

Equality and Sanctity: Rethinking Jewish Marriage in Theory and in Ceremony

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This essay will begin with an exploration of the traditional theory of Jewish marriage. By “theory of marriage” I mean the complex of definitions, directives and assumptions that go into formulating an understanding of what makes a marriage happen, what it accomplishes, and what its importance and implications are for the couple, their children (if any) and their position in their community. It will be argued that the traditional Jewish ceremony that effectuates this institution is crafted to express this traditional theory.¹

However, this traditional marriage theory does not reflect the theory of marriage commonly held by many, if not most, contemporary Jews (including many adherents of traditional Judaism), both as individuals and as a community. The essay will delineate where the traditional marriage ceremony and theory contradict the implicit theory of today’s Jews. It will further argue that the theory of marriage that many such traditional Jews would embrace today requires a reworking of the traditional wedding ceremony. It will suggest a ceremony whose elements express essential values and dreams shared by many contemporary Jews while insisting on fidelity to fundamental values and ritual forms of Jewish tradition. It will conclude by arguing that the result of such a reworking is a ceremony that should apply equally to heterosexual and same-sex couples.

Defining Marriage; Defending Marriage

Any proclamation of readiness to alter a fundamental social and religious institution must expect to elicit profound unease. As with anything considered holy, the institution of marriage requires solicitude and protection in order to safeguard its sanctity. In modern times this institution has been challenged by various groups and ideologies. In response, many traditionalists agree that, in the unstable social environment of the contemporary world, the institution of marriage must be defended. Our interest in this general background is limited to its relevance to our considerations of Jewish marriage.

With regard to Jewish marriage, additional challenges have surfaced. Since Emancipation, the main issues requiring a rethinking of Jewish marriage have been: a) the Jewish status of civil marriage (and divorce); b) the growing phenomenon of interfaith marriage; c) the call for adjustment of the marriage ceremony so as to prevent or ameliorate the problem of ‘*agunah* – a wife who is no longer in a functioning marital relationship but who is prevented from re-marrying because she cannot obtain a traditional Jewish divorce; d) the demand that the marriage ceremony become egalitarian. From one perspective, the first two of these challenges relate to an issue different from the last two. The issues of civil marriage and interfaith marriage raise the question of the “Jewishness” of the marriage ceremony. They seem to be external challenges. The other two challenges represent problems that are internal to traditional Jewish marriage. But from another perspective, the first and last of these four challenges have something in common in that they ask us to compare Jewish marriage with marriage as it is practiced and understood in Western society. And from a broader perspective, we can see that all these challenges are

interrelated, since they demand a clear formulation of how we wish to define Jewish marriage – what makes a marriage “Jewish,” who is eligible to partake of it and what does it signify?

Most recently, another challenge to traditional marriage has caused controversy in both general and Jewish society. This has been the claim advanced by members of the homosexual community and its supporters, who have demanded that same-sex couples be allowed to marry. It is this claim that has intensified the feeling that the very institution of marriage is under attack and must be defended. Those who wish to defend marriage claim that its traditional definition limits marriage to heterosexual couples. Their position is that marriage today is adequately understood and effectuated through existing means, and is to be limited to the population presently recognized in most communities as being eligible for it. Even those who would allow same-sex couples the same legal rights as those enjoyed by married heterosexual couples often argue that the ceremony and institutionalized relationship created for same-sex couples cannot be called “marriage.”

Such a position rests on a number of presuppositions. It posits that there is a clear definition of marriage that is authoritative. And it holds that heterosexuality is essential to that definition. Another element fundamental to this position and buttressing the previous two elements is the appeal to religious tradition and the aura of legitimacy and sanctity that it is thought to bestow. But, as we shall see, none of these foundations is secure. Furthermore, the issue of same-sex marriage should not be seen in isolation from the earlier challenges to marriage that have arisen in modern times. It is simply the most blatant example of the contemporary questioning of traditional marriage theory.

This essay will focus on one of these many challenges – the issue of egalitarian marriage as a Jewish institution. But it will become clear that the implications drawn from such an examination should influence our approaches to the other challenges thrown up by modernity.

The Traditional Theory of Marriage: For Sex or Procreation?

What, precisely, is the public stake in marriage and what is the individual’s stake in the public’s acceptance of his/her status as “married”? The answers to these questions have changed over time, so that any appeal to an authoritative predefined notion of marriage must justify itself against the charge of anachronism and dishonesty.

The institution of marriage rests upon deeply conflicting elements that exist in dynamic tension. Marriage joins two people as one, much as sexual congress does; it endows – indeed, it couples – a private relationship with public significance. The insistence on joining the seemingly personal and private with public significance is what is at stake in making marriage an institution. As the previous sentences intimate, while society’s interest in marriage is partly in the creation of a new social unit, the creation of that unit is intrinsically tied to the sexual aspect of that union. Society’s concern for the regulation of sexual activity has been an inextricable part of the institution of marriage. The same two people engaging in the same actions together were considered to be either “living in sin” or “in sacred matrimony,” depending on whether they had a wedding first. Thus, a traditional significance of marriage is that marriage makes sex permissible. It does this by ceremonially making the private act of sex public.² One result of this was that the stigma attached to children born out of wedlock would be nonexistent if only the same two people had pre-

ceded having the same baby, through the same act of intercourse, with the recitation of a formula in public – a “marriage ceremony.” It was only by allowing the public to insinuate itself into the most private aspect of their relationship that a couple could remove the taboo and stigma from its sexual activity together. “Said Rabbi Hanan bar Rava, ‘Everyone knows why the bride enters the marriage canopy.’”³ By first making the private public, the private could then proceed in private, the taboo permitted and, thus, sanctified.

This concept is expressed in the Blessing of Betrothal, the blessing that introduces the marriage ceremony:

Blessed art Thou, O Lord our God, King of the Universe, who has sanctified us by His commandments and has commanded us concerning the forbidden relations and has forbidden unto us the betrothed and has allowed unto us the wedded [to us] through [the marriage] canopy and sanctification. Blessed art Thou, O Lord, Who sanctifies Israel through canopy and sanctification.⁴

The early authorities struggled with this blessing. What was its nature? Was it a *birkat mitzvah* – a blessing recited in preparation for performing a *mitzvah* (as, for instance is the blessing prior to putting on *tefillin*)? If so, why did it dwell on the concept of forbidden sexual relations rather than simply indicate the *mitzvah* that must be fulfilled? Meiri offered this explanation:

Many have labored to explain this blessing – where have we found a blessing about a prohibition and for a negative commandment, and, moreover, how can we say “and commanded us” when “commanded” only applies to a positive commandment – until they labored to produce explanations that make no sense.

[Rather] it seems to me that the essence of the blessing is about marriage in general, which is a positive commandment. Yet they expatiated about it with added praises and thanks to the Omnipresent One because the matter of coupling involves extra holiness, in that we may not be united together without *qiddushin*, as they used to do before the Giving of the Torah. So we give praise and thanks to God for sanctifying us and distancing us from forbidden sexual relations, which includes, by rabbinic decree, sexual relations without *qiddushin*.

Thus our blessing is not about something forbidden, but is about the holiness that comes to us by observing this prohibition, and the command further includes all aspects of *qiddushin*, that is to say, “and commanded us matters, such as *qiddushin* and the requirement of witnesses, by means of which we are separated from any defiling acts of intercourse.” Thus the holiness comes by way of *huppah* and *qiddushin*....⁵

According to this explanation the essential holiness of marriage derives from the traditional identification of holiness with restraint and limitation, most especially with regard to sexual matters.⁶ Marriage is the means of controlling, and hence, sanctifying our sexual activity.

This intimate connection between marriage and sex has led to the claim that heterosexuality is of the essence in a marriage. But why should this claim be accepted? There are two arguments that are usually given. One is that heterosexuality is the only form of sex-

uality that is legitimate. That claim will be dismissed from this discussion, for the position of this paper is the one accepted by more and more citizens of the Western world – that homosexuality and heterosexuality are both natural forms of that richly diverse phenomenon called human sexuality. If there is, indeed, a need to link the institution of marriage with the need to sanctify sexual activity, this link should apply to all forms of human sexuality.⁷ But, even before arriving at that controversial position, we shall see that the way that heterosexuality has been programmed into traditional marriage is, itself, problematic. For soon we shall see that while, until now, marriage has been limited almost exclusively to heterosexuals, the theory of heterosexuality upon which traditional Jewish marriage is based is open to question or rejection when measured by the contemporary values that a significant number among us share.

