. In the static battles that they engendered, corpses would lie unclaimed until the front line moved and by that time many were unidentifiable. One solider described the frontline as "more or less a graveyard. Many soldiers lie buried in the parapet and in some cases their feet project into the trench. We came across others as we dig. If you saw it all, you wouldn't know whether to laugh or cry."[55] The soldier went on to write that "burying a man who has been killed in the open is usually done by shoveling a few shovels of earth over the body where it lies, and the hands and feet are often left exposed."[56] Many of these unknown or

[53] Neil Hanson, *Unknown Soldiers: The Story of the Missing of the First World War* (New York: Knopf, 2006). See also Introduction, *supra* notes 43 and 44.
[54] Ibid, 87.
[55] Ibid.
[56] Ibid.

missing soldiers were Jews, Jews who had often left their wives behind in cities and villages.[57] With no proof of their husbands' deaths, these wives became *agunot*.

Obviously previous wars had caused their share of missing soldiers, and conditional bills of divorce were mentioned in Russian responsa from wars such as the Russo-Turkish War (1877-78) and the Russo–Japanese War (1904-05).[58] However there were more *agunot* in World War I than in all other wars combined.[59] For this reason towards the end of the Great War, Rabbi Abraham Isaac Kook, the first Chief Rabbi of Palestine and the father of the religious Zionist movement, began to publicly voice his concerns about the *agunah* crisis. In 1917 he wrote in his definitive work *Igrot haRa'ayah*, "I am deeply perturbed by the plight of our Jewish sisters and their post-war, virtually intractable *agunah* predicaments."[60] Kook suggested some sort of publication to find solutions to this problem "in the light of all the available leniencies" but he also warned against "the frivolous authorization of illegitimate remarriage."[61] Kook wanted to create an institution to investigate the fates of missing soldiers so as to give these widows a better future.[62] While none of these ideas were implemented, Kook's statements serve as evidence of the extent of the *agunah* problem that existed following World War I and the determination of the rabbis to create solutions for it.

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[57] 50,000 British Jews fought in World War I, conversation with AJEX assistant Curator Brenda Goldberg Dec 2006.
[58] See introduction p. 16
[59] Personal interview with Jonathan Sarna, February 20, 2007.
[60] *Igrot HaRa'ayah* II p.15 quoted in Hagashma <http://www.hagshama.org.il/en/resources/print.asp?id=2092> (22 March 2007).
[61] Ibid.
[62] Ibid.

Other rabbis did attempt to alleviate the acute problem of wartime *agunot* by setting up a committee in Warsaw to collect information about missing husbands.[63] In America, Louis Epstein, a leading Conservative rabbi in Boston and president of the Rabbinical Assembly,[64] focused his attention on this issue by suggesting that in every marriage contract a husband appoint his wife as an agent to execute a divorce on his behalf. Therefore if the husband disappeared (or refused to grant her a divorce) she would have the ability to go before a *Beit Din* and be granted a divorce. Epstein published his treatise in Hebrew on this topic entitled *Hatza'ah Lema'an Takanot Agunot*[65] in 1930 and by 1935 the Rabbinical Assembly had initially voted to accept his proposal.[66] However the Orthodox rabbinate strongly opposed Epstein's proposition, claiming that it was not *halakhically* grounded. Indeed *Agudas HaRabbanim*, the major right-wing Orthodox group in America, published a volume of correspondence from prominent rabbis objecting to the Epstein plan.[67] Ultimately, Epstein's proposal was ultimately not approved by the Conservative movement.

British Mandate Palestine

The *agunah* calamity following World War I caught the Rabbinate completely off guard. They were determined not to let it happen again. As it became increasingly clear

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[63] *London Jewish Chronicle* 10 January 1941, 6/7.
[64] The Rabbinical Assembly is the association of Conservative rabbis in America.
[65] *Hatza'ah Lema'an Takanot Agunot*, (New York: 1930) Translation: *A Suggestion to Avoid Agunot*
[66] Sidney Schwarz "Conservative Judaism and the Agunah," *Conservative Judaism* 36.1 (Fall 1982): 37-44, and Robert Gordis, "A Different Kind of Hostage: Is there a Solution to the Tragedy of the Agunah?," *Moment* (April 1987,) 59-60.
[67] The volume was entitled *Le'Dor Aharon* (Brooklyn, NY: 1937). A similar book attacking the concept of placing conditions in the marriage contract was written in Vilna by Judah Lubetsky called *Ain Tnai B-Nisuin* (Vilna: 1930). In 1946, Epstein tried to respond to his attackers in *Le-Sheelot Ha-Agunot* (New York: 1940) to no avail. See also *infra* chapter 3 p. 62 notes 6,8,9 for discussions of the Epstein proposals in CANRA during World War II.

that many Jews would be fighting in World War II, Rabbi Herzog addressed the problem head-on. He recommended that each soldier sign a document dictating that the woman would be "released" if her husband does not return from the front within a year.[68] Herzog demanded swift action in widely implementing the document although he admitted that "in normal times they [the rabbis] took more time in the matter of a *get 'al tenai*, both because of the *halakhic* details that were bound up in it and because a *get* like this could ugly the atmosphere and damage family relations if it was taken advantage of in a non-appropriate manner."[69] It is apparent that while Rabbi Herzog acknowledged possible legal problems in the *get al t'nai* he thought the personal and social problem of *agunot* trumped these issues.

Rabbi Herzog immediately sent his suggestions to Rabbi Chaim Ozer Grodzinski (1863-1940) in Vilna, a leading rabbinic authority of Europe, to share his proposal and to respectfully request that the European rabbinic leaders act in similar fashion should war break out. He wrote:

> Although we are praying there will be peace that the danger of World War will pass there is a Holy duty on all the Rabbis of Israel[70] should be proactive as much as possible to prevent the *iggun* of the daughter of Israel. In every city of the Jewish Diaspora that there are learned teachers in the laws of divorce[71] should give instructions to the lay leaders to declare and to publish that every married man who is called to the army is obligated to do this [sign a conditional bill of divorce] and should go to the Rabbis as soon as possible[72]

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[68] Isaac Herzog, *Shut Heichal Yitzhak, Even Ha'ezer*, Part 2 Siman 35, 36 (Jerusalem: 1967).
[69] Ibid.

[70] Ibid. The phrase "all the Rabbis of Israel" referred to all rabbinical leaders worldwide.
[71] The laws of divorce are traditionally thought to be the most complex in Jewish law, and the *Shulhan Arukh* (The Code of Jewish Law) explicitly prohibits a rabbi from executing divorces unless he is expert in all relevant areas (*Even Ha'ezer 49:3)*.
[72] Herzog op.cit. *Even Ha'ezer*,Part 2 Siman 35,36 .

Rabbi Herzog proposed in his letter that the soldier should register the document with the *Beit Din* (Rabbinical Court) and if he did not return within a year after the end of the war the *Beit Din* would decide whether or not the woman would be permitted to remarry.

Rabbi Chaim Ozer Grodzinski replied in the winter –a few months after the breakout of the war in 1939. Apologizing for his late reply, he explained that he had been immersed in aiding Jews who had escaped to Vilna from other parts of Europe and were dependent on him. He agreed emphatically with Rabbi Herzog on the importance of the conditional bill of divorce and said that in Vilna he had taken steps to "arrange *gittin al t'nai* according to what has been customary earlier." He added that the conditional bill of divorce could be signed if the individual came to the *Beit Din* but "we are not allowed to publicize."[73] Thus, the conditional bill of divorce was utilized in Lithuania, although not officially promoted widely.

In Palestine, Rabbi Herzog followed up on his earlier proposal and attempted to ensure that every married soldier sign a document on this subject before he left for battle. Rabbi Herzog explicitly formulated the technical language of the documents to deal with specific problems in Jewish law. The form he developed for World War II read as follows:

> I give permission for everyone in Israel that they should give a divorce to my wife and write a *get* for my wife[74] and write as many as necessary until one is proper in the writing or the signing and all of this will be made clear to the chief rabbi of Israel that information from the military government has been revealed that I am with the lost soldiers or that I am missing from the world[75]

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[73] Ibid.

[74] This is written in an "exaggerated" form to try to place the responsibility on the entire community and to expand the number of people who could carry it out.

[75] Isaac Herzog, *Heichal Yitzhak*. The form is reproduced in Itamar Warhaftig and Shmuel Katz (ed) *Harabanut Harashit beYisrael* : *Shivim Shanah le-yisudah Vol II p.434* and in Isaac Klein, *Guide to Jewish Religious Practice* (New York: Ktav 1979).501-502.

This type of conditional bill of divorce, which gives agency to others to execute the divorce if the husband is unable to, was adopted by most rabbis in countries such as England and Holland.[76] In this form, the witnesses and scribes are not identified or named, but the man authorizes any rabbinical authority (in technical language "the entire city of Jerusalem") to act as his agent in divorcing his wife if he is missing. This has the practical advantage over other more traditional formulations, which name specific scribes or witnesses, because it does not limit the authorization to someone who may be dead or unavailable to act as his agent when the time comes.

Rabbi Herzog attempted to make the signing of this document universal for all those who fought during World War II. However, although he was widely respected, his authority was limited to the Jewish homeland in Palestine (the *Yishuv*), which was still under the British Mandate. Nonetheless, Herzog was relentless in using all formal and informal paths to promote the signing of such documents. Examination of Rabbi Herzog's available correspondence shows that in August 1940, the Chief Rabbi wrote to the Chief Rabbi of Egypt enlisting his help in getting married soldiers who had not signed a conditional bill of divorce before leaving Palestine to do so while in Egypt.[77] Rabbi Herzog was joined in his efforts by the Sephardic Chief Rabbi of Palestine, Rabbi Uziel (1880-1953), who wrote in February 1940 to the Chief Rabbi of France to ask him to get soldiers who enlisted in France, to sign a conditional bill of divorce.[78] Herzog worked

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[76] See below p. 32-38.

[77] Phone interview with Rabbi Samuel Katz of Jerusalem (who is researching the legal writings of Chief Rabbi Herzog), October 17, 2006. The letter was written on 29 Tammuz August 4 1940.

[78] Rabbi Uziel had written a responsum supporting Chief Rabbi Herzog's proposal. *Sefer Mishpetei Uziel Even Haezer* 6 Part 7 Siman 107 Jerusalem. 20 Elul 5699, September 4 1939. According to Rabbi Katz a copy of Rabbi Uziel's letter is in the archives of the Chief Rabbinate (849/6).

tirelessly to galvanize the international community into action in order to prevent the tragedy of wartime *agunot* from occurring again.

Eastern Europe

It was not just in Palestine that the issue of *agunot* sparked great concern; rabbis in Eastern Europe were dealing with this problem as well. Before the tragedies of World War II and the Holocaust, Eastern European Jewry was the locus of Jewish life, culture, and religious thought. Even when placed in ghettos and concentration camps, many Jews attempted to follow *halakha* as best they could.[79] While much of the rabbinic scholarship that existed during the Holocaust period was lost, the responsa, letters, and books that remain shed light on the struggles of rabbinic communal leaders to keep Jewish law during times of such unspeakable horror.[80]

As rabbis continued to be concerned with following *halakha* to the utmost during the Holocaust, the issue of *agunot* became more urgent. One documented example occured in the Lodz ghetto.[81] In 1941, a group of the rabbis of the ghetto met [82] to decide

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[79] My focus of research is not the Holocaust. The issue of the Holocaust and missing spouses and *agunot* is a vast field that needs close and extensive examination. However the two cases I bring up below took place in ghettos or pre-deportation camps and serve as a good context to understand rabbinic sentiment during the early stages of the war and the leniencies that were created in light of the extreme circumstances in which European Jewry found itself.

[80] For a good overview of *halakhic* literature during the Holocaust see, I.J. Rosenbaum, *The Holocaust and Halakhah* (New York: Ktav, 1976), H.J. Zimmels, *The Echo of Nazi Holocaust in Rabbinic Literature* (London: Ktav 1977), Ephraim Oshry, *Responses from the Holocaust* (New York: revised edition 2001), Avraham Fuchs, *Hashoah BeMekorot Rabaniyim* (Jerusalem: 1995).

[81] The Lodz ghetto, located in Poland, housed over 255,000 Jews. Throughout the war its residents were sent to the Chelmno death camp or Auschwitz concentration camp. When the Soviets liberated the Ghetto in 1945, 877 residents remained.
Jewish Virtual Library, <http://www.jewishvirtuallibrary.org/jsource/Holocaust/lodz.html> (21 March 2007). Controversy over the Lodz ghetto exists because the Nazis placed Mordekchai Chaim Rumkowski in charge of the ghetto and he was forced to decide the fate of his fellow Jews. For a heartbreaking account of this story see the novel Leslie Epstein, *King of the Jews* (New York: Coward, McCann & Geoghegan, 1979).

whether to obligate every resident to give to his wife some sort of conditional bill of divorce. There is no documentation of the results of the discussion but it can be assumed, based on the lack of any further record, that the suggestion was not accepted. In the community ledger of the Lodz ghetto dated January 10-13 1942 there is the following note "In connection with the campaign, the [head] rabbis gave authority to a [regular] rabbi to give divorces in a more simplified way…. the obligation to write a divorce falls on the men for a couple when one of the sides has to leave the ghetto."[83] Most likely this statement is referring to a conditional bill of divorce. In this brief note two things emerge: the decision to relax the rules regarding divorce—which are the most stringent in Jewish law— and the acknowledgment by rabbinic authorities that those who were leaving the ghetto would most likely face death.

There is evidence to show that conditional bills of divorce were often given in the Lodz ghetto during the time of mass transports.[84] The discussion among the rabbis of Lodz showed their attempts to prevent situations of *agunot* in the relatively early stages of Nazi domination even when there was no precedent for doing so. Their unusually dramatic actions demonstrate their awareness of the situation and the responsibility rabbinic leaders felt towards the public in the ghetto.

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[82] The protocols of the *yeshivot* in the Lodz Ghetto quoted in Esther Farbstein, *Be-seter Ra'am: Halakha, Hagut uManhigut biYemei ha-shoah: Hidden in Thunder: Perspectives on Faith, Theology and Leadership during the Holocaust* (Jerusalem, Mosad ha-Rav Kook, 2002) 289. I am indebted to this book on religious leadership in the Holocaust for directing me to valuable sources on the uses of conditional *gets* in Eastern Europe and in Holland.

[83] Chronicles of Lodz Ghetto, vol. 2, 57 cited in Farbstein, 296.

[84] Farbstein, Ibid.

The first transports from the Lodz Ghetto were comprised of men who were classified as criminals—either due to lack of obedience to the laws of the ghetto or because they were considered enemies of Ramkowski the Jewish head of the ghetto. Many of their wives who remained in the ghetto feared to be associated with their husbands and did not wish to be stigmatized as their widows. They therefore requested to be given a conditional bill of divorce.