Perhaps it is out of discomfort with dwelling on this issue that the second argument, privileging heterosexuality as essential to marriage, deflects the justification for marriage from the realm of sexual activity per se and, instead, ties marriage to procreation. Only heterosexual couples can have children through intercourse together. In this view marriage is the means by which the community insures that children will be born into a stable, well-defined family unit. But, setting aside modern transformations in the field of fertility and child-bearing, is procreation essential to the definition of marriage? Many people are married without any possibility of having children together. No one argues that they are any the less married or that they are married in some different way from those who are married and have children.⁸

The alternating views of marriage as being either the dedicated realm of sexual activity or the dedicated realm of procreation can be discerned in comparing readings of one of the first verses of the Torah that deal with relations between men and women: “Therefore a man will leave his father and mother and cleave to his woman, and they will be one flesh.” (Gen. 2:24) The Targum translates: “Therefore a male will leave the house of his father’s and mother’s lying-together, and cleave to his wife and they shall be one flesh.” This translation sees the departure of the man as one of sexual individuation and independence. If he is to lie with his wife he will not do so under the same roof under which his parents engage in sex. But Rashi interprets the verse to mean that the man leaves home in order to procreate – to produce “one flesh.” He writes: “The offspring is formed from the two of them, therein making their flesh one.”⁹

Jewish tradition has struggled with these two approaches to justifying marriage, for they exist in tension with one another and the resolution of that tension has involved a continuing history of shifts in the balancing of these competing elements, forces and values.

This tension and some of its history is evident in the very beginning of the discussion of marriage law in the *Shulhan 'Arukh*:

§ 1 – The Laws Concerning [the *Mitzvah* of] Being Fruitful and Multiplying, and That One Should Not Remain Without a Wife

1) Every person (*kol adam*) is obligated to marry a woman in order to be fruitful and multiply. And anyone who does not involve oneself in reproducing is considered as if he shed blood, and he diminishes the Image [of God] and causes the *Shekhinah* to abandon Israel.

Gloss – And anyone who does not have a wife dwells without blessing, without Torah, etc. [BTYev. 63b] and is not called a man [BTYev. 63a]. But once he marries a woman his sins are blotted out, as it is said, “He

who has found a wife has found goodness, and he will draw grace from God.” [Prov. 18:22] [BTYev. 63b]¹⁰

In Rabbi Yosef Karo’s formulation, following earlier Talmudic authorities and codes, the commandment is not to marry, but to procreate. While it is commonly understood that marriage is a *mitzvah*, and this is the view of Maimonides and others, this is not the view of every legal authority.¹¹ Thus the Rosh, Rabbenu Asher ben Yehiel, explained that the blessings recited under the *huppah* are not blessings preparatory to fulfilling a *mitzvah* because marriage is not really a *mitzvah* at all. The *mitzvah* is to have children and it is possible to fulfill that obligation, he explains, without getting married at all, by impregnating a concubine.¹² We should also notice that the first sentence codifies the traditional determination that only the male is commanded to procreate. It is even more striking that the rule is couched in terms that refer to the man – and not the woman – as “*adam*” – a human being. It is the man, as the human being commanded to perpetuate the human species, who must find a woman with whom to discharge his obligation.

Rachel Biale expresses the paradox of this situation:

Procreation is a primary aspect of family and society in the Jewish tradition. It is the cornerstone of marital life, though not its exclusive purpose; [...] For men procreation is a positive commandment, but for women it is only an act of choice and free will. In fact the *Halakhah* displays a determined effort to exclude women from the legal duty to bear children, which flies in the face of an intuitive assumption that men and women have equal parts in procreation.¹³

It remains for the gloss added by Rabbi Moshe Isserles (RaM”A) to include other Talmudic sayings that extol the marital state as one of blessing and atonement. The *Shulhan `Arukh* then teaches that marriage is so important that it is one of only two purposes for which it is permitted to sell a Torah scroll, the other being to pay for Torah study, itself.¹⁴ But procreation is not the only purpose of marriage. The control of sexual drives is also a key element. Thus, the *Shulhan `Arukh* continues:

3) It is a *mitzvah* for everyone to marry a wife at age 18. One who does so earlier, from age 13, [has fulfilled] an exemplary *mitzvah* (*min ha-muvhar*). But before the age 13 he should not marry for this is like licentiousness. But under no circumstances should he pass the age of 20 without a wife. And he who does not want to marry – the court compels him to do so, in order that he fulfill the *mitzvah* of reproducing. However, if he is studying Torah and is burdened by it and is afraid of marrying a wife lest he have to struggle for a living and will be kept from studying Torah – it is permissible for him to delay [marrying].¹⁵

It is clear that when R. Yosef Karo says that marriage at age 13 is an exemplary *mitzvah* he is not concerned with promoting early marriage because it is meritorious to meet one’s obligations as soon as possible. A young man is obligated from the age of 13 to perform all *mitzvot*, not only this commandment. From the perspective of *halakhah* there is nothing exemplary about simply doing one’s duty when one is obligated to do so. Rather, what is important to the *Shulhan `Arukh* is to channel the libido of adolescent boys into permitted sexual activity. Thus, it is very important to have a legitimate sexual outlet, regardless of whether one is capable of procreating.

The tension between these two reasons for marriage – procreation and the channeling of sexual energy into an acceptable outlet – comes to the fore in the accompanying gloss by RaM”A:

*Gloss – But in these days we have become accustomed not to compel for this. And so, too, regarding one who has not fulfilled the mitzvah of reproducing and who has decided to marry a woman who is not fertile, such as a barren woman or an old woman or a minor, because he desires her; or because of her money – even though rightfully we should protest against him, we have not usually done this for some generations, now, to be particular about matches. And even when one has married a woman and lived with her for ten years, they have not been accustomed to compel him to divorce her if he has not fulfilled the mitzvah of reproducing. And so it is with other matters regarding couples. (Resp. RIVa”Sh 15) This is provided she is not forbidden to him.*¹⁶

The tradition’s theoretical bases for marriage proved inadequate to get people to marry if they chose not to, or to divorce if they preferred to stay in a marriage that did not fulfill the traditional goal. Here we encounter the retreat of the *halakhah*’s marriage theory before the implicit marriage theory developed through the lived reality of the community. Companionship, a value additionally mentioned by RaM”A earlier, is given more weight here than the *halakhah* wished. But we are not to confuse this implicit populist marriage theory with one based on the value of romance. While people increasingly wanted to have some choice about the marriages they would arrange (for themselves or for others), the considerations that went into their calculations could include money as easily as desire. Nonetheless, by insisting on some form of freedom and companionship as legitimate values in forming a marriage, the seeds were sown for an essential ingredient of the modern theory of marriage. It is something even more profound than the desire not to be alone. It is the valorization of the concept of building a life together.

Heterosexuality and Marriage

Still, it would take centuries for this theory to become explicit. In the meantime, Jewish marriage theory struggled with the problems involved in defining marriage as the sanctification, and, hence, delimitation, of sexuality. The beginning paragraphs of the *Shulhan ‘Arukh* allude to the need for directing men’s sexual drives into marriage. But the acknowledgment that men actually have a sexual drive was vexatious to the tradition. There are, to be sure, numerous statements, beginning with Biblical sources and continuing later, warning men against sexual licentiousness and temptation. Fewer by far are any statements that extol sexuality as a source of pleasure, vitality, communication or identity. The great exception is the sacred Song of Songs. But it is not often remarked that this book is a celebration of sexuality to the almost total exclusion of the marital context. Indeed, once we enter the realm of traditional Jewish marriage theory, especially as distilled by the Rabbis, we may notice a real discomfort with ascribing any positive aspects of sexuality to males.

A small but telling example of this can be found in Rabbi Hanan bar Rava’s saying, cited above: “Everyone knows why the bride enters the marriage canopy...” This sage alludes to the sexual drives that impel people to get married. But he chooses to mention the bride’s sexual desire, and not the groom’s.

Indeed, the satisfaction of the wife's sexual needs is incumbent upon the husband, as mandated by the Torah. The accepted rabbinic interpretation of the Biblical command that a husband not deprive his wife of "her *'onah*" is that this refers to regular sexual activity for the sake of satisfying the wife.¹⁷ This command is the source for many discussions that point to Judaism's positive view of sexuality.¹⁸ However, after further consideration, the asymmetry of the tradition's view of the need for sexual satisfaction should be clear. The male is commanded to satisfy the woman, but not himself, nor is there a command for the two marriage partners to satisfy each other.¹⁹

It emerges that the vaunted heterosexual orientation of the tradition's marriage theory is expressed through the assignment of distinct roles to the male and the female. Yet these assignments violate our basic understandings concerning how men and women should ideally relate to each other. Instead of constructing a partnership of equals between the two spouses, the tradition gives distinct, anomalous roles to each gender. It allocates the *mitzvah* of procreation to the male, exclusively – although it is the woman who conceives, carries the fetus and gives birth to the child. The male's sexual activity is fundamentally justified only because it is necessary for procreation.²⁰ On the other hand, the tradition assigns the possession of legitimate sexual needs to the woman, exclusively – although the tradition is replete with warnings, exhortations and laws regarding the rampant sexual drive of the male.

How could the tradition settle upon such a counterintuitive set of propositions? Whatever the root causes, whose consideration can only be speculative in the extreme, what has resulted is a systematic displacement of sexuality – in its positive and negative aspects – away from the man and onto the woman. If a man feels sexually tempted, it is because women are seductive by nature. Thus the sex act shall be enacted by the man purely in order to do a favor to the sexually driven woman and to fulfill his God-given charge to create healthy children through her. From this perspective, when a man indulges in sexual activity it is not because he is guilty of this shameful desire, but, rather, because he must be magnanimous to his weaker partner. By marrying a woman, a man successfully corrals the evil impulse and domesticates it for sacred purposes. The woman is the one corralled. Indeed, the logic of this approach leads directly to the conclusion that the woman should be eligible for marriage even against her will. The Rabbis recognized that this was so, but they were unwilling to let the traditional marriage theory operate unchecked. They instituted the proviso that the woman must agree to let herself be corralled.²¹

The dichotomy between the active, desexualized male and the passive, sexualized female is given full expression in traditional Jewish marriage ceremony and law. Before examining specific texts and formulations, it is sufficient to refer to the well-known monopoly enjoyed by the man in initiating and terminating a marriage. The legal term for the means for effectuating a marriage is *qinyan* – acquisition. The first *mishnah* in Tractate Qiddushin announces that "A woman is acquired [in matrimony] in three ways – money, contract or intercourse." The literature explaining this term is vast. Virtually every writer takes pains to explain that what is meant is not monetary acquisition, as pertains to property, but an acquisition of some kind of special relationship or status. What is it? Fundamentally, what is acquired by the husband is exclusive sexual access to the woman. The relationship and status relate to the wife in terms of prohibition and permissibility. She becomes forbidden to everyone else but her husband, to whom she is permitted. In theory, a married man can have sexual relations with as many available women as he wishes.

(Only another married woman is off-limits, since her sexual access is owned by another man, her husband.) While the wife has no *qinyan* regarding his sexual activity, the husband's *qinyan* forecloses the wife's sexual possibilities so as to allow her to engage in sex with the husband alone. It "makes sense" in this model, that in order for the woman to regain her sexual freedom her husband must either die or relinquish his ownership. Such relinquishing is done through a *get* – a bill of divorce. The wife is thus "chained" ('*agu-nah*) to the husband's decision to retain or relinquish control over her sexual access.²²

It is no accident that these details of traditional marriage law are increasingly being noticed and are protested as iniquitous. This is not because people are more promiscuous, less committed to marriage or less devoted to Jewish ideals. It is because people are increasingly in disagreement with traditional Jewish marriage theory.

The Question of Adultery

To appreciate how far we have moved from the traditional viewpoint of marriage and marital relations we may consider the question of adultery. Adultery is a capital offense in the Torah. Moreover, if a married woman commits adultery, even if, because of legal technicalities, she cannot be executed, she is still forbidden to have sexual relations, not only with her paramour, but also with her husband. If a married man commits adultery with another married woman, although he, too, is guilty of the same serious sin and is forbidden to continue having sexual relations with his paramour, he is not forbidden from conjugal relations with his wife. This follows from the traditional marriage theory, which wishes to uphold the husband's control over sexual access to his own wife. In sinning with another woman the adulterous husband has not impugned his *qinyan* over his own wife. But if his wife is adulterous, then his exclusive control over his wife has been breached and without that *qinyan* he has no permission to engage in sexual relations with her.²³

Such a stark rule could call for breaking up marriages under the theory that the sanctity of the marriage had been abrogated. But we can detect a growing reluctance to dissolve such marriages, though their purity has been destroyed. The problem was recognized during mishnaic times. Since only the husband could issue a divorce, there arose the suspicion that a wife who wanted to sever her marriage, but who could not persuade her husband to divorce her, could nevertheless find a way to force him to do so, for, if she lied and claimed that she had committed adultery, the husband would be compelled to divorce her since she would be forbidden to him. Thus, the husband's *qinyan* could be turned against him. The rabbis therefore decreed that the woman would not be believed unless she brought solid proof for her claim.²⁴ Nevertheless, if the wife was not the instigator of the charge and if there was some evidence that adultery occurred, or if the husband was convinced that his wife had been unfaithful, the husband would be duty-bound to divorce her.²⁵

The situation became problematic again in the Middle Ages, once Rabbenu Gershom's edict forbidding divorce against the wife's wishes was adopted. This edict was designed to protect the wife's interests. As such it was a modification of the traditional marriage theory. It weakened the husband's *qinyan* in that it prevented him from relinquishing it at will. But it was unclear whether the edict was meant to apply even in cases of suspected adultery. RaM'A reports that some authorities insist on the dissolution of the marriage. But he also reports the opinion of medieval authorities who concluded that, after Rabbenu Gershom, we no longer break up marriages because of suspected adultery.²⁶ Those who insist that the couple divorce are upholding the normative rule that a husband

is forbidden to have relations with his wife if he is convinced that she has been unfaithful. What is the rationale of the rabbis who forbid the divorce? Because they worry that one of the partners could falsely claim to believe that adultery has occurred simply in order to compel a divorce, they are willing to force a husband to live with his wife although he may really be convinced that she is an adulteress. Thus, their concern is no longer to prevent the married couple from living in sin, but rather to prevent disgruntled marital partners from using the *halakhah* as a means to hurt their spouses. In this view the tradition's theory of marriage has once again had to retreat before the forces of real life and other values. The pristine picture of marriage has dissolved into a much murkier image, one that admits of the possibility of dissension, dishonesty and even adultery between the married partners. But the termination of this relationship, however flawed, will not be controlled by the *halakhah*. If there is to be a divorce, according to these sages, it will have to be based on mutual agreement rather than on charges of adultery.

The question of whether or not to break up a marriage because of adultery continued to place a strain on the classical Jewish marriage theory. This is evident from the thinking recorded in an important responsum by R. Ezekiel Landau, the *Noda` bi-Yehudah*, and by subsequent reactions to it. The question sent to R. Landau concerned a pious scholar, frail in body but assiduous in his studies, who had carried on an affair with a married woman for three years. He has now repented and wishes to know what expiatory rites he must perform to gain atonement. The *Noda` bi-Yehudah* goes to some lengths to weigh this question and after much hesitation he prescribes an appropriate regimen of Torah study and ascetic practices. But, in a further complication, it turns out that the scholar has married the daughter of his former paramour. He wonders whether he should tell his father-in-law that his wife (now the scholar's mother-in-law) was unfaithful, so as to save his father-in-law from the transgression of continuing to live with a "zonah – a harlot."²⁷ On the other hand, the questioner suggests that because of the value of preserving human dignity – *k'vod ha-b'riot* – he may be exempt from revealing the facts "because they [the in-laws] are well-known people and they have sons reputed for their Torah knowledge and aristocratic family, so there is reason to consider the issue of a family blemish."²⁸

The responsum analyzes the *halakhic* guidelines regarding *k'vod ha-b'riot*. R. Landau concludes that the dispensation to transgress prohibitions in order to protect human dignity is only a temporary one.²⁹ Thus, it does not allow the scholar to permanently refrain from telling his father-in-law the facts. He therefore rules that the scholar is obligated to speak privately to his father-in-law and reveal that he has had an affair with his wife. But, in order to protect the family's good name, it is permissible for the cuckolded husband to maintain his unfaithful wife in the same home, provided he not remain alone in the same room with her. The *Noda` bi-Yehudah* allows this potentially hazardous situation because he "is already very old and will not be eager to marry another one even if this woman is forbidden to him. And it is not necessary for him to divorce the harlot, and he is not suspected that he will want to have intercourse with her in sin, for since she has been licentious she is repugnant to him." Meanwhile, the scholar has acted improperly in marrying his paramour's daughter. But that cannot be undone. Still, "he must keep his mother-in-law away from his home altogether, for if she regularly visits her daughter he will have to divorce his wife."³⁰

It is clear to R. Landau that, given the facts, the husband should really divorce his wife, who has acted "the harlot." But issues of *k'vod ha-b'riot* mitigate against this path. It is remarkable, though, that all the considerations about avoiding embarrassment and pre-

serving human dignity revolve around the reputations of the family, meaning, the husband and the sons. The question of sparing the adulterous woman any embarrassment, and the question of how her forced distancing from her daughter would be explained, are never raised. R. Landau turns his attention to her only for the purpose of declaring that there is no point in trying to prevent her from transgressing the Torah because “women don’t learn law” and she is therefore not to be considered aware of her forbidden status to her husband. Thus it is better to leave her alone.³¹ The only question is whether to tell the husband in order to prevent him from sinning. The *Noda` bi-Yehudah* sees no way out of this. But he is willing to forgo a divorce in order to save the family’s face, although this means that the family must live a lie.