Holland

Another example of the conditional bill of divorce in Holocaust literature comes from Holland. Germany invaded Holland in 1940, easily defeating its army.[85] The issue of the pre-conditional bill of divorce was discussed as early as July 1941, in a meeting of the Rabbinical Council on the initiative of Philip Frank, Chief Rabbi of Northern Holland.[86] When it became known that the Jews in Holland who were sent to Buchenwald concentration camp in Germany were being killed, he suggested that husbands should write for their wives a *get al t'nai*. While some rabbis initially opposed encouraging everyone to sign one, saying that would cause a panic, by 1943, more rabbis saw it as necessary. Rabbi Aharon Issachar Davids, Chief Rabbi of Rotterdam, began promoting a *get l'achar hazman* (a bill of divorce after a certain amount of time) which was essentially a conditional bill of divorce. The exact formulation of the *get* was written by Chief Rabbi Lodewijk Hartog Sarlouis and given to Chief Rabbi Abraham Solomon Levisson.[87] Rabbi Levisson in his role of area Rabbi of Freisland had access to the deportation camp Westerbork,[88] and he worked assiduously to convince married men in the camp to sign the *get.*[89]

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[85] For the Gerrman invasion of Holland see Michael J. Lyons, *World War II: A Short History* 2nd ed. (Englewood Cliffs, NJ: Prentice-Hall,1988) 88-9.
For information on the devastation of Dutch Jewry during the Holocaust see Jacques Presser, *Ashes in the Wind: The Destruction of Dutch Jewry* (Detroit: Wayne State University Press, 1988) and Mozes Heiman Gans, *Memorbook*, (Baarn, Netherlands: Bosch & Keuning, 1977).
[86] Farbstein, 296-299
[87] Ibid.
[88] More than 103,000 Jews were transferred from the transit camp to Auschwitz, Sobibor or Bergen-Belsen. 5,000 survived. There was a transport to the extermination camps every Tuesday. Anne Frank and her family were on one of the last trains to leave Westerbork before liberation The Forgotten Camps, <http://www.jewishgen.org/ForgottenCamps/Camps/WestEng.html>, (22 March 2007).
[89] Many forms of the *get al tenai* that were kept in the archives of the *Beit Din* in Holland were sent for safekeeping in London see Dan Michman *"Biymei Shoah v'Pekudah"* on Rabbinical Authority 84-85. There are also many individual forms that were found in private hands and in the private archives of Rabbi

When Levisson was still in Amsterdam, he wrote to Rabbi Frank who had already been sent to Westerbork, informing Frank that the form for conditional bills of divorce had been given the rabbinic approval of all the important rabbis in Holland.[90] He also discussed issues particular to camp life, such as the case of a husband who had been sent alone to the camps without having the chance to write a *get* for this wife. Levisson wrote that by depending on the Talmudic concept of *Kitvu U'tnu* (literally "writing and giving")[91] someone else would be allowed to give the divorce even if the husband was not present. An even greater complication occurred when neither member of the couple was present. When asked if both parties could appoint agents to sign the bill of divorce on their behalf, Levisson wrote that normally this would normally not be permissible, this time period could be considered a *Sha'at Ha'dchack* (state of emergency) in which according to Jewish law, certain leniencies were allowed. Indeed, as it became clear that those who were leaving on trains westward were destined not to return, the Dutch rabbis became increasingly lenient in the laws of divorce on order to prevent women from becoming *agunot*.[92]

Great Britain

The British Rabbinate took very seriously the issue of preventing wartime *agunot*. There were many Jews who enlisted in the British army at the onset of World War II.

Levisson, who, in a letter to Rabbi Frank in Westerbork on July 1942, gave special instructions relating to the "*get acharai hazman*".

[90] Farbstein, 298.

[91] Talmud, Tractate *Gittin*. 76b-77a.

[92] All of these Rabbis discussed were murdered by the Nazis.

70,000 Jewish soldiers served in different units of the British army.[93] This number does not include the 30,000 Jews who enlisted from Palestine, nor does it include the Jews who enlisted from the Commonwealth.[94] Out of the 70,000, more than 14,000 served in the air force, 15,000 in the Navy and the rest in different units. 1,150 fell in battle or died on active duty and 179 were declared missing.[95]

Two months after the outbreak of WWII, Rabbi Yehezkel Abramsky (1886-1976) head of the *Beth Din* of London publicized a ten-page *iggeret* (booklet) that appeared later as a responsum in his published writings. The *iggeret* was directed to Rabbis of the free world and especially to the Rabbis in Palestine and America, and recommended that married Jews who were conscripted to different armies give their wives a conditional bill of divorce in order that their wives would not be *agunot* if their husbands did not return from war.[96] As he wrote in his responsum:

> Because of the war that is being fought by land, air, and under water, it is likely to multiply *agunot* and widows. Therefore it should be proclaimed publicly, and talked about to every conscripted soldier individually that that everyone who goes out should give his wife a divorce.[97]

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[93] AJEX (Association of Jewish Ex-Servicemen and Women) < http://www.ajex.org.uk >, (22 March 2007) The figures are those of men and women actually contacted by Jewish Chaplains or whose names have appeared in authentic and checked nominal rolls.

[94] In South Africa for example, about ten percent of all the Jews volunteered to fight, 357 were killed and an equivalent number were injured.

[95] From Israel Brodie, British Jews in WWII in *Lochamim Yehudim Neged Ha natzim* edited Marian Mashket Tev Aviv 1971 239-241 Rabbi Brodie (1895-1979) had served as chaplain in WWI, became chaplain again in WWII, both in France and the Middle East, and was with the troops who were evacuated from Dunkirk. He was the first Jewish chaplain to be commissioned to the R.A.F, and served as Senior Jewish Chaplain, H.M.Forces from 1944-1948 when he became Chief Rabbi of the United Hebrew Congregations of the British Commonwealth of Nations, and served in this role until 1965. On Brodie, see J.M. Shaftesley, "A Biographical Sketch" in H.J.Zimmels, J.Rabbinowitz and I Feinstein(ed) *Essays Presented to Chief Rabbi Brodie*, (London 1967) p.xi-xxxiv.

[96] Avraham Fuchs, *Hashoah Bemekorot Rabaniyim*, (Jerusalem: 1995) chapter 23 "Jewish Soldiers in the War against the Nazis."

[97] Rabbi Yehezkel Abramsksy *Shut Chazon Yechezkel* on *Mesechet Zevachim and Likutim al Hashaas* part 3 Jerusalem 1981 *siman* 15, *daf* 157 a-b (see also note there) The writing of the booklet is discussed in the two volume biography of Rabbi Abramsky by Rav A.Swirsky, , *Melech B' Yafo*: 2004 Vol I p. 429-431. On the frontispiece of the booklet is written "iggeret from the London *Beth Din*, arranged and prepared by Rabbi Abramsky" No copies currently exist in the London *Beth Din* or in archives according to

According to Rabbi Abramsky's version of the conditional bill of divorce, the soldier should write that if he did not return five years from the end of the war, witnesses should grant his wife a divorce.[98] He acknowledged that in the tumultuous time of war it was psychologically hard to persuade soldiers of the advantage of signing the document.

The furlough, a new consequence of modern warfare, sparked further *halakhic* debate. To deal with the problem of possible invalidation of the conditional divorce by the soldier's coming home on leave after having signed it,[99] the document was formulated not as a technical bill of divorce but rather a document authorizing someone else to perform a divorce, so that the husband could come home and have sexual relations with his wife during a furlough without invalidating the document he had signed. However, Rabbi Herzog and Rabbi Chaim Ozer Grodzinski believed that a soldier must sign a new form every time he comes home.[100] Rabbi Abramsky maintained that even if a husband comes home during the war after signing the document and cohabits with his wife, the document would still be valid.[101]

Rabbi Abramsky's role in promoting the *get al t'nai* for soldiers is very interesting. He was opposed in general by many English Jews during his tenure as head of the London Beth Din, which lasted from 1935 till 1951 when he moved to Jerusalem. He was accused of bringing foreign and extreme ways to the rabbinic leadership of

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communication with David Frei *Beth Din* Registrar and Charles Tucker, *Beth Din* archivist. A copy is to be found in the library of Bar Ilan University which has handwritten notes by Rabbi Abramsky making *halakhic* clarifications. This has been published together with the handwritten clarifications in *Oreiyta* (a Jewish law publication), vol 17 Netanya 1993 p.50-55.

[98] The form is reproduced in Isaac Klein, *Guide to Jewish Religious Practice* (New York: Ktav, 1979) 505-506.

[99] The main code of Jewish Law, the *Shulhan Arukh Even Ha'ezer* 148 states that a conditional *get* is only valid as long as a couple do not subsequently have sexual relations.

[100] Rabbi Abramsky argues that one does need to do this because every writing of the *get* by those going off to war is for the specific purpose of freeing their wives if they become missing in action and therefore there is no fear that the soldier will cancel the *get* when he comes home.

[101] HaPardes, Tishrei (New York: 1941).

Britain, and he held stringent views on issues of conversion and ritual slaughter.[102] But on the issue of *agunot*, perhaps because of the suffering he had seen after World War I in Europe and in Russia following the Revolution, where he himself had served five years of hard labor in Siberia, he was prepared and determined to creatively use his vast knowledge of Jewish legal sources to relieve suffering.

Not only was the rabbinical leadership involved in promoting the conditional bill of divorce in England, but Jewish communal organizations responded forcefully to this issue as well. Throughout World War II, the London Jewish Chronicle ran a series of editorials, advertisements, and news briefs, informing their readers about the conditional bill of divorce.[103] On January 19, 1940 the newspaper published a statement from the Chief Rabbi Joseph Hertz **(**1872-1946**)** acknowledging the problem of *agunot* in the war and announcing the creation of a conditional bill of divorce.[104] The statement explained that a husband can, in front of a *Beit Din*, request a *get* to be issued five years later if he does not return. In July of that same year another news brief promoted the *get*, emphasizing that the document would not interfere with marital status and that "every thoughtful husband" should sign one. The brief also stated that the London Beth Din would invite the cooperation of the Jewish press and Jewish communal organization to help them on this important matter.[105] By April 2, 1942, a letter to the editor of the

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[102] Geoffrey Alderman, *Modern British Jewry* (Oxford: Oxford University Press, 1992) 357. See also Miri Freud-Kandel, *Orthodox Judaism in Britain Since 1913: An Ideology Forsaken* (Vallentine Mitchell: 2006). For a description of the scope and workings of the London Beth Din before Rabbi Abramsky's tenure, see Dayan A. Feldman,"The London Beth Din" Publications of the Society for Jewish Jurisprudence. Reprinted from the *Judicial Review*, June 1929.

[103] The London Jewish Chronicle was (and remains) the primary Jewish paper in England, and is viewed as its Jewish "newspaper of record".

[104] *London Jewish Chronicle*, 19 January 1940, 23.

[105] *London Jewish Chronicle*, 12 July 1940, 10/11.

Jewish Chronicle from Chief Rabbi Hertz and his *Dayanim* (Rabbinical Judges) implored enlisted soldiers to sign such a document.[106]

These leaders of the Jewish community were deeply concerned about the low level of response. By June 19, the editors of the Jewish Chronicle entered the debate, and in an editorial declared that it was a shame that a document that was so hard to create and had helped so many was actually being used by so few. The editorial went on to say that the document was only being used by the educated classes and the neglect of this issue could lead to tremendous problems later on. This leads to many interesting questions; Were the pleas of the British rabbis ignored? Did the majority of the married British Jews serving in the army not concern themselves with it? The Jewish Chronicle material suggests that they did not. We do not know how many soldiers signed the *Beth Din* document. The records of the London *Beth Din* were destroyed in bombing in 1940, and attempts through AJEX to find World War II veterans who were married during World War II have not been successful. The only tangible evidence we have is the testimony of Reverend Leslie Hardman, the sole surviving Jewish WWII chaplain,[107] who recounted that when he received the missives from the London *Beth Din*, he did everything he could to convince married Jewish soldiers to sign the form. But prevailing superstition at the time discouraged many people from even talking about the possibility of not surviving

[106] *London Jewish Chronicle*, 3 April 1942,10/11. This was the same time the issue was just beginning to be discussed by the Jewish Welfare Board in America.

[107] During World War 11, there were, according to Rev. Hardman, between 26 and 30 Jewish chaplains in the British forces. Two were killed on active service, and one, Isaac Levy (1910-2005), who later became Senior Chaplain in 1946, was captured in the Middle East by the Afrika Corps while serving as chaplain, but then escaped.

the war. Only one soldier, he remembered, expressed real interest in signing a conditional bill of divorce.[108]

Conclusion

While there are few filled out conditional bills of divorce in Europe and Israel still in existence, it is clear from the responsa and letters between the major rabbis of the time that the document was heavily encouraged by the rabbinate and widely publicized by leaders in the Jewish community. With the memories of the *agunot* of World War I haunting them, the rabbis often took advantage of leniencies in Jewish law that would have shocked their predecessors. Their struggles can serve as a microcosm for the problem of Jewish tradition confronting modernity and the way in which authority figures must work to combine the two. It is important to remember that in all of the countries listed above, the centralized rabbinical authorities were Orthodox. America, on the other hand, had no central religious authority. Orthodox, Conservative, and Reform movements all had strong organizational structures and constituencies leading up to the war. In the following chapters we shall see how the different denominations in America worked together in wartime, and the effect that had on the conditional bill of divorce.

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[108] Rev. Hardman, now aged 94, recounted that he had joined the chaplaincy in 1942 and served until 1945-6, first in the British Home Counties, and then in France, Belgium, Holland and Germany, being the first chaplain to enter the Bergen-Belsen concentration camp. In spite of his advanced age, Rev Hardman remembered personally signing a conditional document when he received the request from the Beth Din. He recalled the specific language of the missives he received asking him to "Please arrange meetings with your soldiers to arrange the signing of the *get*". In describing the reactions of the soldiers he approached, he said that they were scared and superstitious and felt it would be inviting "the evil eye" to sign. Personal interview, Jennifer Breger date December 8 2006. The actual document that Rev. Hardman signed is presently at the Manchester Beth Din; this was confirmed in a telephone conversation with Dayan I.D Berger, head of the Manchester Beth Din. No other similar forms were found with it. Telephone conversation with Dayan Berger December 22, 2006.

CHAPTER 2

THE JEWISH WELFARE BOARD'S COMMITTEE OF RESPONSA: A STUDY IN PLURALISM

When Rabbi Arnold Fishel was elected by a Pennsylvania regiment to serve as its chaplain during the Civil War, his appointment was rejected by the War Department, as only Christians were allowed to serve as U.S. military chaplains.[109] Only after American Jews turned this issue into a *cause celebre* and petitioned President Abraham Lincoln were non-Christians allowed to serve as chaplains in the U.S. Army.[110] Since then, Jewish chaplains have faced two difficult tasks: helping to fulfill the religious and emotional needs of soldiers, and representing Judaism and the Jewish people in the U.S. military in a positive light. This second task increased in prominence during World War II, a period with the highest number of enlisted Jews in the U.S. Army as well as the highest level of antisemitism in the U.S.[111] Because of this, chaplains worked hard to present Jews in the military as model American citizens.

One of the most important components of the chaplain's job was to make decisions for his base and for his soldiers on issues connected to Jewish law. However the chaplain could not merely give his personal *halakhic* opinion but had to respond as a representative of the Jewish Welfare Board (JWB) and the Committee of Army and Navy

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[109] Albert Isaac Slomovitz, *The Fighting Rabbis; Jewish Military Chaplains and American History*, (New York: New York University Press 1999), 11. Jews served in respectable numbers on both sides during the Civil War. Over 165,000 served with the Union and 2,000 with the Confederacy.

[110] The first authorized Jewish chaplain in Army was Rabbi Jacob Frankel of Congregation *Rodef Shalom* in Philadelphia. He was commissioned by President Lincoln on September 18, 1862 and served until July 1, 1865.

[111] For numbers see Deborah Dash Moore, *GI Jews: How World War II Changed a Generation* (Cambridge: Harvard University Press 2004). For a good review of antisemitism during this period see Hasia Diner, *The Jews of the United States, 1654-2000* (Berkeley: University of California Press, 2004) 207-215.

Religious Activities (CANRA) as well. Therefore, the legal decisions of the Jewish chaplaincy during World War II had to encompass all three major religious denominations- Conservative, Orthodox, and Reform. To accomplish this difficult task, a committee comprised of representatives of all three major denominations in Judaism was formed to render official *halakhic* decisions. Although each individual member of the committee had radically differing views, the Committee on Responsa (COR) attempted to present a unified front; when answering each question, committee members made strenuous efforts to maintain unity and present American Jews as patriotic citizens who could subsume their differences to assist the war effort.

The Committee on Army and Navy Religious Activities

During the First World War, a conglomeration of Jewish groups including the Union of American Hebrew Congregations, the Central Conference of American Rabbis, the United Synagogue of America, and the *Agudas ha-Rabbonim* (the Federation of Orthodox Rabbis) joined together to form the Jewish Board for Welfare Work in the United States Army and Navy, whose name was later changed in 1918 to the Jewish Welfare Board.[112] The JWB was recognized by the War Department as the official agency for Jewish welfare work in the military. The logic was that the JWB would help the Jews in the Army and in turn the Jewish soldiers would help the Army in the war. Or as the Executive Director of the Jewish Welfare Board wrote in 1918, "Primarily the purpose of the Jewish Welfare Board is to help America win the war."[113] Additionally, the JWB worked hard to dispel antisemitic notions that existed among both the soldiers

[112] Slomovitz, 44.
[113] Chester Jacob Teller *The Jewish Welfare Board* (Philadelphia: Jewish Publication Society, 1918) 1.

and chaplains in the military. Its initial "Purpose, Scope, and Achievement" report in 1918 stated that the JWB "distinctly opposes segregation of the Jew from his Gentile brother-in-arms. Its aim is to help the Jewish boy to understand and sympathize with those about him and to be in turn understood by them."[114] The JWB wanted Jewish G.I.s to be considered as invaluable assets in the war effort and in order to achieve that goal Jewish G.I.s needed to appear as a cohesive minority.