A similar question was asked about a hundred years later of R. Shlomo Kluger. A woman had confessed to a rabbi that she had committed adultery and wanted to repent. The rabbi wondered whether he was required to inform the husband so as to shield him from transgression with his wife, who was now forbidden to him. R. Kluger cites the *Noda` bi-Yehudah*. But he applies the value of protecting human dignity to the woman. While she has sinned and become forbidden to her husband, she should not be shamed. She must inform her husband quietly and then the husband can divorce her quietly. If, however, the woman is too embarrassed to admit her sins to her husband, the rabbi must help the woman find an appropriate way to repent while yet staying in the marriage. But he must not reveal the facts to the husband, “even though from the legal standpoint it is right to do so, because we have no power to uphold the law properly.”³²

The tide had turned against the position of the *Noda` bi-Yehudah*. Though it was clear that the couple was forbidden to each other, the will to separate them had weakened. But this was an uncomfortable situation for the *halakhah*. Attempts were made to find more fundamental ways to mitigate or eliminate the obligation to tell the husband. R. Chaim Halberstam of Tzanz, when asked a similar question, came to a radical conclusion.³³ He rules that it is permissible to keep the cuckolded husband ignorant of his wife’s sin because the prohibition against their remaining married is of a weakened nature, since it is not explicitly written in the Torah, but is the result of rabbinic exegesis. Therefore, although the prohibition has the force of Torah law in general, it is not necessary to enforce it in this case, in the interests of preserving human dignity.³⁴

A generation or so later, R. Yosef Hayyim, the great sage of Baghdad, went even further.³⁵ He is asked the same question: should a cuckolded husband be made aware of the confession of a man who has had an affair with the husband’s wife? The questioner is afraid that revealing this information will cause the couple to quarrel and bring disgrace to themselves and their family. After taking note of the opinion of the *Noda` bi-Yehudah*, R. Yosef Hayyim nevertheless embarks upon a quest to find reasons to leave the couple alone. He argues that, since we are not actual witnesses to the sinful sexual intercourse of the married couple, we should assume that they are behaving properly and we do not have to intervene to stop them from sinning. But then he adds another argument. He resuscitates an opinion that had been ignored by other authorities. According to this minority view, attributed to one opinion in *Tosafot* and to some other *rishonim*, there is no prohibition at all for the married couple to live together as long as the act of adultery was not witnessed by two witnesses. While R. Yosef Hayyim expresses amazement that this opinion has been ignored by the *Noda` bi-Yehudah* and others, he relies on it, along with his other arguments, to allow the wife’s infidelity to remain a secret and to allow the couple to stay married.

In contemporary times R. Ovadiah Yosef, after expressing grave misgivings regarding some of the arguments of the *Rav Po'olim*, nevertheless bows to his authority (along with adding copious additional citations) and allows a repentant adulterer to refrain from divulging his story to the cuckolded husband.³⁶ An important ingredient in the argument is the long neglected opinion that the act of adultery had not created any prohibition at all because it was not seen by two witnesses.³⁷

This survey illustrates the tension that has developed between the traditional theory of marriage and the need to respond to the narratives of specific individuals and couples. Over time the *halakhah* finds ways to allow itself to give ground before the messy reality of imperfect marriages. What is important to emphasize is that it would have been defensible to insist on upholding the traditional, strict requirements. If the conviction were strong enough that these cases of adultery had fatally destroyed their marriages, the demand for separating the couples would have followed. Instead, we see a gradually increasing willingness to turn away from viewing the marriages as compromised by allegations of adultery and an increased unwillingness to declare that such adulterous acts effect a prohibition on the couple's relationship. *Halakhic* criteria, if applied consistently, would have necessitated the break-up of marriages in which the sexual aspect was no longer permissible. Instead, countervailing considerations bring these decisors to try to find ways to maintain these marriages and turn away from the concern that the marriages may be arenas promoting forbidden sexual relations. That is to say, the lived reality of the marriage is given greater integrity – in the sense of strength to maintain itself – over against the tradition's ideal definitions and demands.

But the *halakhah* can only bend so far. In all these cases the act of adultery was not witnessed by two unimpeachable witnesses. It is this lack of proof that allows the *halakhah* to turn aside from the circumstantial reasons that might render the adultery certain and instruct those who know the situation to be quiet. But what if there were two witnesses? Then all the authorities cited above would agree that the woman had become prohibited to her husband and that she must be divorced. Yet, I wonder whether many of us would prefer another approach, even in that circumstance. We are, unfortunately, no longer strangers to stories of adultery in which there are no uncertainties as to the facts. Yet, many people in our society would consider this to be a matter to be settled between the couple. Without condoning the adulterous actions, we would rather let the hurt party decide whether he or she wanted to end the marriage or whether he or she would rather try to somehow reconcile with the adulterous spouse. We may not understand why a person might choose that path in a particular case, but, then, we are often baffled by the choices made by our friends and neighbors (and ourselves). Nevertheless, we would rather allow them the freedom to choose. But it is not merely our support for individual autonomy that underlies our feeling. It is that we hold to a very different theory of marriage than the one upon which traditional *halakhah* is founded.

Rethinking Qinyan

Our theory of marriage would allow the couple to decide whether an act of adultery by one of them is a severe enough betrayal of the relationship to warrant its dissolution. This is because our values insist that marriage be seen as a relationship entered into by both parties equally. Just as the relationship is understood to be one created in mutuality,

it makes sense, as well, that it should be dissolved in mutuality. But this theory involves more than simple mutuality. The idea that mutuality alone could be the foundation of marriage led to the experimentation with “open marriage,” whereby it was assumed that the couple could agree to relinquish all claims to an exclusive sexual relationship. That experiment is generally seen to have failed, for reasons we shall discuss later in this essay. What does seem to be generally accepted, however, is that, while unfaithfulness is, indeed, a blow to a marriage, the mutuality of marriage should allow the faithless partner to ask for forgiveness from the wronged partner, who should be allowed to choose to forgive.³⁸ Thus contemporary theory would see marriage as a mutual endeavor that is dedicated to the ongoing building, sustenance, and – if necessary and if possible – the repair of the relationship. How would a Jewish ceremony appropriately effectuate such a marriage? Are the elements of the traditional ceremony still usable?

These questions can only be answered after a consideration of the defining element of the traditional marriage ceremony – *qinyan*. Since the traditional theory of marriage views the relationship between husband and wife as one that is initiated by the man so as to take control of the woman’s sexual access, it makes sense that the groom is the active agent under the wedding canopy. He is the one who does the talking and he is the one who gives the ring, effecting his *qinyan* – his control. The bride listens, acquiesces and, as she accepts the ring, she is “*nigner*”³⁹ – brought under control.

Initial stirrings of discontent with this theory, present within the tradition itself, have been detected in a roundabout way through our examination of responsa on adultery and the problem of dissolving a marriage. An additional few, direct expressions can be found in discussions about the ceremony that begins a marriage and about the nature of the *qinyan* that is executed under the *huppah*.

Intimations that the lack of the woman’s voice under the *huppah* should be seen as a defect in the effectuation of marriage when compared to an ideal marriage concept can be found in the following profound comment by R. Shneur Zalman of Liadi, the first Rebbe of Lubavitch. He noticed that the last blessing of the Seven Blessings recited under the marriage canopy concludes with the hope that “May the voice of happiness and the voice of rejoicing, the voice of the groom and the voice of the bride, soon be heard in the hills of Judea and the outskirts of Jerusalem.” R. Shneur Zalman explains this messianic hope:

For at present there is no “voice of the bride.” As it is written, “I was silent and speechless.” (Ps. 39:3) And she is speechless as Rachel, who does not have the aspect of speech in voice (*b’hinat dibbur b’qol*) [and therefore the groom says, “You are hereby sanctified...” and the bride is silent.] This means that the aspect of speech is not really revealed, for all the worlds of *BY”A* (*B’ri’ah, Ytzirah, Assiyah*) “do not come close to You.” (based on Ps. 40), for He is holy and separated. And Speech, which in Divinity does not reveal itself in them in the same way it does in *Atzilut*, in the aspect of *Ayn Sof* [...] Now, while the angels sanctify and exalt [God] and say, “Blessed be God’s Glory from His Place,” (Ezek. 3:12) which seems to indicate that the revelation of God’s Glory does flow into *BY”A*, this is merely as it is written “And You sit, [enthroned through the praises of Israel,]” (Ps. 22:4) which means that the aspect of “sitting” is a lowering, for God lowers Himself from being holy in order to sit and be drawn down, specifically through the praises

of Israel [...] The aspect of *kallah* – bride – as in “my soul yearns – *kalta nafshi*,” (Ps. 84:3) that receives the light of *Ayn Sof*, is in the aspect of being speechless during the Exile, for She has no one with whom to speak and to reveal Herself because of the materiality of the world relative to the light of *Ayn Sof* which hides and conceals. But this will not be so in the Coming Future: “And the Glory of God will be revealed.” (Isa. 40:5) This is the light of *Ayn Sof*, the secret of *Keter 'Elyon*. [...] Then there will be “the voice of the bride,” which is the flow, in the nature of revelation.⁴⁰

According to R. Shneur Zalman’s teaching, the inequality of the traditional marriage ceremony reflects the tragedy of the exiled Divine Feminine, Who has been rendered virtually speechless. It is the way things are, but not the way things should be. Unfortunately, however, as far as R. Shneur Zalman was concerned, the rectification of this *halakhically* expressed inequality would have to wait until the final redemption. But, as in so many other areas, many modern Jews have decided that they are no longer willing to wait and have decided to pursue values in the present that have been traditionally deferred to the end-time.

The demand for a more egalitarian approach to marriage and to the ceremony that brings a marriage into being is heard in Orthodox circles as well. R. Dov Linzer tries to respond to this demand while remaining within the traditional paradigm. Therefore, his suggestions for how to achieve “a more balanced wedding ceremony”⁴¹ comprise cosmetic changes and embellishments. He reiterates that care must always be taken that the groom’s exclusive role as the effective agent of *qiddushin* not be altered or blurred.