In order to deal properly with religious issues affecting soldiers, the Jewish Welfare Board formed the Committee on Religious Activities, which it later reorganized and renamed the Committee on Army and Navy Religious Activities (CANRA) in 1942.[115] The JWB worked hard to ensure that CANRA was religiously diverse. The committee was organized with five representatives from each of the three denominations, Orthodox, Conservative and Reform, three rabbis as at-large members, one layman with military experience, and one chaplain on the staff of the Chief of Chaplains of the United States Army.[116] CANRA took on ambitious projects immediately after its formation, and worked to create an official prayer-book and Bible for the military.[117] These projects required the different movements to work together to produce material that met the standards and philosophies of the majority of Jewish soldiers. CANRA's goal was to promote intra-Jewish cooperation both inside the Jewish world and outside of it.

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[114] Jewish Welfare Board, *Purpose Scope Achievements*, (National Headquarters NY 1918), 2.
[115] The committee later became known as the Commission on Jewish Chaplaincy (CJC) and most recently as the JWB Jewish Chaplains Council.
[116] Phillip Bernstein, *Rabbis at War: The CANRA story* (Massachusetts: American Jewish Historical Society, 1971), 2-3.
[117] Slomovitz, 80.

Recruiting Chaplains

Over the course of World War II, over 550,000 Jews served in the armed forces in America. This number constituted eleven percent of the Jewish population and fifty percent of Jewish men age eighteen to forty-four.[118] Jewish soldiers came from all over the United States from diverse religious backgrounds and with different needs that had to be met by the chaplaincy. Each of the three religious movements of Judaism— Reform, Conservative, and Orthodox— made a major push to recruit rabbis to serve as chaplains.[119]

The Central Conference of American Rabbis (CCAR), the rabbinical association of the Reform movement in America, required all recent graduates to receive evaluations regarding their eligibility for service. Senior rabbis visited newly ordained colleagues to remind them of their obligation to serve, and Reform congregations agreed to allow rabbis to resume their pulpit position once they returned from service.[120] The Conservative movement, through the Rabbinical Assembly, elected to have a voluntary draft system for all of their rabbis.[121] The situation in the Orthodox community was more complex, as Orthodox Judaism in America lacked a definitive umbrella organization.

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[118] Deborah Dash Moore, "When Jews were GIs; How World War II Changed a Generation and Remade American Jewry." *Jean and Samuel Frankel Center for Judaic Studies*, (The University of Michigan: 7 March 1994) 7.

[119] Gilbert Kollin considers that military service had a transformative effect on American Jews in its transition from an immigrant society and that the "impact of the war on the American rabbinate was even more pronounced." Gilbert Kollin, "The Impact of the Military Chaplaincy on the American Rabbinate (1861-1976)" in *The American Rabbi* ed. Gilbert Rosenthal, (New York: Ktav, 1977) 31-35.

[120] Slomovitz, 8.

[121] Bernstein, 8. Marsha Rozenblit in her essay on JTS during the Holocaust describes how Louis Finkelstein, the chancellor of the Seminary, tried to get as many of his graduates into the chaplaincy as possible, feeling that the army experiences would prepare them well for the challenges of post-war American Jewish life. She suggests that American Jewish needs and the perceived needs of the Conservative movement took precedence over concern for the atrocities taking place in Europe. See "The Seminary during the Holocaust Years" in *Tradition Renewed: A History of the Jewish Theological Seminary* ed, Jack Wertheimer (1992) 291-295.

However, under the mainstream Orthodox rabbinical group, the Rabbinical Council of America, many Orthodox Rabbis applied to be chaplains. In fact, modern Orthodox rabbis strongly encouraged Jews to participate in the war effort. When Rabbi Joseph Soloveitchik, considered the leader of the modern Orthodox movement, was asked about service in the military, he replied "It is not only permissible, but it is also the duty of every Orthodox rabbi to enlist in the armed forces for the purpose of rendering spiritual guidance to soldiers."[122]

Ultimately, 1,045 rabbis volunteered for military service in World War II but only 311 received commissions.[123] Of those commissioned, 147 were from the Reform movement, 96 were Conservative, and 68 were Orthodox.[124] The reason for this small number of Jewish chaplains was not the quota set up by the Chaplains' Office which allowed 3.2% of military chaplains to be Jewish, but the strict requirements created by CANRA. While the Chaplains' Office required applicants to have completed either three years of college or seminary, CANRA required applicants to have both.[125] This put many Orthodox candidates at a disadvantage, as they had studied in *yeshivot* outside the United States and did not attend university. In an attempt to protest this rule, on March 1941, members of the *Agudas Yisroel*, an ultra-Orthodox rabbinical organization, petitioned the War Department about chaplaincy requirements.[126] This group also objected to the inclusion by the Jewish Welfare Board of Conservative and Reform rabbis as religious authorities. However, the Chaplains' Office looked to CANRA for recommendations for

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[122] Letter of Rabbi Samuel Belkin, President of Yeshiva University to Rabbi Samuel Berliant, President of the Rabbinical Council of America, 14 May 1941 reporting on Responsa by R. J. Soloveitchik Appendix III in Sidney Hoenig, "The Orthodox Rabbi as Military Chaplain" *Tradition* vol 16 no 2 (Fall 1976) 55-6.
[123] Slomovitz, 75.
[124] Slomovitz, 81. Eight Jewish chaplains were killed in action in WWII. See note 26 below.
[125] Bernstein, 9.
[126] Slomovitz, 77-78.

chaplains throughout the war, and CANRA worked hard to ensure that each Jewish chaplain met its model of the American Jew. CANRA required that each candidate agree to support the observance of all the Jews he served, not just his own brand of Judaism.

CANRA not only wanted worldly and well-educated rabbis, it wanted "visually pleasing" ones as well. CANRA held interviews with candidates to determine if their appearances were suitable and did want any elements of "foreignness" in their recruits. Undesirable characteristics included foreign accents, beards or anything that would separate the Jewish chaplains from their non-Jewish counterparts. CANRA was determined to make a good impression on Jews and non-Jews alike.

CANRA's concerns did not abate once the candidate was accepted: the group continued to monitor the chaplains' progress. In one instance, two members of CANRA, Barney Brickner, a Reform rabbi, and Simon Kramer, an Orthodox rabbi, visited a group of Jews in the Army School for Chaplains at Harvard to check on their progress. In their report to CANRA, they told of an Orthodox rabbi in the school who made "his Orthodoxy objectionably obvious." [127] He not only had a beard but insisted on receiving his coffee in a glass cup,[128] and complained when a non-kosher spoon was used. The two CANRA representatives were shocked that because of his complaints, everyone else had to wait for their coffee. Kramer cautioned the candidate against acting "in an outlandish and bizarre fashion which would naturally arouse resentment."[129] In this situation CANRA did not seem to be concerned that the rabbi's complaint reflected a meticulous understanding of the kosher dietary laws; they were concerned instead that he should not

[127] CANRA minutes, 23 April 1941 and 19 October 1942, AJHS, NJWB Military Chaplaincy Records, Box 1.
[128] This was to ensure the cup was kosher.
[129] CANRA minutes, 23 April 1941 and 19 October 1942, AJHS, NJWB Military Chaplaincy Records, Box 1.

differentiate himself from the other chaplains.[130] However, to claim that CANRA was only looking for overtly religious problems would be unfair, as the organization took it upon itself to look for any sort of behavior that the larger community might deem objectionable**.** In that same visit, the CANRA representatives reprimanded two other Jewish officers for talking publicly and loudly about women and sex.[131]

Antisemitism Before and During WWII

CANRA sought "Americanized" chaplains in order to combat the significant antisemitism that existed in the U.S. and the armed forces. The Depression and the confusion of the inter-war years caused antisemitism to increase in the US during the 1930s and 1940s. Christian antisemitism found its voice in personalities such as Father Charles Coughlin and Gerald Winrod.[132] In major cities newspapers ran "want ads" that specified "Christians only".[133] Public opinion polls in 1938 and 1940 revealed that nearly two-thirds of Americans believed that Jews as a group had objectionable traits and over fifty percent of Americans thought that German antisemitism stemmed either partially or wholly from the actions of German Jews.[134] Indeed, Gunnar Myrdal in *An American Dilemma*, suggested that antisemitism was higher in America than in Germany before the

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[130] A number of the memoirs of Jewish chaplains that I read were Orthodox. Only one of them, Hersh Livazer, who served as chaplain at the end of World War II and also in Korea, wrote that he felt that JWB and CANRA were hostile to the Orthodox. Hersh Livazer, *The Rabbi's Blessing: From the Memoirs of a Chaplain in the US Army* (Jerusalem: 1980).

[131] CANRA minutes 23 April 1941 and 19 October 1942 op. cit. see note 21above.

[132] Fredric Cople Jaher, *A Scapegoat in the New Wilderness: The Origins and Rise of Antisemitism in America* (Cambridge: Harvard University Press, 1994), 246.

[133] Robert Michael, *A Concise History of American Antisemitism* (Maryland: Rowman and Littlefield Publishers, 2005), 144.

[134] Bernstein, 69.

advent of the Nazi regime.[135] Charles Lindbergh's 1941 speech attacking American Jews, entitled "Who are the War Agitators?" while extreme, was not beyond the pale of public sentiment.[136] Even in 1942, when America was already fully entrenched in the war, the Office of Public Opinion Research found that only about one percent of Americans polled believed that Nazi hatred of the Jews was bad.[137]

Before the U.S. entered the war, Jews were accused of war mongering, and during the war they were accused of cowardice and an unwillingness to fight. One popular ditty during the war was "So it's onward onto battle, let us send the Christian slobs. When the war is done and victory one, all the Jews will have their jobs[138]. One soldier remembered being frequently needled by his fellow soldiers who asked, "Where are the Jews?" and then by the Christian chaplains who asked, "Where are the Jewish chaplains?"[139] The accusation that Jews shirked their duty including the double stereotype of Jewish doctors granting exemptions to Jewish draftees, continued throughout the war. To counter these sentiments, the Jewish Welfare Board created the Army and Navy Public Relations Committee.[140]

The antisemitism was not limited to the common solider but had roots in the hierarchy of the Army as well. Some officers would harass Jewish soldiers and ridicule

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[135] Gunnar Myrdal, *American Dilemma: the Negro Problem and Modern Democracy* (New York: Harper, 1944) 53 1186n.

[136] PBS website, Reference site for film "Lindbergh" http://www.pbs.org/wgbh/amex/lindbergh/filmmore/reference/primary/desmoinesspeech.html

[137] Saul Friedman, *No Haven for the Oppressed* (Detroit: Wayne State University Press, 1973) 31.

[138] David Wyman, *The Abandonment of the Jews: America and the Holocaust: 1941-1945* (New York: Pantheon Books, 1984) 9.

[139] Oscar Kraines, 'Anti-Semitism in the U.S. Army, 1941-1945; A Memoir' *Midstream* (April 1999) 26-28.

[140] Slomovitz,79. Material was put out annually about the achievement of Jewish soldiers, their casualties, and their awards. Also stressed was the fact that 8 Jewish chaplains lost their lives during serving in World War II. See Isadore Kaufman, *American Jews in World War II: The Story of 550,000 Fighters for Freedom, 2 Vols,* (New York: Dial Press, 1947), 303-321.

their names or backgrounds. Government officials were not immune to antisemitic sentiments either.[141] During a wartime hearing on compulsory training before the House Military Affairs Committee, one congressman commented that there were many Jews who would not fight voluntarily and should not "be left to go scot free."[142] Additionally, the Army looked into Jewish claims for deferment, which were felt to be improper.[143] Jews thus faced the double-edged sword of being accused of evading military service as well as being looked upon suspiciously when they did enlist in the Army.

Even the chaplaincy was not immune from antisemitism. Antisemitic tracts still made their appearance on chaplains' shelves,[144] and antisemitic sentiments often bubbled below the surface. Most chaplains, along with G.I.s, experienced some form of antisemitism during their years of service. For Rabbi Harold Gordon, for example, changes in circumstances did not create a decrease in prejudices but merely continued the status quo:

> During the war years, there was much optimistic and pious talks about how living together at close quarters in the armed forces would promote good will between Jewish and non-Jewish soldiers. But in reality there was no more reason to expect such proximity to produce only good will than there was to expect a husband and wife to be on good terms all the time simply because they shared a home.[145]

Other Chaplains took a different view. Chaplain Rabbi Morris Kertzer described in his memoirs how the Army helped non-Jewish chaplains see their coreligionists in a new light:

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[141] Joseph Bendersky, *"The Jewish Threat" Anti-Semitic Politics of the U.S. Army* (New York: Basic Books, 2000), 295.
[142] Ibid. 296.
[143] Ibid.
[144] Kertzer, 35.
[145] Harold H. Gordon, *Chaplain on Wings* (New York: Shengold Publishers, 1981), 92.

> But in the main, army life had a tremendous effect on most chaplains. A Southern Methodist preacher, who had never seen a Jew out on the Texas range, who had first heard of Catholics when his mother spoke of the bogeyman, shared a tent or a foxhole with a rabbi and a priest. A rabbi leaving his Orthodox synagogue in Flatbush, whose life had been confined within the four walls of Brooklyn Jews visited the bedsides of Catholic and Protestant boys.[146]

For Kertzer, the Army served as an ideal ground to promote what we would today call multiculturalism. He, along with the rest of CANRA, considered this to be an opportunity for Jews to prove themselves to their non-Jewish counterparts and to show that they were just as brave, patriotic, and American as the rest of the country.

In this challenging environment many Jews, and CANRA in particular, saw the U.S. Army as an unique opportunity to break down barriers and dispel stereotypes about Jews.[147] This effort included promoting interfaith activities and creating good will among the other soldiers. For example, Jewish chaplains suggested that Jewish soldiers assume extra responsibility over Christmas to ease the burden of their fellow Christian soldiers. While this was not obligatory, most Jewish G.I.s, to CANRA's delight, willingly gave up their time.[148] Additionally, CANRA encouraged Jewish G.I.'s to befriend their fellow soldiers. Kramer, an Orthodox member of CANRA, reminded soldiers of the precedent in Jewish history for Jews mingling with their gentile counterparts and even helping them when the opportunity arose:

> The Jewish service man must therefore be very careful not to build up a wall of difference and antagonism between himself and the other Americans in the group who like himself are in the service of their country. He must, in the interest of the common Cause which all of them represent, fraternize with the gentile soldiers in

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[146] Morris Kertzer, *With an H On My Dog Tag*, (New York: Behrman House, Inc, 1947), 12. This was often true for non-Jewish soldiers as well. Once such soldier reported that "his concepts changed in proportion to the number of Jewish 'buddies' with whom he was thrown together." Edward T. Sandrow, "Jews in the Army- A Short Social Study", *The Reconstructionist*, March 17 (1944) 16.

[147] "Some however did not and changed their names from Cohn to Clarke and tried to hide all manners of their Jewish identity." Ibid, 299.

[148] Bernstein, 37.

> the camp, and as an American, observe all those amenities which the life of a soldier as well as his standing as an American will impose on him.[149]

This speech is surprising since one would expect an Orthodox rabbi to instruct soldiers to be true to their Jewish identity and to beware of assimilating, instead of encouraging them to fit in at all costs.

While for Jews, as for soldiers generally, '[t]here is ample proof that there are no atheists in foxholes,'"[150] outside of forward combat zones it was often perceptions of antisemitism in the military that led Jewish soldiers to seek out Jewish chaplains and Jewish community life. Thus, for many, the military environment helped strengthen their Jewish identities.[151] Even militant socialists and atheists asked the chaplain for a mezuzah to wear around their necks so as to identify as Jews.[152] "It could only happen here," Albert Eisen, a Jewish G.I., wrote to his mother. "I went to Jewish Services tonight. I think I can count on the fingers of one hand the times I have gone before."[153] Like many soldiers who participated in religious services when they would never have done so otherwise on "civvies street," Eisen explained that part of the reason for participating was to declare his pride in his Jewish identity. He wrote, "As a minority, it

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[149] Simon Kramer to Solomon Freehof, 10 February 1942. Freehof Files, Rodef Shalom Congregation, Pittsburgh. BA-89 FF 49.

[150] Edward T. Sandrow, "Jews in the Army- A Short Social Study", *The Reconstructionist*, March 17 (1944) 10. A somewhat more skeptical view of such "combat religion is found in Leon Rosenberg, "A Chaplain Discussing Combat Religion," *The Reconstructionist* December 1 (1944) 9-13.

[151] According to one study the return to religion was characteristic of the American military as a whole. See Margaret Mead, "Report of National Character" Department of Defense Research and Development Board. Washington DC 1951", 117. On a personal note, it would seem that applies today as well. A friend who recently returned from Iraq reported to me that Judaism became a focal point his life when he was there

[152] Harry Gersh, "Chaplains on Land and Sea: A One-Man Survey" *Commentary* (August 1948) 169-174.

[153] Albert Eisen in Isaac E. Rontch, *Jewish Youth at War: Letters from American Soldiers* (New York: Marstin Press, 1945) 43-47.

becomes necessary for us to declare ourselves to those who, unfortunately, are imbued with anti-Semitic sentiments."[154]

The "American Soldier"

At the same time that members of CANRA were trying to promote Jewish pride among G.I.s, they were also working to eliminate elements of "foreignness" among Jewish recruits. This often meant that CANRA, the organization dedicated to religious activities in the military, was willing to forgo religious necessities to gain acceptance. In one instance, the military offered to create separate kosher dining halls for the small number of soldiers who required it, after deciding that arranging kosher food in regular dining halls would be too complicated and labor-intensive. CANRA however, feared that a separate dining hall would further segregate Jews and instead chose to pay for kosher food to be distributed by chaplains and JWB workers.[155] This is a situation in which CANRA knowingly made it more difficult for observant soldiers to eat kosher food, as many Jewish soldiers were not stationed near a Jewish chaplain. CANRA's decision to control all availability of kosher food, instead of allowing the military to do so, prevented many men from observing the dietary laws.[156]

Even more startling was a statement that Rabbi Simon Kramer distributed to his Orthodox congregation during the war. Kramer told his congregants that all religious decisions in the military "must necessarily be based upon the fundamental principle that

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[154] Ibid.
[155] *Rabbis at War*, 21. CANRA Minutes, 26 March and 8 December 1941, AJHS NJWB military Chaplaincy Records, Box 1.
[156] One soldier described how he subsisted on a diet of fruit and bread throughout the war after being told that Kosher food kitchens would only be available if there were separate Jewish units. See Gottfried Neuburger, "An Orthodox G.I. Fights a War" *Commentary* (March 1949) 265-272.

‘good citizenship’ is an integral part of a Jew’s duty to his god and to his Religion.”[157] Kramer was not merely arguing that the strictest adherence of Jewish law must sometimes be sacrificed during wartime, but that there existed a Jewish legal principle of “good citizenship” that superceded Jewish law. This injunction of “good citizenship” could be equated with Biblical laws themselves. He then explained that part of this “good citizenship” meant participating in the group as a whole and not isolating oneself:

> In the first place we must guard against a gratuitous self-isolation from the rest of the group which will increase his [sic] own difficulties and at the same time reflect no particular honor upon the Jewish people or the Jewish faith. Self isolation is not a Jewish ideal and gets no support from Jewish teaching or Jewish history.[158]

Kramer explained to his congregants that Jewish soldiers must do all they can to become one with their “gentile neighbors.” He did however add at the end, “The Jewish soldier must therefore seek out every opportunity to observe his religion as much as he can without infringing upon the discipline inherent in army life.”[159] For Kramer, it is “one’s religious duty [as well] to bear arms in the defense of the country’s safety and honor.”[160]

Throughout the war, CANRA equated American values with Jewish ones. Even in the CANRA *Haggadah*, a liturgical text published to help Jewish soldiers celebrate Passover, the authors compared the Exodus story to the ongoing war.[161] The authors of the *Haggadah* introduce the text by proclaiming, "Pesach [Passover] teaches us that freedom is a priceless gift, and that we deserve to be free only if we are brave and help

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[157] Simon Kramer to Solomon Freehof, 10 February 1942. RS. BA-89 FF 49.
[158] Ibid.
[159] Ibid.
[160] Ibid.
[161] *The Passover Haggadah for Jewish Personnel in the Armed Forces of the United States* (New York: National Jewish Welfare Board, Commission on Jewish Chaplaincy, 1944). CANRA published many different issues of the *Haggadah*, often adding or removing text.

one another to secure and preserve freedom"; it then overtly reminded soldiers that fighting for freedom was a Jewish ideal and obligation.[162] The *Haggadah* focused on the joys of being American, and emphasized that, "here in America, we are free, and we celebrate our Pesach Seder with song and joy, with food and with drink. We live in this blessed land of liberty and our lot is a happy one. For this we give thanks to the almighty."[163]

The Tolerant Chaplain

CANRA also wanted chaplains who would be tolerant and work well with other Jews. When recruiting candidates, CANRA would try to gauge how open-minded they would be in certain situations. Phillip Bernstein, the Executive Director of CANRA, described how Orthodox members of the committee would question the Orthodox candidates about "their readiness to make the adjustments of religious practice" if it was necessary, and Reform members tested the Reform candidates on their willingness to "adopt traditional practices in order to serve the majority of Jewish personnel who had come into traditional background."[164] CANRA tried to ensure that no chaplain would try to push their brand of Judaism on anyone else. Additionally, CANRA wanted to be perceived as a cohesive group, not as one torn apart by infighting. Bernstein wrote that the move to get all chaplains to work as one group "led to more observance of tradition

[162] Ibid, 5.
[163] Ibid, 6.
[164] Bernstein, 5.

by Reform, a liberalization of the Orthodox, and an expansion of Conservatism, which seemed to characterize the general pattern that evolved under military conditions." [165]

For some, however, CANRA's concern bordered on hypersensitivity and proved to be unnecessary in the long run. Rabbi Isaac Klein, who was to become a leading Conservative rabbi, interviewed with the Jewish Welfare Board when applying for the chaplaincy before a committee made up of representatives from Reform, Conservative, and Orthodox bodies. He described the experience as almost comical:

> Looking back now, from the perspective of thirty years and of four years' experience in the chaplaincy, at the questions they asked me, I smiled at their irrelevance. They showed that the committee had a very faint idea of what the chaplaincy entailed. Some of the rabbis were particularly anxious to find out whether my observances of the Jewish dietary laws and the Sabbath restrictions would interfere with my chaplaincy work, and at what point I would relax in their observance. My answers were on the humorous side, spiced with apt quotations from the Talmud. Rabbi de Sola Pool- I was sitting next to him during the interrogation- smiled benignly and whispered into my ear, "That's the way to answer such questions.[166]

The Committee on Responsa

Once appointed, chaplains were confronted with unprecedented situations and faced difficult questions from soldiers that required Jewish legal decisions that they were not equipped to answer. In an attempt to meet this need, in 1942 CANRA created a religious subcommittee called the Committee on Responsa. The subcommittee was based on the traditional Jewish *Beit Din* (Rabbinical court or tribunal) where three people serve to render judgment; in this case however, each member represented a denomination of Judaism. The court was charged with the almost impossible task of rendering *halakhic*

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[165] Philip Bernstein, "Jewish Chaplains in World War II" *American Jewish Yearbook* 47 (1945-46) 173-200.

[166] Isaac Klein, *The Anguish and the Ecstasy of a Jewish Chaplain* (New York: Ktav, 1979) 11. In his memoir, Rabbi Klein describes his experiences as a Jewish chaplain in France after D Day and his efforts to help Jewish survivors in Europe.

decisions to satisfy every branch of Judaism. In this way a chaplain could give a decision not based on his own religious beliefs or opinions but informed by the thought process of the Jewish Welfare Board. Looking back at this process, Gilbert Kollin wrote that "It took acts of rabbinic statesmanship on the part of the denominational representatives to create an effective unitary approach."[167]

The three men called upon to perform this challenging task were Orthodox Rabbi Leo Jung, Conservative Rabbi Milton Steinberg, and Reform Rabbi Solomon Freehof. Each of these individuals was considered to be a strong spiritual leader in his respective movement at the time. Rabbi Leo Jung (1892-1987) was one of the founders of the modern Orthodox movement in America.[168] An advocate of Rabbi Samuel Raphael Hirsch's injunction of *Torah Im Derech Eretz* (Torah in conjunction with worldly activity), Jung served as rabbi of the prestigious Jewish Center synagogue in New York and religious chair of the Joint Distribution Committee. With his commitment to Jewish law and to *Tikkun Olam* (repairing the world), Jung was an ideal candidate to serve on the Respona Committee.

Rabbi Milton Steinberg (1903-1950) served as Rabbi of the Park Avenue Synagouge and although he was a disciple of Mordechai Kaplan and later aligned himself with the Reconstructionist movement,[169] he was a leading Conservative rabbi and served as the Conservative member of the Committee. Throughout his life, Steinberg engaged in

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[167] Kollin, 1977 op.cit.p.32.

[168] For more on Leo Jung's role in the formation of the Modern Orthodox movement see Maxine Jacobson, "Trends in Modern Orthodoxy as Reflected in the Career of Dr. Leo Jung" (Ph.D. diss., Concordia University, 2004). I am grateful to Menachem Butler for providing me with this source as well as other helpful material. See also Marc Lee Raphael, "Rabbi Leo Jung and the Americanization of Orthodox Judaism: A Biographical Essay" *Reverence, Righteousness and Rahamanut: Essays in Memory of Rabbi Dr Leo Jung* ed. Jacob Schachter (New Jersey: 1992)

[169] The Reconstructionist movement formally split off from the Conservative movement in 1953.

social justice work as Chair of the Rabbinical Committee on Social Justice, serving on the B'nai B'rith Hillel Commission and on the board of the national Jewish Education Committee.[170] An eminent theologian, he was also a prolific and best-selling author on Judaism.

Rabbi Solomon Freehof (1892-1990) was one of the first Reform rabbis to write and publish responsa to questions in Jewish law. He served as the rabbi at Rodef Shalom, a large Reform congregation in Pittsburgh. His mastery of Jewish traditional sources enabled him to actively serve on the Responsa committee where his learning commanded respect even from Orthodox rabbis.[171] During World War II, Freehof served as the committee chairman. Freehof was not only a serious *halakhist,* he was a great organizer and kept the Responsa Committee on track. Ironically, because the Conservative and Orthodox movements did not want the other's representative to serve as Committee Chair— thereby giving credence to their interpretation of *halakha*— the Reform rabbi was put in charge.

Over the course of World War II, the Committee on Responsa received questions on all matters of Jewish life, including when it was permissible to eat nonkosher food and

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[170] See Louis Kaplan, "On the Fiftieth Yahrtzeit of Milton Steinberg" *Judaism*, Wntr, 2001, Simon Noveck "Milton Steinberg" *The Other New York Jewish Intellectuals* edited by Carole S. Kessner, (New York: New York University Press, 1994), 313-352. See also Pamela S. Nadell, *Conservative Judaism in America:A Biographical Dioctionary and Sourcebook*, (Greenwood Press: 1988) 244-246. During World War II, Steinberg served as divisional chaplain of the New York National Guard, and his untimely death in 1950 was precipitated by a severe heart attack that he suffered while touring army camps in the South West on behalf of the JWB during the war.

[171] Freehof had written responsa prior to WWII. He was on the CCAR Responsa Committee from 1922-24. He later was chairman of CCAR Responsa Committee from 1955-76. Freehof had a serious interest in collecting traditional responsa for his library. Joan Friedman, "Solomon B. Freehof, The 'Reform Responsa,' and the Shaping of American Reform Judaism" (Ph.D diss., Columbia University 2003)

how to go about conducting Sabbath services in a church.[172] Chaplains wrote in to ask questions such as "Should Jewish services be held in a post interfaith chapel when there is a Christmas tree present?" and "May the Torah be read at other times if it is impossible to hold services on Shabbat mornings?"[173] Many questions inevitably dealt with issues of death and burial, including questions about burial in national cemeteries, burial on Shabbat, decoration of Jewish military graves and the use of a *tallit* in military burial.[174] Facing such questions about real life scenarios, often chaplains were unsure about how to proceed.

Although the Committee on Responsa made a concerted effort to concentrate only on issues affecting soldiers while on base or on active duty, inevitably many questions regarding marriage and divorce were asked.[175] The queries included one from a Reform soldier who wanted to convert his Protestant fiancée but no Rabbi was available, and another regarding whether to allow a non-Jewish chaplain to perform weddings if there was no other alternative.[176] One of the most notable cases the Committee answered was from a base in Honolulu, Hawaii. Maurice Schneirov, the Jewish chaplain in Honolulu, wrote to a member of the Jewish Welfare Board with an unusual query. He described it as

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[172] The wartime Responsa are preserved in the CANRA archives at the American Jewish Historical Society and some have been collected and reprinted in National Jewish Welfare Board. *Responsa in Wartime*. (New York: National Jewish Welfare Board, 1947). A further volume of responsa by David Aronson (who took over from Milton Steinberg), Solomon Freehof and Leo Jung was published by the Commission of Jewish Chaplaincy in 1953 under the title of *Responsa to Chaplains (1948-1953*).

[173] *Responsa in Wartime*, 16, 18.

[174] Ibid. 40-86.

[175] For example, to the question "Can a non-Jewish chaplain or Justice of the Peace perform a Jewish wedding if no Jewish chaplain or civilian rabbi is available", the answer was in the negative The response concludes: "If no Jewish chaplain or rabbi is readily available, a rabbi or some other Jewish communal functionary authorized by the state to perform marriages must be brought in, even if from some distance or at some inconvenience. Otherwise the Jewish Welfare Board representative will be in the position of arranging for these two Jews to live together in a relationship which is not sanctioned as marriage under Jewish tradition." *Responsa in Wartime*, 21.

[176] Ibid. 21, 24-25.

a problem "which is entirely beyond the scope of any experience which I have had, and which the chaplains cannot advise upon."[177] Schneirov described how two Jewish soldiers had become involved with non-Jewish girls and wanted to marry them. Although the non-Jewish women wanted to convert to Judaism, Schneirov was unsure how to proceed, especially as both of the men came from Orthodox homes. He added that one girl was black and the other one white in case that would influence the outcome of the case. While conversion is one of the trickiest topics in Jewish law, all three Rabbis were emphatic that race was not a factor as to whether or not one could convert to Judaism. In the first paragraph of his response, Leo Jung wrote that conversion is by no means based on the color of one's skin.[178]

The challenge of the Committee was to find solutions to these questions that all three Rabbis would agree upon despite their different denominational philosophies. Freehof acknowledged the complexity of this job in a letter to David De Sola Pool, the executive chair of CANRA and rabbi of the Spanish-Portuguese synagogue in New York Congregation Shearith Israel. Freehof wrote in February of 1942, "The difficulty of answering these questions under the present circumstances is evident. These questions are to be given not merely to Orthodox men but to men from Conservative and from Reform homes. It will be difficult for us to give answers satisfactory to all three groups."[179] He similarly wrote to his friend and fellow Reform Rabbi Jacob Lauterbach "It will be difficult to find an answer suitable to all soldiers. We cannot answer merely from the

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[177] Maurice Schneirov to Benjamin Rabinowitz, Jewish Welfare Board. 31 December 1942. RS. BA-89 FF 49.
[178] *Responsa in Wartime*, 22-23.
[179] Friedman, 223.