Nevertheless, the traditional theory exerts diminishing influence. Recently, for example, a document was produced and circulated by Kolech – The Religious Women’s Forum in conjunction with Young Israel Rabbis of Israel. Called “Prenuptial Agreement for Mutual Respect,” it is designed to help alleviate the *'agunah* problem, but recognizes that the problem is deeply rooted in the way we conceive of marriage in general. The Hebrew Preamble to the document reads:

Marriage is the beginning of the path toward the establishing of a home and the next generation. At the basis of the family unit, with all that it entails, is the covenant that the couple establish at the time of their marriage. This is a deep covenant that must withstand difficult tests that may confront the couple during their lives.⁴²

Even in this community that declares its unswerving commitment to traditional *halakhah* and specifically to the traditional *halakhah* governing marriage, the emphasis on mutuality and respect is prominent and unabashed. However, the mechanism it is ready to employ in order to express these convictions – a pre-nuptial agreement – must be placed outside the *huppah* itself. Thus the fundamental theory of marital *qinyan* is not shaken.

But a unique document has been preserved for us from the ashes of the *Shoah*, recording the struggles of one relatively unknown Torah sage to reconceptualize the notion of *qinyan*. Unfortunately, this is only a small section of what must have been a much larger work. It gives us only a taste, but a tantalizing one, of the thinking of this talmudist. Though, as a *halakhic* statement, it leaves many questions unanswered, it preserves enough for us to appreciate how far he was willing to stretch tradition for the sake of a new

vision. This is, in fact, the sole remnant of the Torah novellae of R. Yitzhaq Eiziq Milikovsky, published by his brother-in-law, R. Hayyim Yosef Arnest, who survived the war and became a *rosh yeshivah* at Rabbi Isaac Elchanan Theological Seminary (YU).⁴³

R. Milikovsky understood that if the idea of *qinyan* were to be redefined it would be necessary, at minimum, to show that the husband does not exercise exclusive control over his wife's sexual access. By ingenious use of rabbinic sources he argued that he could support such a claim. It is not necessary to follow his analysis of the evidence to appreciate why he felt it was important. In the following excerpts I translate the opening of his truncated work, the new formulation of *qinyan* that he proposed and the last sentences of the salvaged document:

Regarding the Subject of *Qiddushin*

Some investigations into the essence and foundation of the law of *qidushin*.

As is known, *qiddushin* require these four conditions: (a) an act of *qinyan* – “acquisition;” (b) awareness and will; (c) witnesses; (d) speech and formulation. We shall elucidate them one by one, with the help of the Blessed God.

- a) The act of *qinyan* – How does it operate? “The woman is acquired in three ways” [...] (m*Qiddushin* 1:1) And lacking one of these three manners of acquisition nothing else works. It would seem, apparently, that the woman is acquired by the husband just like other things that are acquired by an act of *qinyan*. But when we really look into it we will come to understand that the husband has no acquisition of his wife at all. [...]

However, after consideration it is apparent that the *qinyan* of married status [*ishut*] is different from other monetary *qinyan*. For in other monetary *qinyan* the meaning of the *qinyan* is that the object acquired belongs to the acquirer, and the acquirer has ownership and proprietary rights in the object, such that he may do with it whatever he wishes, for he has control over the very object itself. But with regard to *ishut* this is not so. For the husband is not the master or ruler over the wife at all, and she is not at all in his possession as regards mastery. Rather the meaning of this *qinyan* is that they each belong to the other, the husband to his wife and the wife to her husband, and they become as one entity, this being the meaning of the verse, “and they shall be as one flesh,” (Gen. 2:24) from which the Sages of blessed memory learned that “his wife is like his own body” [...] It thus emerges that the *qinyan* does not operate on one side only. Rather the *qinyan* is a tying together and a bond that binds and ties them both together.[...] Now, according to the above it emerges that – when a *kohen* marries an Israelite woman and she gives birth to a son for him, with the child considered a *kohen* – this is not simply because of kinship rules that decree that he follows his father's status, but rather, even were he to follow after his mother's status he would still be a *kohen*, for she also becomes a *koheneret* at this moment. Consider this.⁴⁴

It is evident that it means a great deal to R. Milikovsky to be able to move the traditional marriage theory in the direction of equality and mutuality. However it is also evident that he has not been totally successful. The examples he gives still operate in only one direction, co-opting the woman into the man's status through an act that depends on the sole initiation of the man. As noted, R. Milikovsky's teaching is but a fragment. We cannot know whether or how he would have addressed this problem.

The Reform Critique

Of course, dissatisfaction with traditional Jewish marriage has been more explicit and more extreme within the contemporary reformist camp. Yet the process through which this state developed was not straightforward. One of the most radical critics of *halakhah* in early Reform, R. Samuel Holdheim, wanted to abolish the institution of Jewish marriage so as to ease the integration of Jews into general society. Yet, surprisingly, we find that he based his position – advocating the validity of civil marriage, and, hence, of intermarriage, for Jews – on the acceptance of a view of *qinyan* that was precisely the one rejected by R. Milikovsky. R. Holdheim, taking the rabbinic sources at their word, argued that traditional marriage was effected through a *qinyan* and that this *qinyan* is no different from any *qinyan* in the commercial world. By claiming that marriage fell within the realm of civil law and that there was nothing intrinsically Jewish or religious about Jewish marriages, he could further argue that Jewish marriages should follow State rules, because of the *halakhic* principle that “the law of the State is the law – *dina d'malkhuta dina*.⁴⁵” R. Holdheim conceded that love and trust were possibly present when a couple decided to marry, but that these elements were legally irrelevant. Marriage had no religious meaning. It was a purely civil, public institution.⁴⁵ Paradoxically, then, by seeming to take traditional marriage theory seriously, R. Holdheim was able to bring about its destruction through self-contradiction.

R. Zechariah Frankel sought to refute R. Holdheim's position, claiming that the marriage *qinyan* was a unique, religio-moral concept. But, to heighten the irony, he based his argument on the traditional laws governing adultery. R. David Ellenson explains:

Frankel [...] noted that in the case of marriage, an act of infidelity on the wife's part required the husband to issue a *get* to his wife. The authority of the husband to do with his wife what he might wish in such an event was abrogated, and he had no license to forgive her. Jewish law provided no other option. Divorce was unavoidable. From this Frankel concluded that *kiddushin* and the act of *kinyan* associated with it could not be equated with other instances of *kinyan*; the wife was a person in her own right; she was not simply an inanimate piece of property over which her husband could exercise total domination. [...] The institution of marriage, however, was viewed from a religious-moral, and not simply a legal, perspective; and the act of *kinyan* that established it had to be regarded as unique and therefore distinct from every other type of *kinyan*. The adulterous act of the wife was a “moral abomination – *sittlicher Abscheu*.” It violated both culture and modesty and represented a rupture in the moral order of society.⁴⁶

We see that these rabbis, devoted as they were to their own particular agendas of reconceiving Judaism in the modern world, and perhaps because of this focus, were content to conceive of marriage in traditional terms – R. Holdheim, in order to abolish it, and R. Frankel, in order to defend it – while, ironically, their Orthodox colleagues were struggling to accommodate the first stirrings of a new marriage theory.

R. Holdheim's position was only half adopted by subsequent Reform rabbis. They insisted on retaining a Jewish ceremony of marriage (moving eventually to insisting that the ceremony be egalitarian) but on allowing the State to handle divorce. In 1869 the American Reform rabbinate met in Philadelphia and decided that: "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 altogether from the judicial authorities of the state. The so-called ritual *Get* is in all cases declared null and void."⁴⁷

While this policy distinction between marriage and divorce might seem inconsistent, its logic is revealed when considering the influence of modern concepts of the role of "religion" in the creation of a marriage. The idea is that religion is a realm essentially apart from the realm of human interactions, as such, and that it is the job of religion to somehow bestow sanctity upon those actions. The image conjured is of a priest or minister blessing a marriage. Once that image was adopted it became possible to say that it made no sense for religion to busy itself with divorce, since its benedictory function would be inappropriate. But that approach is not authentic to the traditional Jewish concept of religion or marriage. In that view there is no clear separation between religion and human interactions. And the holiness of the ceremony is not bestowed upon it by a religious functionary, but by the intention of the participants themselves. The Jewish adoption of the modern concept of religion has a distinguished history in modern times. From Mendelssohn on, the notion of splitting the civic dimension from the religious was one solution to the continuing struggle to adapt to modernity.⁴⁸ In that sense, R. Holdheim's essential stance was adopted by the Reform movement completely.

More recently a radical rethinking of the Jewish marriage ceremony has been undertaken by Dr. Rachel Adler. Following a trenchant critique of many aspects of traditional Judaism on feminist and ethical grounds, Dr. Adler rejects the concept of *qinyan* because, as she writes, "while the *purchase* of the bride may have dwindled to a mere formality in the rabbinic transformation of marriage, her *acquisition* is no formality. The language of acquisition still accurately reflects a relationship in which the woman has been subsumed and possessed."⁴⁹ But, it is not only unjust to apply this term to women. Because she perceives that this term carries the meaning of acquisition, she rejects its application to interpersonal relationships across the board. Thus, she rejects the innovation of "double-ring" ceremonies, instituted to make the wedding ceremony egalitarian. These ceremonies, however well-meaning, are termed by Dr. Adler, "Equal Opportunity Commodification,"⁵⁰ in that they merely change the ceremony from requiring that one person be acquired to requiring that both human beings involved in the marriage be acquired.