Orthodox point of view because if, for example, we make a demand that all soldiers should wear a hat, we can easily offend non-Orthodox men, etc."[180]

However the committee was determined to give answers that would satisfy all denominations. If there were disagreements, they would be publicized as little as possible. Freehof came up with a master plan for the how the committee should reconcile different views when answering questions. He laid this out in a letter to Jung and Steinberg:

> I will write out an answer according to my best knowledge and try to make the answer fair and suitable to all three groups. In other words, I shall write an answer not from the point of view of Reform Judaism but from what may be deemed a general point of view. Then I will send the answer to each of you and whatever revision you will wish to make, I am confident that your comments will likewise be from a common point of view.
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> 1) We will try to embody all three opinions (whenever there are varying opinions) and then send the answer to the Jewish Welfare Board.
> 2) In case some question arises with regard to which, in spite of our best intentions, we cannot arrive at a common answer, we should send our separate opinions to the question to the Welfare Board.
> 3) In no case should the enquirer (the soldier or the welfare worker) receive our discussion and debate since we do not desire to give an impression of disagreement and disputatiousness. We will transmit our answer to the Welfare Board and the Board will give an answer to the enquirer on the basis of our responses. [181]

The Committee was determined to present a unified front even when it contradicted the fundamental philosophies of their denominations.

One example of clashing ideologies is found in a question in which a woman had received a civil divorce over a year prior to the question, but had only recently obtained a *get (*Jewish divorce). She wanted to marry a soldier about to go overseas, but she had not

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[180] Friedman, 224n20 Jacob Z. Lauterbach, Cincinnati to Freehof TLS, 16 February 1942, RS BA-89 FF 27.

[181] Freehof to Steinberg, Jung, 4 Feb 42, RS BA-89 FF 27.

yet waited the three months required by Jewish law from the time she got her *get*.[182] The answer could not be clear cut as the Reform movement did not believe in the need for a *get*, but rather accepts the validity and sufficiency of civil divorce.[183] While there is a rule in traditional Judaism, forbidding such an early marriage, if the parties were Reform, they would not have to follow it, Ultimately after quoting the Talmud in *Yevamoth* 42a, as well as other rabbinic sources, the Committee concluded that in the case in question, the woman's having received a *get* after her civil divorce indicated that she, or her former husband or her fiancée was Orthodox and therefore she would have to wait the requisite number of months after receiving the *get*. [184]

While, officially, each member's opinion carried equal weight, a review of their decisions makes it clear that the Orthodox member implicitly carried more authority in decision making. And indeed, in June 1942 CANRA approved the following recommendation, submitted by its Orthodox membership: "Wherever an instance arises concerning Jewish law requiring an immediate decision, it should be referred by the chaplain to the Orthodox representative on the Sub-committee on Religious Practices in War Time."[185] However, Freehof's powerful personality and his extraordinary scholarship did not let him become railroaded by his more traditional counterparts. In one case, Freehof was upset that Jung had received a copy of the question before he did. He wrote, "Now in this case…Rabbi Jung is already committed to a negative reply before he

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[182] According to traditional Jewish law a woman must wait 3 months before remarrying to ensure that the paternity of any potential child is clear.

[183] At its rabbinical conference in 1869, the Reform movement declared: "The dissolution of marriage is, on Mosaic and rabbinical grounds, a civil act only which never received religious consecration. It is to be recognized therefore as an act emanating from the judicial authorities of the state. The so-called ritual get is in all cases declared null and void." Quoted in Yael Levy, "The Agunah and the Missing Husband: An American Solution to a Jewish Problem" *Journal of Law and Religion* vol 10 (1993-1994) 62.

[184] *Responsa in Wartime*, 32-34.

[185] Friedman, 224n19.

receives my suggested responsum. This makes it difficult for him to agree with my suggestion."[186]

When questions came to the Committee, they needed to be decided quickly. Since the three members of the Committee held other jobs and responsibilities, they corresponded by mail and even telegram. The quick interchange back and forth was of necessity. In one case, Jung answered Freehof rapidly as follows:

> ASNWER TO GUESTION 1 AND 4 IS NEGATIVE STOP AGREED TO QUESTION TWO STOP QUESTION THREE NOT ON FRIDAY OR SATURFDAY GREETINGS
> LEO JUNG [187]

Freehof wrote in his 1947 introduction to the publication of war time responsa:

> Inasmuch as many of the questions were far from having been decisively treated in the Jewish legal literature, and many new ones were hardly touched upon at all, our decisions will sometimes seem to have insufficient grounds or not to cover the entire literature; but we did not have the leisure either for completeness or certainty. We were compelled to get substantially the attitude of Jewish law and make our practical decisions. We did not have the joy of studying merely l'halacha; we had to give a definite decision l'maaseh.[188]

The need for quick-decision making led to rulings that would have been considered impossible before or after the war. There was an understanding that these decisions were made for war time only and would not be used as precedents afterwards. For that reason, the Committee agreed to not publish their decisions.[189] It would seem that this allowed members to make compromises with which they might not otherwise have been comfortable.

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[186] Freehof to Bernstein, 11 August 1943, RS BA-89 FF 50.
[187] Jung to Freehof. August 8, 1943. RS. BA-89 FF 49.
[188] Responsa in Wartime, iii. *l'halacha* means "for theoretical edification" whereas *l'maaseh* means "for practical application".
[189] Only after the war were selected responsa published in book form by CANRA.

Conclusion

The Committee on Responsa was remarkable in that although religious differences between the various religious groups militated against cohesion, somehow the Committee managed to make decisions. It succeeded in deciding policies on *Kashrut*, liturgical texts, and Sabbath services without incident. And, in many ways, the exigencies of war led to agreements on ritual observance that today would be astonishing. It was in this Committee that the discussion of the conditional bill of divorce during World War II took place. And as we shall see in the next chapter, it was in this environment of religious unity combined with the fear of appearing un-American that the conditional bill of divorce failed to be promoted by the Jewish Welfare Board.

CHAPTER 3

"RABBIS RECOMMEND DIVORCE FOR WIVES OF ALL JEWISH SOLDIERS": THE CONDITIONAL BILL OF DIVORCE CONTROVERSY

On October 8, 1942, Rabbi Solomon Freehof dashed off a quick note to his friend and fellow Reform rabbi James Heller, in Cincinnati Ohio.[190] Heller, the President of the Central Conference of American Rabbis, was a board member of CANRA. From his study in Temple Rodef Shalom in Pittsburgh, Freehof described one issue under discussion in the Committee on Responsa to which a unified answer was not forthcoming—that of the conditional bill of divorce for soldiers. If the Committee could not reach a decision and had to present the question to the CANRA body as a whole, Freehof requested that Heller hear his side beforehand. "I am particularly anxious to avoid any public announcements on the Agunah question," he added at the end of the letter.[191]

The same day Freehof wrote to his Orthodox colleague on the committee, Leo Jung, and explained his refusal to bend in his opinion regarding the conditional bill of divorce.

> It could lead to most unpleasant publicity. Imagine the headlines in some papers: "Jewish soldiers ask to divorce their wives. Rabbis recommend divorce for wives of all Jewish soldiers." Such unjust headlines will be remembered long after our careful explanations and corrections will be forgotten.[192]

These two letters show Freehof's part in a long and acrimonious disagreement with his colleagues, and his expectation that the argument would not resolve itself swiftly. Reading these letters, it is clear that though the Committee on Responsa had carefully

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[190] Freehof to Heller, 8 October 1942. Freehof Files, Rodef Shalom Congregation, Pittsburgh. BA-89 FF 49.
[191] Freehof to Heller, 8 October 1942. RS BA-89 FF 49.
[192] Freehof to Jung, 8 October 1942. RS BA-89 FF 49.

crafted itself as a public model of religious pluralism, this image concealed a great deal of tension and disharmony.

Indeed, the problem of the *agunah* during wartime threatened to dissolve the unity between denominations that CANRA had worked so hard to create. While an extreme example, the bitter controversy over the conditional bill of divorce illustrates apparently unbridgeable divisions between the denominations in World War II. Despite the good will and good intentions of the Committee, the rabbis who had compromised on actual laws would not compromise on the overarching philosophies of their own denominations. Although ultimately the Committee agreed to disagree and published a common statement, Freehof's strong antagonism towards the conditional bill of divorce caused it to be less publicized and less utilized than it was in other countries such as England and British Mandate Palestine.

The question of the conditional bill of divorce was brought to the Committee on Responsa's attention early in the war. On February 27, 1942, less than three months after the attack on Pearl Harbor, David De Sola Pool, the chairman of CANRA and an Orthodox Sephardi Rabbi, wrote to the members of the Committee on Responsa—Solomon Freehof, Milton Steinberg, and Leo Jung.[193] In the letter, he explained that CANRA had been asked to address the problem of *agunot* in wartime. Pool, who served during World War I as a field organizer and director of army camp work for the JWB, gave two possible solutions to the quandary:

> 1- The suggestion has been made that Jewish men who enter the army or navy should give a *Get Al Tenai*, making it possible for their wife to receive *Get* should they disappear or be bombed out of existence without there being the absolute evidence of their death which Jewish law demands.

[193] Pool to Freehof, 27 February 1942. RS BA-89 FF 27.

> 2-The suggestion which has been made that in the *Ketubah* there be included a stipulation that should the husband completely disappear with every presumption but without proof of his death, the *Beit Din* be empowered to grant a *Get*.[194]

Pool's first suggestion is in line with the viewpoints historically maintained by Orthodox and Conservative rabbis on the topic of conditional bills of divorce during wartime. His second suggestion reflects a discussion going on before and during the war on the subject of adding a clause into the *ketubah* (marriage contract) that would allow a court to grant a woman a divorce without the signature of her husband. There was a disagreement over whether such a clause would invalidate the contract. [195] Pool wrote the letter on *agunah* in a tone similar to the many other letters he had written to the Committee on Responsa about issues such as keeping Kosher, observing the Sabbath, and dealing with non-Jews who want to convert to Judaism[196]. Little did he realize the maelstrom he had unleashed.

Less than a week later, the Conservative committee member, Milton Steinberg, wrote a brief letter to Freehof. In the letter he suggested setting up official rabbinical courts to issue these conditional bills of divorce for soldiers who were already married throughout the country.[197] He also suggested looking to the work of Conservative Rabbi Louis Epstein for a model clause in the *ketubah* for those about to get married. Epstein had long championed placing a clause in the *ketubah* to prevent all *agunah* cases and the outbreak of war made the issue all the more pressing.[198]

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[194] Ibid.

[195] Louis Epstein's advocacy of adding this clause to prevent *agunot* caused great controversy in the Jewish world. For his study of the history of the *ketubah*, see Louis Epstein, *The Jewish Marriage Contract* (New York: Jewish Theological Seminary of America, 1927).

[196] Pool to Freehof, 19 March 1942. RS BA-89 FF 27.

[197] Steinberg to Freehof, 3 March 1942. RS BA-89 FF 27.

[198] Louis Epstein, "A Suggestion to Avoid Agunot" *A Solution to the Agunah Problem* PRA 4 (New York: 1930-32) 83-90. See also the discussion *supra* in chapter 1 p.26 and footnotes 14-17.

Ten days later, Freehof responded that a conditional bill of divorce should not be considered: "It is a gruesome thing to ask every married soldier to visualize his complete destruction and to free his wife conditionally beforehand. It would be terribly destructive to morale."[199] He remained open to considering the clause in the *ketubah*– but added that it would not apply to Reform Jews as Reform Judaism does not require a *get* or a Jewish divorce for two individuals to be considered able to remarry.[200] It is possible that because of this, Freehof did not feel the plight of the *agunah* as acutely as did his two committee colleagues.

Jung however did. He replied to Freehof that in wartime, the standard opinion in Jewish law was to create a conditional bill of divorce.[201] He also disagreed with Freehof's claim that encouraging soldiers to sign such a document would damage morale. He wrote that "a tactful and wise word from the Rabbi who arranged for this contingency would prevent this grim necessity from becoming destructive to the morale of the soldier."[202] Steinberg agreed and together they attempted to persuade Freehof that in *halakha* a conditional bill of divorce was the only viable option for those who are already married.[203]

The issue of morale and the conditional bill of divorce was a complex one. Many soldiers and officers did feel such a document was a sign of bad luck. Evidence for this comes from the interview with the Orthodox English chaplain Leslie Hardman recorded above

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[199] Freehof to Steinberg, 13 March 1942. RS BA-89 FF 27.

[200] At its rabbinical conference in 1869, the Reform movement declared: "The dissolution of marriage is, on Mosaic and rabbinical grounds, a civil act only which never received religious consecration. It is to be recognized therefore as an act emanating from the judicial authorities of the state. The so-called ritual *get* is in all cases declared null and void." Quoted in Yael Levy, "The Agunah and the Missing Husband: An American Solution to a Jewish Problem" *Journal of Law and Religion* vol 10 (1993-1994) 62**.**

[201] Jung to Freehof, 19 March 1942. RS BA-89 FF 27.

[202] Ibid.

[203] Steinberg to Freehof, 20 March 1942. RS BA-89 FF 27.

in Chapter One.[204] Resistance on the part of married soldiers was not uniform, however. U.S. chaplain Rabbi Harold Hirsch Gordon, known as "the flying Jewish Chaplain," traveled all over the world during World War II. Gordon did not encounter the same vociferous objections to the conditional bill of divorce that Rev. Hardman did. In his memoirs, Gordon recounted that in the marriages he performed, he made use of a legal document created by the Rabbinical Assembly, the association of rabbis of the Conservative movement in America. By signing it, the husband agreed that if he did not return within three years of postwar demobilization, a rabbinical court could give his wife a *get*. Gordon wrote:

> Since this is a rather delicate subject to discuss with two young people about to be married, I made mention of this "conditional divorce" as casually as possible during our first premarital conference, usually at least a few days before the wedding[205]

For Gordon, a Conservative Rabbi, the goal was to have as many couples sign these documents as he could. He mentioned it "as casually as possible," implying that there was some fear of a soldier's negative answer. According to him, only one couple in his experience refused to sign – as they came from nonobservant families and did not accept traditional marriage laws.[206] From these two cases, one in England, one in America, it is clear that effect on the morale of the soldier could vary according to the individual personality of both the soldier and the chaplain as well as the nature of their interaction.

Unlike in previous situations of conflict, where the agreement of two members of the Committee often caused the other to at least rethink his position, Freehof refused to be cowed. "I will have to be obdurate," he declared in a letter to Steinberg on March

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[204] See chapter one page 37.
[205] Harold H. Gordon, *Chaplain on Wings* (New York: Shengold Publishers, 1981) 47.
[206] Ibid.

24.[207] "I believe it is cruel and destructive of morale to ask a young married soldier to take steps which envisage his complete extinction." While the tone was unyielding, using the same language as his letter of March 13 cited above,[208] he assured Steinberg that "we really have done very well so far and a little disagreement or two will not affect our further work."[209] Freehof was not willing to break up the united front he had worked so hard to create, but neither was he willing to back down on this issue. Freehof suggested at the end of his letter that Steinberg and Jung draw up a joint statement and Freehof would send a report to CANRA stating that the Committee was in disagreement. This solution had worked previously in a disagreement over the use of Christmas trees for Jewish troops.[210]

Steinberg agreed to this.[211] However, nearly a month later, no progress had occurred. Pool was unwilling to let the issue lapse and on April 24, 1942, he wrote a Jewish Welfare Board Office Memorandum on the topic.[212] He quoted a clipping from International Women's News reporting that the Palestine Jewish Woman's Equal Rights Association had convinced the Chief Rabbi of Palestine to require every married Jewish solder to sign a conditional bill of divorce.[213] He also reported that the London *Beth Din* had drawn up legal documents to prevent women from becoming an *agunot.* Examples, such as those discussed in Chapter One, allowed Pool to argue that just as Jewish

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[207] Freehof to Steinberg, 24 March 1942. RS BA-89 FF 27.
[208] See p. 65 of this chapter.
[209] Freehof to Steinberg, 24 March 1942. RS BA-89 FF 27.
[210] Pool to Freehof, 4 February 1942. RS BA-89 FF 27.
[211] Steinberg to Freehof, 30 March 1942. RS BA-89 FF 27.
[212] He sent this also to the Committee. David De Sola Pool 24 Apri1 1942. RS BA-89 FF 27.
[213] It is hard to know what credence to give to the credit taken by the Palestinian Women group considering the very positive and forceful statement by Rabbi Herzog on this issue already in 1939. Rabbi Herzog makes no mention of the women's group in his writings.

institutions in other countries had introduced a conditional bill of divorce, so should CANRA.