Dr. Adler set for herself the task of creating a wedding ceremony rooted in Jewish tradition that would be egalitarian and would not perpetuate the concept of acquisition of another person: "We need a wedding ceremony that embodies the partners' intentions to sustain and strive with each other all their lives, to endure like the protagonists of the stormy but ultimately redemptive covenant marriage of biblical prophecy. This intention is not reflected in the act of acquisition. It can only be expressed by an act of covenan-

ting.”⁵¹ Searching the tradition, she found the model she needed in the concept of partnership. She then created a completely new ceremony that follows the ancient procedures for establishing a partnership. Instead of the two people acquiring each other, their act of *qinyan* effects their acquisition of the partnership itself, a partnership agreement entered into in full mutuality and including mutually accepted commitments of a sexual, ethical, emotional, economic and social nature. Since neither party is treated as an object acted upon by another, Dr. Adler called this new institution *B'rit Ahuvim* – A Marriage Between Subjects, or more literally, a covenant between loved ones.

Besides the conceptual advantages she attained through this approach, Dr. Adler also had another important set of concerns she wanted to satisfy. She wanted to make sure that this ceremony would not be considered a halakhically acceptable marriage ceremony, nor did she want anyone to mistakenly confuse it with such a ceremony. In thinking through all the details of performing the ceremony Dr. Adler found that this concern dictated some of her choices. Thus, she avoided using the tradition of *qinyan sudar* as the means of finalizing the commitment because it was too familiar from traditional wedding ceremonies as a legally binding gesture of the groom. Instead she opted for the ancient, but by now neglected act of pooling resources into a bag and lifting it up together.

Dr. Adler's careful considerations succeeded in creating a ceremony that expresses a fully egalitarian ethic. Moreover, by consciously avoiding any attempt to satisfy halakhic marriage requirements the *B'rit Ahuvim* avoids the problems that beset *halakhic* marriage: an adulterous infidelity does not automatically destroy the marriage, the children of any adulterous affair are not stigmatized as *mamzerim*, and the dissolution of the relationship does not require a *get* that only the husband can issue, thus eliminating that inequality and obviating the *'agunah* problem that sometimes arises from it. In addition, the ceremony is equally meaningful for heterosexuals and homosexuals.⁵²

All in all, Dr. Rachel Adler's achievement, only partly summarized here,⁵³ should be celebrated as a giant breakthrough toward a more honest expression of marriage that is true to the demands of contemporary marriage theory and to Jewish traditions and values. Anecdotal evidence indicates that it can be a very meaningful alternative to traditional wedding ceremonies.

Marriage and Possession

But for all the advances made by Dr. Adler's approach, it suffers, in this writer's view, from a number of serious deficiencies and inadequacies, both in theory and in ritual implementation. In her rejection of traditional marriage theory Dr. Adler has searched for ritual forms that could not be associated with that theory's androcentric bias and its hinging of marriage upon an act of acquisition and commodification. Instead, she advocates a concept of marriage as *b'rit* – covenant. Yet, paradoxically, the mode of sealing this covenant is taken from commercial law. The act of entering into the marriage covenant is now different from the act of entering into a traditional marriage, but it is no different from entering into a traditional business deal. In a certain sense, R. Holdheim's position, relegating marriage to the civil sphere, has carried the day again. This is clearly not what Dr. Adler wants. She writes explicitly about the difference between contractual commitments and covenantal commitments. But her ceremony of marriage does not express sacred covenant through its form.

This failing is linked to a conceptual difficulty in Dr. Adler's marriage theory. While she is eloquent in describing the multi-faceted aspects of a life truly shared by covenant-ed loved ones (*ahuvim*), she is so uncomfortable with the central role of acquisition – *qinyan* – in the history of marriage theory that she will not admit that *there really is a profound sense of exclusive ownership* that stems from the feelings of love and relationship that are sanctified by marriage.

The feeling of ownership is profoundly and intensely felt during times of romantic attraction or moments of intimacy. It is also aroused and keenly experienced when the relationship is perceived to be threatened or is lost: when betrayal is suspected or known to have happened, when love is no longer requited, or when one's loved one dies. Moreover, the feeling works in two directions – both the claim of ownership over another as well as the sense of being owned by another can be equally present and significant. The evidence for this – in novels, plays, poems, news reports and popular songs – is too abundant to cite from in an adequate and representative way.

It may be instructive, however, to revisit one example of the interplay between feelings of ownership and being owned, expressed through declarations and acts of love and jealousy, vindictiveness and forgiveness, in the Biblical text of Hosea, Chapter 2. Dr. Adler presents a deep reading of Hosea, exploring its provocative and problematic imagery. Building on previous feminist scholarship, she acknowledges that the text possesses the dark potential to serve as an apologia for abuse. But she embarks on a mission to “wrestle [Hosea’s] prophecy for a blessing.”⁵⁴ Dr. Adler points out that Hosea’s contribution to our image of God is to teach us that God’s need for Israel’s love makes God vulnerable and open to being hurt. She also shows how the text subverts the image of God’s all-powerful ownership by showing how Gomer/Israel repeatedly escapes God’s control. This is taken by Dr. Adler as a critical point that undermines any validity to our claims of ownership over each other.

Thus, she celebrates the transformation of the relationship between God and Gomer/Israel through the concept of mutuality, carried by the term “*brit*” as it concludes the chapter. Furthermore, she shows the profound significance of God’s reconciliation with Israel, despite Israel’s unfaithfulness, as a radical overturning of Torah law, which declares adultery to be a capital crime that is unforgivable and whose effect is to destroy the marriage irretrievably. She writes:

If marriage, too, can be healed when its contractual obligations are broken, then marriage is transformed from a contract to a covenant. The introduction of reconciliation into the breached covenant marriage accomplishes a constructive violation of metaphor. The vehicle of the metaphor (marriage) is radically redefined in order to bear the new growth of meaning in the metaphor’s tenor (the covenant between God and Israel). Redefined marriage is based not upon ownership but upon mutual responsiveness.⁵⁵

For Dr. Adler the dichotomy is absolute. Either marriage is based on an ownership model or on a covenant model. The former entails unilateral control by one party over the other. The latter entails mutuality. But this opposition is too brittle. I suggest that it is necessary to imagine a model of marriage that entails mutuality and that acknowledges that this mutuality entails mutual feelings of ownership and being owned. For the essential validity of ownership claims in interpersonal relationships does not stem from an equation

between ownership and control. On the contrary, the abiding power and deep truth of the element of ownership in passionate relationships stems precisely from the impossibility of enforcing that ownership claim except to the degree that the loved one cooperates and accepts his or her role as the one who acquires or who allows himself/herself to be acquired. The brutal threats hurled by God are dangerously violent and abusive and cannot be defended as legitimate expressions of God's entitlements as husband/lover. However, any attempt to expunge such behavior by uprooting the feelings of ownership from which they derive is destined to substitute a jejune, lifeless simulacrum of love for the real thing. Feelings of ownership are so intricately intertwined with all other feelings of love and closeness that they cannot be amputated without cutting out the entire human heart. Indeed, God cannot feel such passionate rage unless God, also, feels owned and dependent on Israel's reciprocating God's love. It is because of God's feeling in thrall to Israel that God feels devastated by Israel's failure to act with love toward God.

Dr. Adler comes very close to saying all this, but stops short because she is so focused on rejecting the pathological version of ownership in which feelings can descend into acts of abusive control. Her recognition of the radical and brief glimpse that this text gives of another basis for marriage is eloquent, yet it does not quite allow the text to communicate its full message. Significantly, there is one element missing from her analysis of the culmination of the Hosea text, the ultimate vision of the renewal of God and Israel's covenant on a new basis of mutuality. In discussing Hosea's prophecy that Israel will no longer call God her Master – *ba'ali* – but *ishi* – my Man, she writes:

Ishi and *Ishti*, “my man” and “my woman,” are equivalent and nonhierarchical terms of relationship. But the shocking change from “my *ba'al*” to “my man” affects the vehicle of the metaphor as well as its theological tenor. It prophesies a time when marriage will not be a relationship of master to subordinate, owner to property, or omnipotent giver to extractive dependent. In a stirring parallel to the hopes of contemporary ecofeminists, the prophesied resolution of the war between the sexes is to usher in a new covenant of universal harmony.⁵⁶

She continues by pointing out the “upheaval” expressed in the espousal formula spoken by God: “I will espouse you forever: I will espouse you with righteousness and justice and with lovingkindness (*hesed*) and with compassion, and I will espouse you with faithfulness and you shall know YHWH.”⁵⁷ The verb “to know” is used here for the first time as an act performed by a female!

What is missing from this commentary is the recognition that, not only is the marriage model transformed, but the very concept of possession is transformed as well. Dr. Ader has not noticed that the final term used in the mutual relationship she celebrates – “*ishi*” – my man, and not “*ba'ali*” – my master – it is still a possessive term. It does not remain, as Dr. Adler would have it, a vestige of the old model of submission and control, but is renewed, by means of the validation of the possibility of forgiveness, as a frank declaration of intimate desire.

Thus, if we wish to craft a marriage ceremony that is adequate to the basic elements of the relationship it is to celebrate and sanctify, we must seek to give expression to this newly understood sense of acquisition – *qinyan*. We might attempt to craft a ceremony that is both radically different in message while being only subtly different in form or formu-

la, much as the Hosea text remains firmly within the Biblical and prophetic tradition as it simultaneously transforms its laws, values and hopes.

An Attempt to Find an Alternative within Orthodoxy

At about the same time that Dr. Adler was publishing her groundbreaking work, a hesitant, but, potentially radical approach was published in Israel by Dr. Meyer S. Feldblum, an Orthodox rabbi and scholar of traditional and critical approaches to Talmud. Perceiving a crisis in the functioning of the religious system of marriage and divorce as authorized by the Israeli government, his concern was to ameliorate three problems: that of *'iggun* – the stranding of wives by extortionate and recalcitrant husbands who withhold a divorce from these women, the possibility of the birth of illegitimate children (*mamzerim*) to women who would not wait to obtain a valid Jewish divorce, and the concomitant estrangement that has been growing between the Israeli public, which is mostly secular, and the rabbinic establishment which supervises and implements this dysfunctional system.⁵⁸

Dr. Feldblum's proposal was to create a two-track system of marriage. Traditional marriage ceremonies would be available for all who wished to use them. But for the secular public he advocated another option that he termed "*derekh qiddushin* – in the manner of marriage." His discussion is significant both for his critical insights into the flaws of the present system as well as for some of his suggestive ideas for creating an alternative to traditional marriage.

Working from a traditional *halakhic* perspective, Dr. Feldblum posits that the Torah establishes marriage as a form of *qinyan*, thus requiring *da'at qoneh* on the part of the man who takes a spouse in marriage (the groom) and *da'at maqnah* on the part of the woman who is taken in marriage (the bride). This means positive intention to acquire on the part of the groom and positive assent to grant acquisition by the woman who is to be acquired. Absent either intention, the marriage is not valid. Dr. Feldblum is candid in acknowledging that, by this traditional *halakhic* standard, most marriages today must be deemed invalid. He writes:

In light of the drive by women of our day for equality in all areas of life, there is an "evident presumption" (*umd'na d'mukhah*) that many women, if they only knew what was mentioned above [the requirement for assent to be acquired in marriage] would absolutely refuse to agree to the *qinyan* of traditional Jewish marriage (*qiddushin*). This is contrary to what was the case in past years. This assumption is additionally strengthened from the declarations of those women who are aware of the *qinyan* of *qiddushin* and who do not accept it, their intention being solely to establish a bond of faithfulness to their partner. **According to this a presumption has been created that there is a lack of *da'at maqnah*.**⁵⁹

Having brought this situation into the open, Dr. Feldblum was not prepared to assent to its continuation. How should the thousands, if not millions of couples, who were clearly not living within a marital relationship sanctioned by the Torah, be viewed? Dissolving their relationships is simply not an option. Dr. Feldblum's answer was that the *halakhah* had long recognized relationships forged "in the manner of marriage." That is, *halakhah*

had reluctantly deemed certain relationships acceptable if they had been created using the form of traditional marriage, although the ceremony had no real validity.

The prime example of such a relationship has to do with a marriage arranged for a girl who is a minor. As a minor, she is legally incapable of giving her own assent – *da'at maq-nah* – to the marriage. According to *halakhah*, only the father has the right to arrange a marriage for his daughter while she is a minor. In cases where he died, the rabbis instituted a rabbinically valid marriage by empowering her mother and brothers to arrange a marriage. But they did not allow for this as long as the father was alive and able to arrange for his daughter's marriage. In Geonic times, the problem arose with regard to a marriage arranged for a minor girl, while her father was alive but absent, by relatives other than the father. Was this a promiscuous relationship (*z'nut*)? Was it a valid marriage, to be severed only through valid means of termination – *get* or *mi'un* (the power of a minor girl to opt out of a marriage once she has attained to her majority)? The answer given by the Rosh was that “it appears that she is not married, even rabbinically. Nevertheless, *we should not forbid her*, as if she is an unmarried woman living with him promiscuously, because, since this is *in the manner of marriage* for him, *it is not licentiousness...*”⁶⁰

Dr. Feldblum saw a number of advantages to establishing an alternative marriage system – *derekh qiddushin* – for those who would not or could not marry through the traditional ceremony. He argued that the post facto acceptance of such a relationship as being non-promiscuous could justifiably be extended in these times to acceptance *ab initio*. In addition, such an alternative would not require a *get* to dissolve it⁶¹ and would not carry the stigmas of adultery and *mamzerut* that are attendant to infidelity to a Torah-sanctioned marriage.

In the interests of keeping this alternative approach as similar to traditional Jewish marriage as possible, Dr. Feldblum advocated that the Israeli Rabbinate take control of this track and administer it under its auspices, lending it institutional legitimacy. He felt that this would also enhance the prestige and relevance of the rabbinate in the eyes of the secular public. To further connect that public to the tradition, he maintained that the alternative marriage ceremony should be as similar to the traditional ceremony as possible.⁶² On the other hand, since the efficacy of the alternative marriage ceremony depends on it not getting co-opted into the traditional ceremony, care must be taken to make sufficient and significant changes in the ceremony so that it will maintain its alternative quality. Thus a balancing act is necessary between creating a sense of traditional authenticity and also making explicit the non-traditional nature of this marriage ceremony and its legal results. Dr. Feldblum negotiated this balance as he considered four key elements of the ceremony: (a) the blessings; (b) the declaration of marriage; (c) the witnesses; and (d) the *ketubah*.

(a) Blessings – Relying on earlier opinions that discussed the case of the arranged marriage of the minor, he argued that the traditional blessings should be recited under the *huppah*. As he indicates, this relies on the understanding of the blessings as expressions of praise, rather than as blessings for performing a *mitzvah*. Although he cites an opposing ruling by R. Ovadiah Yosef, he feels that the earlier opinions should be followed in this approach, “for it is important not to change the accepted ceremony so that both the couple and those assembled may feel the special experience of this moment and of the sanctity of this union.”⁶³

(b) Marriage Declaration – It is here that Dr. Feldblum understood that differentiation from the traditional marriage ceremony is crucial. If, somehow, a declaration of mar-

riage is uttered in a way that can be construed as fulfilling traditional criteria, the marriage effected will be considered a traditional marriage, requiring a *get* for its dissolution, and carrying severe consequences in cases of infidelity on the part of the wife. In order to obviate such a possibility, Dr. Feldblum suggests that the formula recited should be, “*harey at m'yuḥedet li...*” Such a formula has been judged to be *halakhically* deficient for the purposes of effecting a marriage. In addition, by using this formula “there will be a distinguishing sign and declaration that we are operating with ‘*derekh qiddushin*’ and not with the traditional *qiddushin* of the Torah.”⁶⁴

(c) Witnesses – Dr. Feldblum writes that, since this ceremony does not intend to create a traditional marriage, the usual *halakhic* requirements that the witnesses be religiously observant can be dispensed with. He suggests that this will allow the secular bride and groom to invite their friends, who are also, presumably, secular, to serve as witnesses. This will both satisfy them and be an additional indicator that we are engaged in *derekh qiddushin* rather than Torah authorized *qiddushin*.

(d) Ketubah – *Derekh qiddushin* does not require a *ketubah*. However, Dr. Feldblum encourages the use of the traditional text of the *ketubah* if the groom is willing to do so voluntarily, though “a particularly careful [rabbi] may decide to introduce some minor changes to it.”⁶⁵

Dr. Feldblum’s proposal was opposed by Rabbi J. David Bleich and was then ignored in Orthodox rabbinic circles.⁶⁶ It was sympathetically discussed by Masorti rabbinical scholars within their overview of various proposal that have been put forward to solve the agunah problem, but it was dismissed: “Even though Prof. Feldblum maintained otherwise, he has not proven, in our opinion, that the bond of ‘*derekh qiddushin*’ is essentially different from the bond created by means of concubinage. [...] Even though not every case of concubinage is a case of ‘*derekh qiddushin v'nisui'in*,’ it may be that ‘*derekh qiddushin v'nisui'in*’ constitutes a case of concubinage. The discussion would then pass over to the question of whether we should accept, in our time, the bond of concubinage for a couple as a possible way to solve the problem of ‘*agunot*.’”⁶⁷

From Apology to Assertion

But to make an equation between the classically defined concept of concubinage and this new alternative to *qiddushin* is to fail to recognize the essential difference between the new theory of marriage espoused by that alternative and the traditional theory of marriage under which concubinage was subsumed. Concubinage was, indeed, a way for couples to establish a relationship without resort to *qiddushin*. But it was still, in essence, an acquiescence to that theory of marriage in that it was a non-egalitarian relationship. It was a way around *qiddushin*, and it was a way to supplement *qiddushin*, but it was still conceived of as a way for men to take women into their beds, as was *qiddushin*. It is this basic acknowledgement of the validity of the traditional theory of marriage that allows the opponents of concubinage to aver that concubinage should be prohibited. They maintain that it is a sociologically determined fact that the women who are concubines are necessarily embarrassed and ashamed of their status, since it is lower than “real” marriage. This fact is then used as the basis for prohibiting the institution, either because such shame will lead those women to avoid observance of family purity laws, or as a penalty for opting out of the preferable method of marriage. Another variation of this line of thinking is that concubinage should be prohibited in order to safeguard the dignity of Jewish women.⁶⁸

None of these arguments recognize the fundamental change in attitude toward the classical theory of marriage that is now held by a segment of the Jewish community and upon which alternatives to *qiddushin* are being proposed. This change requires the formulation of an alternative to the traditional ceremony of *qiddushin*, not as a secondary supplement to it, but, as a replacement for it. For this community the primacy of the traditional form of Jewish marriage is no longer a given. Indeed, its very legitimacy as an authentic ritual expression of our orientation to the sanctification of interpersonal relationships is denied.