Despite Pool's prodding, no decision from the Committee on Responsa was forthcoming on this issue. Time passed and the Committee was easily distracted by other pressing problems and questions relating to the war. Pool wrote Freehof again in August pressing for some sort of resolution.[214] However, Freehof would offer none. Instead he suggested that although it was impossible for the Committee to come up with a joint *halakhic* decision, it could create a mode of procedure in which to continue.[215] This was unlike any of the previous responsa of the Committee, where even if there were disagreements, a *halakhic* decision was always given with a minority opinion. Instead, Freehof suggested that the Committee inform chaplains of the conditional bill of divorce option, but not notify the soldiers directly. He wrote that if a soldier inquired about the document, the chaplain would help him receive one. For Freehof, this "don't ask, don't tell" policy provided a possible compromise; the Committee would neither be endorsing nor rejecting the conditional bill of divorce, and the option existed for those who knew to ask for it.

Upon closer examination however, it appears as if Freehof were pushing his own opinion in different packaging. In the same letter, Freehof explained that although the chaplain would have the information about the conditional bill of divorce, he could not announce the option or encourage soldiers to use it.[216] Only a soldier, who on his own initiative approached a chaplain, may be given information about a conditional bill of

[214] Pool to Freehof, 17 August 1942. RS BA-89 FF 49.
[215] Freehof to Steinberg, 19 August 1942. RS BA-89 FF 49.
[216] Freehof to Steinberg, 19 August 1942. RS BA-89 FF 49.

divorce. Freehof wrote, "In this way we will avoid having a public agitation for wholesale divorces and each soldier who will ask for it will be able to get the necessary information from the chaplain."[217] For Freehof, this was a fair compromise. After all, Freehof would be allowing the conditional bill of divorce document to be distributed by chaplains, albeit in a somewhat furtive and under-the-table manner.

Yet for many, especially the Orthodox rabbis in CANRA, Freehof's proposal was unsatisfactory. Pool pressed Freehof to reconsider his position and agree instead to help promote the conditional bill of divorce among American Jewish troops:

> We should go at least one step further from your suggestion, and have the chaplains inform not only the men who make inquiry as to divorce, but inform the men as a whole through general notices in their bulletin, etc., that they are prepared to advise married men who desire to protect the rights of their wife in the event of certain fatalities of war...Then when the men come around, word will get around what it is all about and the interested will come and inquire.[218]

Behind Pool and Freehof's disagreement about how to promote the conditional bill of divorce lay a resistance on the part of both men to understand the other denomination's point of view. For Pool, the *agunah* problem affected all Jews, not just the observant ones. A woman could be an *agunah* without even knowing what one was, and this could affect the religious status of her children if she remarried. Therefore for Pool it was imperative that chaplains publicize and educate soldiers about this issue in order to prevent future tragedies. Freehof, on the other hand, could not comprehend it as a compelling need. He saw it instead as a dangerous idea that could foster a belief in the general public that Judaism was a religion filled with medieval and outdated rituals, thus inhibiting Jews from being accepted into the ranks and, more generally, into American

[217] Ibid.
[218] Pool to Freehof, 25 August 1942. BA-89 FF 49.

society. Accordingly, while Pool wanted to make conditional bills of divorce the norm among Jewish soldiers, Freehof wanted to make them a rare exception.

The Orthodox member of the Committee on Responsa, Leo Jung, took issue with Freehof's whole approach to this problem. He agreed with Freehof, in a letter on September 9, that the "issue of agunah requires very delicate handling."[219] However, Jung felt that Freehof ignored both past precedent as well as the need for the document itself:

> If, as it is usually done, the soldier is enlightened about get-al-tenai as a precautionary measure for the benefit of his beloved wife, he will find it just as little harsh, as he would find the suggestion that he avail himself of the opportunity to buy life insurance.[220]

Jung seems to be subtly reminding Freehof that this idea of a conditional bill of divorce had a long precedent in Jewish law and was not the work of zealous religious fanatics. He also asked Freehof to remember that this was to alleviate suffering for the "beloved wife" and was no more a reminder of one's own mortality as buying life insurance.[221]

Freehof held firm, however, and after doing research on issues surrounding conditional bills of divorce[222], replied to Jung that it was not the Jewish Welfare Board's responsibility to solve the problem of *agunah*. In direct response to Jung he wrote, "so much thought has already been expended on it for generations," and the committee's job was to relate the issue to soldiers and "not to go into the complex and bitter question" itself.[223] He wrote to Jung that in this situation those who suffered the most were the

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[219] Jung to Freehof, 9 September 1942. BA-89 FF 49.
[220] Ibid.
[221] Ibid.
[222] Freehof wrote to Louis Epstein asking for his book on *agunot* and to the editor of *Hapardes* (the journal of the Right wing Orthodox *Agudas Harabbanim*) asking for a copy of their issue on the subject. Freehof to Epstein. 19 August 1942 BA-89 FF 49; Freehof to editor of *Hapardes*, 24 August 1942. BA-89 FF 4.
[223] Freehof to Jung, 4 April 1944. BA-89 FF 49.

victims—namely, the wives—thus they, not the soldiers, should be the ones concerning themselves with this issue. Without mincing words he declared, "If anybody would do anything about it, it would be the wife."[224] He suggested that concerned wives should write to their husbands and ask for a conditional divorce. This "practical solution" would "save us a great deal of trouble and embarrassment."[225]

My review of all of Freehof's letters on this subject suggests that the root of his opposition was a fear that if the divorce document were made public, Jews and Jewish institutions would appear in a bad light, as encumbered with primitive and harmful rituals and therefore inconsistent with modernity. He was also concerned that Americans would believe that Jews were "permissive" regarding divorce which was looked at askance at that time. Although Freehof was a serious student of Jewish law with great interest in, and knowledge of, traditional rabbinic responsa literature, he was unmoved by the overwhelming precedent in this literature on this matter, and in this instance at least, fully tracked the ideology of Reform Judaism. Freehof argued that CANRA must be faithful to its predominant goal and remain vigilant regarding the Jews' image both in the military and in American society. In a way, this was his trump card because, as shown in the previous chapter, CANRA was very occupied with reinforcing and improving Judaism's image in American society. Thus Freehof's concern for the acceptance of Jews into American society (reflective of other goals of Reform Judaism) trumped his customary concern and respect for traditional Jewish legal requirements.

Freehof also wrote to fellow Reform rabbi James Heller asking for his support.[226] Heller immediately responded, agreeing that "the Committee should take no action in

[224] Ibid.
[225] Ibid.
[226] Freehof to Heller, 8 October 1942. RS BA-89 FF 49.

regard to the problem of the 'Agunah' unless it be what you suggest." [227] Heller represented both the institutional branch of the Reform movement and served as a member of the multi-denominational CANRA. Thus, he too had the difficult task of promoting communal unity while maintaining the values and principles of the Reform movement. Heller suggested that if this argument did not conclude to Freehof's satisfaction, Freehof should insist it be re-reported to the larger CANRA committee.

This issue may have been left in stalemate forever had Steinberg not changed his mind at the end of October 1942. He now wrote to Freehof to let him know that he agreed entirely with Freehof's recommendation. He wrote:

> I feel too that it would be unwise to send out a broadcast letter to Jewish soldiers informing them that they may issue conditional divorces to their wives. You would seem to have suggested a much wiser procedure and I for one am happy to endorse your recommendation. [228]

It is unclear what caused this about-face: a feeling that the political tide was changing, a desire to bring this long drawn out debate to a conclusion, or maybe just a sense that keeping the conditional bill of divorce below the radar would be a good idea. It is hard to say, but Steinberg's reversal was vital to bringing the conditional bill of divorce issue towards some sort of conclusion. Delighted by his new ally, Freehof stressed to Steinberg, "What I suggest is really a mode of procedure and in this case the mode of procedure is vital."[229] Freehof also wrote to Jung that he was waiting on his response and that if he did not hear to the contrary, he would draw up a report.[230]

Suddenly, the theoretical question became a live issue. The Committee on Responsa received a direct query from Samson A. Shain through the office of the

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[227] Heller to Freehof, 22 October 1942. RS BA-89 FF 49.
[228] Steinberg to Freehof, 22 October 1942. RS BA-89 FF 49.
[229] Freehof to Steinberg, 24 October 1942. RS BA-89 FF 49.
[230] Freehof to Jung, 26 October 1942. RS BA-89 FF 49.

Chaplain Station Hospital in Fort Benning, Georgia. Shain asked, "What shall be done in the case of a girl marrying a soldier who wishes a provisional military 'get' included in her marriage contract?"[231] Pool forwarded this request on to the rest of the Committee and awaited response.

By November, it seemed that everyone agreed (at least publicly) with Freehof's suggestion to send chaplains various conditional bill of divorce forms from the different rabbinical organizations. Along with the documents there would be a statement from CANRA instructing the chaplains on how to deal with them. Freehof drafted the statement:

> In order to avoid the danger of public misunderstanding and the possibility of unfair publicity, you are asked not to issue any general letters or to put up any public announcements with regard to this matter, but simply to give all possible help to those who of their own accord apply for information and assistance.[232]

This draft of the statement strongly discouraged chaplains from publicizing the conditional bill of divorce in any way and was in accord with Freehof's opinion. In January, however, Phillip Bernstein, CANRA's executive director—himself a Reform rabbi— sent another version to Freehof including revisions from Pool.

> The chaplain should give every possible help to those soldiers who desire to give their wives a conditional "get" in order to save them from becoming Agunoth. In order to avoid the danger of public misunderstanding and the probability of unfavorable publicity, it is recommended that you do not issue any general letters or put up any public announcements with regard to this matter, but that you give all possible help to those who of their accord or at your suggestion apply for information and assistance.[233]

This version was more positive in tone because of the ordering of the sentences, the substitution of "it is recommended that you do not issue" for "you are asked not to issue," and the addition of "at your suggestion." All these edits gave the chaplains more leeway

[231] Shain to Pool. 26 October 1942. RS BA-89 FF 49.
[232] Freehof to Barnett Brickner of the Jewish Welfare Board, 19 November 1942. RS BA-89 FF 49.
[233] Bernstein to Freehof, 14 January 1943. RS BA-89 FF 48.

in this matter. Freehof agreed to these revisions and the statement became the official CANRA policy in early 1943. [234]

While official CANRA policy veered towards a low-key approach in encouraging soldiers to sign conditional divorce documents, rabbinical organizations were much more proactive. Both the Orthodox Rabbinical Council of America (RCA) and the Conservative Rabbinical Assembly (RA) strenuously encouraged troops to sign conditional divorces. The Rabbinical Council of America, the association of mainstream Orthodox rabbis, published a pamphlet in December 30, 1942, about the conditional bill of divorce entitled "For the Protection of the Jewish War Widow." The pamphlet stated, "Every Jewish chaplain in all camps in this country or overseas should use his influence and make every soldier-husband sign and read aloud these forms in accordance with the indicated instructions".[235] This statement was clearly not in line with Freehof's position, but the RCA did not fall under Freehof's jurisdiction. The authors of the RCA booklet [236] stressed that the form was created in order to "protect the war-widow and to avoid an agunah problem which is likely to arise as a result of the present war."[237] To anticipate the possible antipathy of soldiers to the idea that they might be killed, the preamble adds:

> It is our fervent prayer that this war may soon end and permanent world peace be established, so that it may not be necessary to use these forms that our men serving in the armed forces of the United Nations shall soon return home to their families safe and sound with the banner of Victory for God and Country.[238]

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[234] Freehof wrote to Pool that he wanted to start publishing the statement but still hadn't heard from Jung. Freehof to Pool, 14 January 1943. RS BA-89 FF 48.
[235] "For the Protection of the War Widow." 30 December 1942. RS BA-89 FF 27.
[236] According to Sidney Hoenig, the author of the RCA formulation was Rabbi Mordechai Stern. Sidney Hoenig, "The Orthodox Rabbi As a Military Chaplain." *Tradition* Vol 16 no.2 (Fall 1976) 42. The end of the form refers questions to the *Halakha* Committee of the RCA (Rabbi Simchah Levy, Chairman, Rabbi Judah Damasek, Rabbi Mordechai Stern).
[237] "For the Protection of the War Widow." 30 December 1942. RS BA-89 FF 27.
[238] Ibid. Attempts to interview surviving Orthodox U.S. chaplains from WWII proved exceedingly difficult. Rabbi Herschel Schechter, wartime chaplain of the Eighth Army is too frail to speak to visitors. I managed to contact Rabbi Emanuel Rackman, a former US Air Force Reserves Colonel who served as the Chairman of the Commission on Jewish Chaplaincy of US Armed Forces, on the phone in July 2006; when asked if

The Rabbinical Assembly, the association of Conservative rabbis, created a similar booklet in order to be "mindful of the extraordinary stress to which Jewish marriage is exposed in time of war."[239] The issue of conditional bills of divorce was debated in meetings of the Rabbinical Assembly during World War II. In 1940, the Report of the Committee on Jewish Law had included the following:

> At the last meeting of the Committee on Jewish Law it was suggested that the attention of the Rabbinical Assembly be called to the fact that the contingency of a new and huge crop of Agunot looms, in view of the possibility of America's involvement in the war, and that the remedy afforded by the Tnai Get be restored in order to forestall fresh difficulties.[240]

Boaz Cohen, the chairman of the Law Committee,[241] the central *halakhic* authority of the Conservative movement, presented two options for a text. The option decided upon by the committee on Boaz Cohen's recommendation was called "*Minui Shlichut She Lo B'phanav*," an authorization document for instances when the husband was absent.[242] After the wedding, the husband can authorize specifically mentioned scribes and witnesses to divorce his wife, if he fails to return after two years have elapsed from the official termination of military hostilities. At the annual convention on June 30 1942, the Rabbinical Assembly adopted the proposal of the Committee on Jewish Law that a husband going off to war appoint the members of the Central *Bet Din* of the Rabbinical Assembly as his *shelihim* (agents or proxies) to execute a *get* should his whereabouts

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he had been involved in promoting the signing of conditional *gets* by married soldiers in the war, he said he definitely had been, but for reasons of his health, it was impossible to sustain the conversation further.

[239] "Advice on Procedure For the Rabbi or Chaplain" undated, RS BA-89 FF 27.

[240] Reprinted in 'Proceeding of the Committee on Jewish Law and Standards of the Conservative Movement' 1927-1970 ed, David Golinkin vol. 1 (Jerusalem, 1997). 34-35.

[241] The Committee on Jewish Law was reconstituted in 1948 and is now known as the Committee of Law and Standards.

[242] Cohen had rejected the conditional *get* – that the husband would have written and delivered to his wife even before he left for the front as a viable option. He wrote, "The Committee is loath to recommend it for the antipathy of newlyweds to a conditional divorce will be so vehement as to rule out the feasibility of this plan" PRA p144.

remain unknown for three years after general mobilization of the Armed Forces of the United States. Rabbi Cohen prepared the specific form to be filled in to reflect the RA's decision, and it was circulated to all the members of the Rabbinical Assembly in November, 1942. [243] Because these forms, if filled out and sent back to the RA, would not have been kept if the soldier returned unharmed from the front, and would likely have been disposed of, it is hard to know how many were actually signed.[244] One might presume that married chaplains belonging to the RA would have signed, but few are alive or in a position to talk about this.[245] Indirect evidence of a chaplain who signed such a document comes from the daughter of Rabbi Isaac Klein (1905-1979) who served as an Army chaplain from February 1942 until 1946. According to his daughter, Rabbi Klein signed a *get al t'nai* for his wife during World War II. Her parents spoke of it often, and

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[243] There is a copy of the form reprinted in Isaac Klein, *Guide to Jewish Religious Practice* in the Appendix and one in the Museum of Jewish Heritage in New York. The exact sequence of the formulation of the RA document is given by David Golinkin in his comments on the writings and Responsa of Professor Louis Ginzberg. Golinkin includes letters from Boaz Cohen to Professoer Ginzberg that show that the RA proposal was prepared under the guidance of Louis Ginzberg from whom Cohen had received his rabbinic. Ordination.See *The Responsa of Professor Louis Ginzberg* ed. David Golinkin, (New York: 1996) 226-228. Louis Ginzberg (1873-1953) was Professor of Talmud at Jewish Theological Seminary (the seminary for Conservative Rabbis). He had great influence in shaping both the Seminary and the Conservative movement, His support for this measure was crucial. Sidney Schwarz writes that "Ironically, during World War II, Louis Ginzberg, who refused to support the Epstein plan a few years earlier, issued a statement to rabbis and chaplains that provided a solution to the anticipated large number of *agunot* that would be created by the war". Sidney Schwarz "Conservative Judaism and the Agunah." *Conservative Judaism* vol36 (Fall 1982) 37-44.

[244] Marsha Rozenblit, "The Seminary during the Holocaust Years" *Tradition Renewed: A History of the Jewish Theological Seminary* vol II ed. Jack Wertheimer (New York: Jewish Theological Seminary of America, 1997) 306 n.142. Rozenblit suggested that there were copies in box 1A/22/2 at the Ratner Center of the Seminary but these are only blanks. I am grateful to Ellen Kastel, Archivist at the Ratner Center for confirming this.

[245] This is the case of one of the pre-eminent chaplains of WWII – Rabbi Judah Nadich, Rabbi Emeritus of Park Avenue Synagogue in New York who was senior Jewish chaplain (with the rank of lieutenant colonel) in the US Army from 1942-1946. He was appointed Special Advisor on Jewish Activities to the European theater of Operations Commander by General Eisenhower after the war. After his retirement from active service, he served as President of the Association of Jewish Chaplains of the Armed Forces and then as Chairman of the Commission on Jewish Chaplaincy of JWB, as well as President of the Rabbinical Assembly 1972-4. Rabbi Nadich, now 95, is very frail and cannot answer questions. It is very likely that his papers when organized in the future may contain much information about the use of conditional bills of divorce during World War II. For further information about Rabbi Nadich see Pamela Nadell op.cit 195-197.

Rabbi Klein had considered it "the greatest act of love'' he could express towards his wife so that "she could have a full life if anything happened to him."[246]

The RCA and RA models of conditional bills of divorce were similar in many ways. Both appointed agents to act as proxy signers and witnesses if the soldier failed to return home, and both required a rabbi to be present at the time of signing. Yet the bills contrasted in many other ways. The Rabbinical Assembly required a husband to be missing for three years (not two as in the original proposal) after the demobilization of the troops for a wife to be eligible for divorce, while the RCA wrote that it was for an undisclosed period to be decided by the *Beit Din* at a later time. Additionally, the RA requested the wife to be present, if possible, at the signing while the RCA makes no mention of the woman's role. The difference can be explained perhaps by the different attitudes of the Orthodox and Conservative denominations towards the role of women in *halakha* during that time period. The RA also requested that the witnesses to these signing be Sabbath observant, a point that the RCA, as an Orthodox institution, assumed would be the case.

One major difference between the two bills concerned the matter of furloughs. The RCA addressed the specific problem of soldiers coming home on furlough, sleeping with their wives, and thus invalidating the bill of divorce. Because of this problem, the RCA wrote that a soldier must sign a new agency appointment document each time he came home. From the perspective of Orthodox Judaism, the act of sexual intercourse is

[246] Phone conversation with Rivka and Jerry Berkowitz, of Buffalo, New York, daughter and son-in-law of Rabbi Isaac Klein, March 16 2007. It is significant that Rabbi Klein, one of the leading scholars of the Conservative movement and representative of its right wing, who served as President of the Rabbinical Assembly from 1958-60 and was a member of the Committee of Jewish Law and Standards from 1948 until his death, came to America in 1921, after World War I, from Europe where he would have seen the devastation and misery caused by the war. For further information about Rabbi Klein, see Pamela Nadell, op.cit.159-161.

considered by the Talmud as a form of marriage and could be considered to invalidate the contract of divorce or the agency appointment.[247] Conservative Judaism does not hold that a contract can be broken by this measure so it is not an issue. In fact, as mentioned previously, during this time period, a clause was placed in all Conservative marriages that let the RA give the wife a divorce if the husband was recalcitrant in any way. The RCA however would not consider a marriage with such a clause as valid, and thus wrote that these forms of conditional divorce "are for a war emergency and should only be used during the duration of the war."[248] This was presumably to distinguish their approach on marriage and divorce from that of the Conservative movement. However, despite these differences, it is evident that both the RCA and the RA considered these documents vital during wartime.[249]

Most interesting is a letter about the issue of the conditional bill of divorce that is addressed to the soldiers themselves. The undated letter, a copy of which is in Rabbi Freehof's archives, was written by Rabbi Uri Miller of Congregation Beth Israel, an Orthodox synagogue in New Orleans. Rabbi Miller who served on CANRA during the war and later became the president of the Synagogue Council of America.[250] In the letter, Rabbi Miller explained the problem of *agunah* in very simple, straightforward terms:

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[247] I discuss this issue of the furlough in my introduction and in the chapter dealing with Israel and England.

[248] "For the Protection of the War Widow." 30 December 1942. RS BA-89 FF 27.

[249] There were also separate texts for authorizing agency appointments for soldiers leaving for War produced after considerable discussion by the Agudas Harabanim, the right wing association of Orthodox American Rabbis. These texts, which were similar to the RCA text, were published without English translation in the Rabbinical monthly journal *Hapardes* Vol 16 Number 2 in May 1942 (Hebrew date Iyyar 5702). This association did not participate in CANRA . The current head of the Beth Din of the association, Rabbi Aryeh Ralbag reported in a phone conversation on March 16 2007 that Agudas Harabanim had moved to a new building in 1957 and that there were no relevant documents extant from World War II.

[250] It is likely that Rabbi Miller, although not an official chaplain, was closely involved with soldiers because of the proximity of New Orleans to military bases in Louisiana and Mississippi. Orthodox military recruits would likely have come to Rabbi Miller's synagogue in New Orleans.

> There is an aspect of protection that a Jewish soldier- husband may give his wife that is part of Jewish tradition but is frequently overlooked. The nature of today's warfare involves the possibility of many men being lost in service with their fate unknown. Jewish traditional law prescribes that where a husband is lost and his fate unknown, his wife cannot obtain a divorce.[251]

Miller told the soldiers something they already knew- people die in war. He did not sensationalize the issue of *agunah* but treated it in a serious and thoughtful manner. He went on to explain that the only solution to this problem was for the husband "to go through the Jewish legal procedure of appointing a proxy, who would issue a divorce, should the husband be declared missing by the proper government agency." Miller crafted this letter understanding the possible opposition to signing such a document and addressing the concerns of the soldiers. He focused his letter on the desire to protect a loved one and not to destroy morale among the troops:

> To those who follow Jewish religious practices, this is an act of courtesy and devotion to one's mate. It in no way implies a lack of marital devotion, nor does it enhance the dangers of warfare. It is similar to life insurance, which we take out to protect our loved ones, and not because we expect to die.

Miller echoed the analogy with a life insurance policy used by Leo Jung in his correspondence with his colleagues on the Committee.

Miller's letter was not just a sermon; in it he also gave practical advice on how to obtain a conditional bill of divorce. He wrote, "There is no expense whatsoever involved in this legal procedure, and but little time is taken. Should you be interested, Mr. Harry Noor of the Jewish Welfare Board will be glad to give you additional information."[252] The fact that Miller instructed the soldiers to contact the Jewish Welfare Board suggests that either the letter predated the Committee on Responsa's decision or else that he knew that it was not so easy to obtain the forms through the chaplains.

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[251] Uri Miller, undated. RS BA-89 FF 27.
[252] Ibid.

This letter undoubtedly would have upset Freehof. It is directed at the soldiers and not at the chaplains; it encouraged the signing of conditional divorce document; and explained how it is required under traditional Jewish law. Unfortunately, there is no response by Freehof to this letter or to the issues it raises.

However, in February 1943, when writing to Philip Bernstein, Freehof explained that the Committee on Responsa did not itself need to approve the conditional divorce forms. All the Committee needed to do is send two or three of each to the chaplains with the statement of procedure. Freehof clearly did not expect a large demand for the forms. He again stressed that the chaplain should not send out a general letter to soldiers on the issue or generate any widespread publicity.[253]

The controversy over the conditional bill of divorce demonstrates that despite the desire for religious unity, significant barriers still existed between the denominations. In this case, the argument in CANRA revolved more on the issue of the place of Jews in America than around specific interpretations of Jewish law. What motivated Freehof seems to have been the fear that the ways of American Jews would be considered alien to American values. A compromise was in fact reached by the Responsa committee, but with strong reservations and discouragement of the issue from Freehof. While the rabbinates of Mandate Palestine and England attempted to promote this instrument at all costs through the chaplaincy, America's chaplaincy de-emphasized and even "hid" the conditional bill of divorce as a strategy to prevent the creation of *agunot.*

[253] Freehof to Bernstein, 10 February 1943. RS BA-89 FF 48.

EPILOGUE

In some ways, history proved Solomon Freehof to be correct, as the problem of *agunot* among wives of enlisted men did not prove to be the large-scale crisis after World War II that the older Orthodox rabbis had anticipated. In part, this was because warfare had changed and the problem of soldiers disappearing and becoming missing in action was far less common than in World War I[254] In part, it was because many of the American soldiers who were drafted in World War II were single, rendering the conditional bill of divorce irrelevant.[255]

Most importantly however, it was because there was a new *agunah* crisis to be dealt with- the *agunah* crisis brought on by the Holocaust.[256] By the end of the war, the far greater *agunah* crisis pertained to the countless refugees in Central and Eastern Europe who were victims of concentration camps and the atrocities perpetrated by the Nazis, and where there was no conclusive proof of death. The rabbis turned their attention to this problem and strove to find justification within Jewish law to declare people dead with lower degrees of proof than was commonly accepted.[257]

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[254] The American figures of MIAs for WWII were 78,000 (35,000 deemed "recoverable" because the rest were lost at sea). There are no available figures for Jewish MIAs. Because the US came into WWI so late, (US only declared war in April 1917 and US troops only fought in large numbers from about the spring of 1918 until the war ended in November) the WW1 figures were not comparable to European figures. It was European WWI figures that were so enormous. Joint POW /MIA Accounting Command.

[255] Email correspondence with Deborah Dash Moore, 24 August 2006.

[256] According to Breitowitz, rabbis who devoted immense time and scholarship to relieve the plight of *agunot* following the Holocaust included Dayan Grunfeld of the London Beth Din, Dayan Weiss of the Manchester Beth Din (later of Jerusalem) Rabbi Tzvi Pesach Frank of Jerusalem and Rabbi Moshe Feinstein of New York. Irving Breitowitz, *Between Civil and Religious Law: The Plight of the Agunah in American Society*. (Greenwood Press: 1993) 4 n11.

[257] One example was if a witness saw some one at a concentration camp being chosen to go into the left line, that was considered sufficient proof to establish death, as the left line was always sent to the gas chambers.

Since World War II, military action continues to be marked by fewer 'Missing in Action.'[258] Chaplain Rabbi Harold Robinson, head of the Jewish Chaplains Council of the Jewish Welfare Board, attributes this trend to increasingly effective and quick communication, more efficient identification of remains, and new sorts of warfare.[259]

What then has been the fate of the conditional bill of divorce since World War II? In Britain, the Senior Jewish Chaplain Malcolm Weisman[260] reported that since World War II and the abolition of conscription, there have been very few Jewish soldiers in British forces.[261] He calculates that there were about eight or nine Jewish soldiers in the Gulf War and the same number currently in Iraq. The Chaplaincy makes no effort to inform men about the conditional *get*. There is only one case of a British Jewish soldier in the Gulf War who arranged for one of these documents by going to the London *Beth Din* himself, not through a chaplain, and he returned safely from the front.[262] The London *Beth Din* knew of no other instances of such a directive or authorization being written.

It is in Israel in the context of constant warfare, conscription and reserve policies, that soldiers are most at risk of becoming 'Missing In Action' and leaving their wives as *agunot*. After the War of Independence and the establishment of the State of Israel in 1948, Israel had its own independent military and a Chief Rabbinate that had authority over its national institutions such as the army. At first in the 1948 war, it was customary to require all married enlisted men to sign the official form developed by Chief Rabbi

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[258] In the Korean War there were altogether 810 MIAs, and in the Vietnam War there were 1,801. There is only one military personnel missing from the Gulf War. Joint POW /MIA Accounting Command.
[259] Phone interview, 5 March 2007
[260] Malcolm Weisman, Senior Chaplain to Her Majesty's Forces is an Orthodox rabbi.
[261] Phone interviews, 17 January 2007 and 18 February 2007
[262] The information was received from the Senior Military Chaplain of Her Majesty's Forces. (conversation see note 4) The *Beth Din* confirmed this but declined to discuss further due to confidentiality constraints. (email communication from Mr. David Frei, Registrar of London Beth Din 15 March 2007). According to Malcolm Weisman, this soldier and his wife later divorced.

Herzog,[263] but as the war continued, it was clear that a decisive majority of married soldiers did not sign the form willingly but rather because of the order of their superiors.

Rabbi Shlomo Goren, who after serving as a military chaplain in the 1948 War of Independence, became the Chief Rabbi of the Israeli Defense Forces and then the third Chief Rabbi of Israel did not support the conditional bill of divorce as an effective strategy of dealing with the problem of wartime *agunot*. Claiming that a soldier's decision to sign such a document would affect military morale before battle, he strove to use other means to release *agunot*. Rabbi Goren explained in his writings that requiring a soldier to sign such a document complicated the legal status of the instrument in Jewish law, because a bill of divorce forced upon an individual is invalid and is called a *get me'usa* (forced bill of divorce). Additionally the officers were opposed to soldiers signing this because it would "remind them of the cruelty of war and lead to a reduction of morale," and the soldiers themselves felt "that it would free the government from having to worry about their wives."[264]

On October 21 1967, the destroyer *Eilat* sank after being attacked by Egyptian missiles. Of the 188 crew members, 141 were rescued, 31 were killed and 16 were declared missing, including seven married men. After investigation, Rabbi Goren determined that all of the missing men must have been killed, and in March 1969, the wives were freed from their status as *agunot*.[265] Likewise, the sixty-nine crew members of the Israeli submarine DAKAR, which vanished without a trace on January 25, 1968 on

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[263] See chapter one of this thesis.
[264] Rav Goren, *Meishiv Milchama:Sheelot u-teshuvot be inyenei tzava, milhama u-vitahon* (Jerusalem: 1982) Interestingly, the Orthodox Goren used the same argument that Freehof, a Reform rabbi, had employed only a few years earlier.
[265] Ibid.

its maiden voyage from England to Haifa, were declared dead by the Rabbinate a year after the disappearance, with the express purpose of unchaining their wives.[266]

Israeli army officials do not want to lower the morale of their soldiers but also cannot let a situation of widespread *agunot* occur. The current approach taken by the Israeli Defense Forces reflects this ambivalence: On the one hand, the IDF has a standing order[267] to allow for the possibility of signing a pre-conditional bill of divorce, and several major rabbinic authorities such as Rabbi Eliezer Waldenberg have tried to draft documents that specifically provide for the possibility of husband returning home on leave.[268] However, signing such a document is optional, and apparently most current Israeli military chaplains and soldiers are unaware of its existence.

The issue of releasing war-widows from their status as chained women or *agunot* becomes most relevant in the case of Tami Arad, the wife of Ron Arad who was captured on October 16, 1986, and potentially in the cases of the soldiers captured in the summer of 2006. Ron Arad is, or was, the Israel Air Force navigator taken captive in Lebanon. At first presumed dead, photos and letters in his handwriting arrived in Israel in September and October of 1987. Since then there have only been conflicting reports, some suggesting that he was transferred to Syria, others that he is in Iran. A Syrian journalist testified to having seen him alive in August 1993. In 2003, three former Iranian diplomats and intelligence officials reported that Arad was still alive and was being held in a prison

[266] In the famous Langer case, a woman whose husband was reported murdered in the concentration camps remarried. Then, in the late 1960's, when she already had two adult children from this marriage, her first husband reappeared. Without a conditional bill of divorce, Rabbi Goren needed to retroactively annul the first marriage in order to secure the validity of the second.
[267] IDF Standing Order NO. 340402.
[268] Rav Eliezer Waldenberg, Tziz Eliezer 15.57.

near Teheran, but in 2006, the Hezbollah leader Nasrallah stated that Hezbollah believed that Arad was dead and his remains lost.

Since the Israeli government and defense establishment maintain that Arad is or at least may be alive,[269] the Rabbinate are not prepared to declare him dead and thus release Tami Arad from her status as an *agunah*. Thus, Rabbi Goren's decision to rely on the declaration of death rather than promote the universal signing of a conditional bill of divorce does not provide a complete solution. While declarations of death worked for the wives of the victims of the submarine Dakar, it is not always possible to achieve.[270]

If Tami Arad had signed such a conditional divorce document, she would not still be an *agunah* 20 years after her husband's plane crashed. At the time of writing, there are three Israeli soldiers who were captured in the summer of 2006 and their well being remains unknown—two in Lebanon (Ehud Goldwasser and Eldad Regev) and one in Gaza (Gilad Shalit).[271] While the Israeli public, as well as their families, are hopeful that they will soon be released, the signing of a conditional bill of divorce at an earlier point would at least have provided some measure of reassurance that in the worst case scenario, their wives would not be left as *agunot*.

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[269] A committee established by the IDF- the Vinograd Commission- had concluded that there is no evidence to change the assumption that he is still alive.

[270] In the case of Arad, many believe that the defense establishment has an interest in not pronouncing him dead as a propaganda tool. There can also be conflicting family interests; it was reported that Tami Arad actually went to Prime Minister Rabin six months before he was assassinated, asking him to explore the possibility of removing her status as an *agunah*, but that Ron Arad's mother objected strongly, refusing to give up of hope that her son was still alive.

It seems that the Arad case is being dealt with differently from other cases of wives of Air Force men who disappeared in the course of military action, An Israeli newspaper article in 2001 quoted an air force commander who estimated that there were between 10 and 15 such women, and that most had been released from *agunah* status within a year of their husbands' disappearance. Most had not requested to be released as they were still grieving or in a state of shock. The Air Force made all the necessary arrangements and asked the women to consent to a declaration stating that the husband was a military casualty whose burial place was unknown. See Sara Leibovich-Dar, "Who will Save Tami Arad" *Ha'aretz* (September 6 2001).

[271] David Foreman, MIAs to the fore all of them", *Jerusalem Post* (29. August 206) 14.

In the U.S., present CANRA officials do not recall being involved with the issue of conditional bills of divorce.[272] As the number of MIAs in conflict declined, it became less of a practical problem. At the same time, it became less of a theoretical problem for the Conservative movement which was beginning to approach the *agunah* issue differently. Nevertheless, the Bulletin of the Rabbinical Assembly did have a small insert at the time of the Korean War in 1951 stating:

> A Reminder: *Minui Shlichut*
> Rabbis and Chaplains in the armed forces are reminded to urge married soldiers who are about to leave the country to have the document of Minui Shlichut filled out before their departure. The document was prepared by the Rabbinical Assembly during WWII, and should be used also for the duration of the present emergency.
> The office of the Rabbinical Assembly will be glad to supply copies of the document to those requesting them[273]

How many would have been signed is unclear. The present chair of the Committee on Law and Standards, Rabbi Kassel Abelson, was himself a chaplain at the time of the Korean War but he was stationed in Morocco and was not involved in a war front. He did not sign any such document. He recalls no discussion of the issue at that time, saying that soon after, the emphasis in the RA and the Conservative movement in dealing with the *agunah* issue came to focus on annulments of marriage through the Conservative *Beit Din*. He did not know "when the military *get al tnai* was actually dropped from the books" but thought that it had certainly occurred by the 1960's or early 1970's if not before. He himself has served on the *Beit Din* that would have dealt with cases of

[272] Conversations and email communications with Rabbi Harold L Robinson, Director of JWB Jewish Chaplains Council 5 March 2007; Rabbi David Lapp previous director of JWB Jewish Chaplains Council 7 March 2007; and Rabbi Nathan Landman, Deputy Director of JWB Jewish Chaplains Council, 12 March 2007. All had taken up their administrative positions at the JCC following long periods of service as chaplains, Rabbi Robinson in the Navy and Marine Corps, Rabbi Lapp in the Army, and Rabbi Landman in the Air Force.
[273] The Rabbinical Assembly of America Bulletin vol II No. 3 (1951) 3.

preauthorization bill of divorce for soldiers or of cases of missing husbands in wartime. However, during the 15 years in which he has been on the committee, the issue has never come up. Theoretically, the Conservative movement has resolved the issue by its general solution to the *agunah* problem.[274]

For the Orthodox, the problem of war- time *agunot* has remained, although it is unclear how many individuals are affected considering the abolition of universal conscription and the small number of married Jewish men serving in the military.[275] Since 1960, the RCA has operated a separate *Beit Din- Beth Din of America*. No information for the Korean War was available, but the *Beth Din* of America Director reported that there was one conditional bill of divorce in the files from Vietnam.[276] During the Vietnam War, a new form was composed. In the preamble under the heading "Divorce out of Love and Consideration" the authors stated:

> Facing the tragic involvement in Vietnam today, where thousands of our co-religionists are engaged in war our Beit Din has formulated a declaration that has to be recited and signed by the soldier-husband before leaving the U.S. in the presence of 3 observant Jews preferably rabbis, or at least one of them being a rabbi, constituting a Beth Din.

Following the pattern of traditional leniencies in this area, the preamble continues:

> If this was not done before leaving the United States, it could also be done in Vietnam in the presence of three observant soldiers, preferably one of them a chaplain. If traditionally observant Jews are impossible to obtain, it should be done in the presence of Jews who at least officially subscribe to some form of observance and the Beth Din of our office will decide on the validity of such a declaration.

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[274] Phone conversation with Rabbi Abelson 7 March 2007 Phone conversations with other Conservative Rabbis who had served as chaplains confirmed Rabbi Abelson's opinion. I am grateful to Rabbi Jan Kaufman for directing me to many of these rabbis.

[275] The leading 20th century rabbinic American authority, Rabbi Moshe Feinstein wrote a responsum on this issue in 1967 with his own formulation for a conditional *get* for a husband going to war to leave directly in the hands of his wife.

[276] Email communication from Rabbi Yonah Reiss, Director of Beit Din of America, March 5 2007.

In this form, the issue of the soldier returning for furlough is simplified from the World War II RCA document, in which the man was required to re-sign each time he came home. In this document the soldier merely declared "that these orders shall remain in full force and can be carried out at any time on the future, even if in the interim I am granted the opportunity to spend time together with my wife in conjugal embrace. I hereby grant my wife exclusive reliability to testify that I have not cancelled any of the afore-mentioned appointments." In the form prepared for the Vietnam War, the time period is specified more precisely than in the World War II document but still leaves leeway to the Beth Din:

> This get shall be written, signed and delivered …. only after it shall be known to the Beth Din of the Rabbinical Council of America in New York, functioning at that time, or to one of the members of the Beth Din who were informed by the military authorities that I am listed among the missing ones, or that the information about my missing will not be sufficient according to the Beth Din or any one member of the Beth Din to permit my wife to remarry, and only when one year has passed since the soldiers captured by the enemy were released from captivity.[277]

While there was still a draft in America at the time of Vietnam, chaplains who served there have recounted that most of the Jewish soldiers were unmarried. Because of the deferment rules, married men with children were placed at the bottom of the list, and most of the draftees were single men. The Director of the Beth Din reported that there is now a new authorization form in place. There have been two or three forms filled out for the Gulf and Iraq wars, and all of these soldiers have returned safely from

[277] Beth Din of America form used during the Vietnam War. I am grateful to Rabbi Reiss for providing me with the different formulations used by the Beth Din over the years.

combat.[278] According to Rabbi Reiss, cases are generally referred by local Orthodox rabbis, not by the Jewish chaplains.[279]

The Jewish Chaplains Council does not have figures for the numbers of Jewish soldiers in Iraq and Afghanistan. All recruits are asked for their religion (partly to enable appropriate burial) but the military does not require recruits to respond to the question. Particularly in Iraq and Afghanistan, many Jewish soldiers have declined to give their religion on official forms or associate publicly as Jews because of fear of ill treatment by the general population. Estimates are that between half to one and a half percent of US military are Jewish, totaling over 6,500. Some figures estimate that there are about 1,500 to 2,000 Jews currently serving in Iraq and Kuwait, as well as an equal number of civilians. However, the numbers are variable, especially because sometimes the National Guard troops come from states without large Jewish populations. At present there are about 290 Jewish chaplains as well as two reservists on active duty. There are approximately 30 reserve component Jewish chaplains available. Conversations with both the heads of the Jewish Chaplains Council and the Director of Pastoral Care and Chaplaincy Services, indicate that the issue of writing an authorization for a divorce has not arisen in the chaplaincy in recent years at all. The Director of Pastoral Care and Chaplaincy Services, who is himself Orthodox and married, had not written one himself

[278] Phone conversations with Rabbi Yonah Reiss, March 1 and March 5 2007. The new form is simplified further and is termed a Military *Kitvu U'Tnu* which is the Talmudic term (Gittin 76b-77a) which refers to a husband who authorizes a get to be written on his behalf and given to his wife. The term is commonly used in respect to situations where a husband authorizes a Beth Din not directly in their presence to write/sign/deliver a get to his wife While the soldier appoints named people as his agents, he also authorizes anybody else who sees his signature on the form to act as his agent in the writing, signing and delivering of the divorce document to his wife

[279] Phone conversations with a number of retired Orthodox military chaplains whose average 20 years of service included Vietnam confirmed that they themselves had never had any contact with this issue. One of them referred to the practice as "something that was done in biblical times". Conversations with Rabbi Nissan Shulman of New York, (March 22, 2007); Rabbi Sanford L. Dresin of Wilmington, Delaware, (April 6, 2007); Rabbi Saul Koss and Rabbi Harold Axelrod of Silver Spring MD (April 13, 2007).

although he had served in combat zones and knew of nobody who had asked to write a conditional *get.*[280] Finally, I learned of one chaplain who had signed such a document in the Gulf War, but who explained to me that he considered it a unique situation.[281]

[280] Email correspondence from Rabbi Mitchell Ackerson, Director of Pastoral Care and Chaplaincy Services 23 February 2007 and phone conversations with Rabbis Robinson, Lapp, and Landman of JCC noted above note 17.

[281] Rabbi Jacob (Yanky Goldstein) is a Lubavitch rabbi who has served in the US Military since 1977. He is currently assigned to the US Army Reserve in the Office of Chief of Chaplains, and is attached to the Fifth US Army. While he had served in Bosnia, Afghanistan, Kuwait and Iraq, he recounted in a telephone conversation that he had signed a conditional bill of divorce for himself only once – in the Gulf War when he was told he was to be deployed to Saudi Arabia, There were fears of gas warfare and capture, and rumors that bodies would be burnt. Because that meant it would be very hard to identify bodies, he feared that his wife would be in an untenable position according to Jewish law. They had five small children at the time. He therefore asked his own rabbi to draw up a document, which he signed in the presence of witnesses. The document was deposited in the rabbi's safekeeping. He did not tell his wife what he had done because he did not want to introduce the possibility of his capture and death, He only told one friend that if he did not come back or if there was any information about his capture that his wife should be told about the *get* that the rabbi was holding for him. In the end he was not sent to Saudi Arabia, but to Israel as part of the Patriot Defender Group. When he returned, he called up the rabbi who promptly destroyed the conditional bill of divorce. Chaplain Goldstein considered that the situation he thought he was getting into in the Gulf War was a very special case. He has not signed such a document again, has never advocated doing so to the troops he has been responsible for, and had never been asked about it by soldiers. He thought that perhaps this should be advocated in Israel because of the constant extreme danger Israeli soldiers are in. What is most interesting is the fact that he did not even tell his wife about having signed the document because he felt if she knew she would be more worried about his welfare.
Phone conversations with Chaplain Goldstein (April 17 and April 19 2007), I am grateful to Colonel Ira Kronenberg, Office of the Installation Chaplain, Fort Dix for directing me to Chaplain Goldstein.

CONCLUSION

The Committee on Responsa was established and operated in a specific time period in American Jewish history. Faced with increased antisemitism during the 1930s and early 1940's, the JWB and CANRA wanted to present a good face to the American public. Afraid of appearing foreign and different from their fellow soldiers, Jews were willing to limit their religious needs for the good of the country as a whole. American Jewry also understood that it was not the time for in-fighting and was determined to put its religious differences aside for the duration of war.

In this climate, it is no surprise that the conditional bill of divorce failed to gain traction. A document necessary for those who abided by the traditional *halakhic* system, it seemed antiquated and out of place to Jews such as Freehof. His ability to persuade CANRA as a whole to not promote the conditional bill of divorce was a product of the fear of appearing un-American during the war.

Rabbis in Europe and Palestine, who had witnessed the influx of *agunot* due to World War I, did not feel they had the luxury for procedural niceties, These Rabbis had seen the devastation of World War I first hand, and took a proactive stand to promote the conditional bill of divorce early in the war. Additionally the institutional rabbinates in these countries were Orthodox, and thus did not have to worry about appearing pluralistic. It is interesting that in America, as well as in other countries, it was the most Orthodox rabbis who looked for the utmost flexibility in Jewish law. They did this in order to relieve the possible dire consequences in terms of human suffering, although in general they focused on preserving the integrity of the Jewish legal system, even when

there are human costs. In America, the opposition to the use of the conditional bill of divorce came from the Reform camp,

In contrast to the desire for Jewish unity to assist the war effort, the postwar years saw an increased confidence in the American Jewish community and a different view towards expressing Jewishness within the American fabric.[282] The war itself probably contributed to this. Jewish soldiers, having fought and bled in the war, felt comfortable in their American identity. The war was central in establishing the view that America was based on a Judeo-Christian ethic[283].

Relying on the free expression clause of the First Amendment, Orthodox Jews in particular began to assert their religious distinctiveness as part of their being American. The quest for religious unity in representing Jews in the general society became a less important issue. The umbrella groups, such as the Synagogue Council of America, set up to represent Jewish interests, collapsed because of Orthodox concerns.[284] Membership in "generic" Jewish organizations like B'nai Brith declined, even as specific cause organizations like AIPAC, the Simon Wiesenthal Center, and distinct Orthodox, Conservative and Reform groups flourished.

In this environment, the Committee on Responsa became somewhat irrelevant. After World War II Orthodox matters were presented directly to the *halakha* committee of the RCA headed by Rabbi Soloveitchik. The RCA, according to Sidney Hoenig, made an attempt to ensure that the COR be chaired by its Orthodox representative and a

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[282] See chapter 2 *supra* note 11 for Gilbert Kollin's opinion that military service had a transformative effect on American Jews in their transition from an immigrant society.
[283] Deborah Dash Moore "Jewish GIs and the Creation of the Judeo-Christian Tradition" *Religion and American Culture: A Journal of Interpretation* 8:1(Winter 1988) 31-53.
[284] On the Synagogue Council of America, see Stewart Ain, "Synagogue Council Disbands" *The Jewish Week* Dec 1,1994. According to the reporter, "The official cause of death was a lack of funds, but others attributed it to the growing schism in American religious life".

halakhic decision had even been written that opposed the interdenominational composition of the committee.[285] Both the Orthodox chaplains and Orthodox recruits turned to their own rabbis and heads of the *yeshivot* (intensive Talmudic academies) at which they had studied. The issue of the recruitment and selection of female chaplains added to the break up of the unity that previous generations of chaplains had struggled for. The dissolution of the Committee on Responsa was not a surprise but it was a shame.[286] The debate on the conditional bill of divorce was passionate and heated at times, but dialogue between the three denominations did occur. Today, an interdenominational debate over a *halakhic* matter is impossible to imagine. The strong desire by all three members of the COR to agree and the decisions that emerged from the Committee marked a unique and important chapter in American Jewish history.

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[285] Sidney Hoenig, "The Orthodox Rabbi as Military Chaplain" *Tradition* Vol 16 No 2 (Fall 1976) 47-48.
[286] In this I respectfully disagree with Deborah Dash Moore who wrote that "Serving as chaplains stimulated a spirit of cooperation among Reform, Conservative and Orthodox rabbis that endured for decades after the war ended." Moore, Jewish GIs and the Creation of the Judeo-Christian Tradition op.cit 48.

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