Of course, such a statement is not at all something to which Professor Feldblum would have agreed. His intuitions regarding the problematic nature of traditional marriage were safely ascribed to a community not his own. The challenge is thus laid before those who are not willing to be apologetic about their alienation from traditional marriage theory and ceremony to proceed assertively toward a new version of effective *qiddushin*.

Apparently, this is not so easy. Rabbi Danya Ruttenberg, while still a student at the Ziegler School of Rabbinical Studies, compiled a helpful list of various suggested alternatives to traditional *qiddushin*, published on the Internet as *The Kiddushin Variations*.⁶⁹ In addition to describing each suggestion, she offers her own assessment of every approach's advantages and disadvantages. While she outlines the problematic nature of traditional *qinyan*, and she describes certain models that maintain traditional *qiddushin* as having the "disadvantage" of supporting traditional *qinyan*, her evaluation of Professor Feldblum's idea is that it suffers from the following disadvantages: "Is not kosher kiddushin, is possibly non-applicable to situations in which traditional kiddushin is possible, has a "lower" status than traditional kiddushin."⁷⁰

The argument advanced in this paper is that it is necessary to admit that it is simply not possible to maintain the traditional halakhic ceremony and also engage in a marriage ceremony that effects a marital relationship in accord with egalitarian values. Reflection on the examples discussed above leads to the conclusion that, when disaffection with traditional *qiddushin* has insufficient weight to overturn the willingness to use traditional Jewish marriage theory as the standard by which to evaluate alternatives, this necessarily leads to a conceptual stalemate. The traditional mode of *qiddushin* must be overturned. A radical conceptual change has taken place in our consciousness and our rituals should express that conceptual change with honesty, conviction and joy.

On the other hand, egalitarian values are not our only values. We also cherish the forms and veneration of sanctity embodied in the tradition. The questions are – how different and how similar should the new version of the Jewish marriage ceremony be, and in what ways?

Dr. Rachel Adler's approach has the great merit of recognizing the radical break in our thinking. However, along with its conceptual shortcomings outlined above, the necessity of its stark discontinuity with the traditional marriage ceremony is questionable. Professor Feldblum's approach values traditional forms much more, but is hesitant to pursue its own line of thought to the end. Is it possible to fashion a wedding ceremony that clearly and honestly refuses to abide by the traditional *halakhic* theory of marriage while yet seeing itself as in continued conversation with the *halakhic* forms sanctioned by the Jewish people over time?

A New Marriage Ceremony

The following discussion deals with the central elements that make up the traditional Jewish marriage ceremony under the wedding canopy. These are: the *birkat erusin* and the act of *qiddushin* accompanied with an appropriate declaration. These are the two elements that make the marriage take effect. The *ketubah* is not such an element. While it is a *halakhic* requirement that Jewish couples contract a *ketubah*, and while the *ketubah* can be a valuable piece of evidence regarding the marriage, the document itself does not make the marriage. Its text can be modified to reflect the values of the couple and community. Many worthwhile efforts have already been made in that regard and this essay will not survey them or try to add to them. Nor will this essay attempt to rewrite the *sheva` b'rakhot*. Again, many creative liturgists and poets have given their attention to these blessings. But these blessings do not effect the marriage. They are celebratory of a marriage that has already taken place, and are thus outside the focus of this essay.

A. The *Birkat Erusin*

After the couple arrives to stand under the wedding canopy the ceremony takes the form of recitations uttered “upon a cup of blessing.” After the blessing on the wine is recited, the “engagement blessing” – *birkat erusin* – is pronounced. The *halakhic* nature of this blessing was discussed above. Historically, when engagement and marriage were often separated by a considerable amount of time, it functioned as a statement of commitment and as a declaration of exclusion of any other suitors. Even in its present context, when it is recited just seconds before the marriage is finalized, it can serve as a meaningful statement. As we have seen, Meiri argued that this blessing is a succinct declaration of the marriage theory upon which the wedding ceremony is predicated. The challenge is to preserve the blessing’s function without echoing the traditional marriage theory.

The problem with the traditional blessing formula is that, in keeping with traditional marriage theory, it is written solely from the perspective of the male. It refers to women as beings who are either forbidden or permitted to men. How can this defect be eliminated? How can the blessing be formulated so as to situate the ceremony within a marriage theory congruent with our values?⁷¹ One simple solution is to incorporate references to men. This approach has been adopted in certain versions, as found in the Reform Rabbi’s Manual, mentioning *n’su’ot* and *n’su’im* – married women and men.⁷² But the Reform text omits any reference to sexual prohibition, and mentions neither the term *’arayot*, nor the term *arusot*. It appears that the composers of that text did not wish to allude to the notions of forbidden relations during this celebratory moment.

However, the concept of prohibition is not prohibited to those who do not subscribe to the Classical Reform philosophy, and contemporary voices in Reform have also affirmed that there is a Jewishly authentic set of principles binding on us in the realm of sexual ethics.⁷³ So what can – and should – this first blessing under the *huppah* say if it is to express the kernel of our new theory of marriage? The first phrase – *v’tzivanu ’al ha-’arayot* – should be preserved. The term *’arayot* should be understood as a gender-neutral term, encompassing all forbidden sexual relations, and not as a term specifically referring to women. In this moment, right before the marriage takes place, we should endeavor to recognize that each of the persons standing under the *huppah* has a dignity that is inviolate. The beginning of this blessing, by declaring that God has commanded us to respect certain sexual relationships, differentiates between the holy and the profane in this central realm.

How shall the blessing continue? The following phrase – “*v’asar lanu et ha-arusot* – and Who forbade to us betrothed women,” can, despite the Reform decision to delete it, be meaningfully modified to refer to men, as well: “*v’asar lanu et ha-arusot v’et ha-arusim* – and Who forbade to us betrothed women and men.” But what can it convey in a culture which allows and even expects couples to live intimately with one another before marriage? In truth, if such an objection were to be accepted, it would force us to eliminate the next phrase – “*v’hitir lanu et ha-n’su’ot v’ha-n’su’im lanu ‘al y’dei huppah v’qiddushin* – Who has permitted our marriage partners to us by means of *huppah* and *qiddushin*,” – the phrase that is modified and included in the Reform service – as well. But this phrase is, indeed, still meaningful, even in the modern context. It sensitizes us and makes explicit the significance of the consent and acquiescence given by each partner in the marriage to the other. It alerts us to that moment of prohibition that applies right before their mutual consent. When standing under the *huppah* the couple is making a statement that their previous history as a couple is no longer normative. At this moment it is forbidden for each partner to continue assuming intimacy with the other until that partner publicly affirms the new relationship of marriage. For it is only that consent and affirmation which releases them from the state of *issur* into the state of sacred relatedness – *qiddushin*.

However, such close adherence to the traditional formula of the blessing runs the risk of blurring the essential distinction between traditional *qiddushin* and this alternative. Here the tension between these two values becomes acute. Since, as will be made clear in the next paragraphs, it is crucial that this ceremony be explicitly differentiated from traditional *qiddushin*, and to explicate the values of the new theory of marriage more clearly, it is preferable to find a new formulation, rather than simply add the masculine terms to the existing text. The new formulation would express the ideal of finding completeness and satisfaction in this exclusive loving relationship. It would celebrate the moment under the *huppah* when each partner is called to focus entirely on the other, without a thought given to any other relationship. Thus, the blessing would read: “*v’asar lanu et ha-himmud, v’hitir lanu et sh’ahavah nafshenu ‘al y’dei huppah v’qiddushin.* – Who has forbidden covetousness to us while permitting to us our soul-love by means of *huppah* and *qiddushin*.⁷⁴”

B. The Gift of Rings

In keeping with our concern to preserve the gestalt of the traditional wedding ceremony, I prefer to have the act of *qiddushin* comprise the gift of a ring, rather than find a completely new action, as Dr. Rachel Adler did. The gift of a ring should be preserved since it has great resonance as a signifier of marriage. But it should be a reciprocal and mutual act. Thus each participant should give a ring to the other. It might be argued that, to make sure that there is no mistaking this ceremony for an attempt to satisfy *halakhic* standards, it is desirable (in the case of a marriage between a man and a woman) to have the woman give a ring first. But this is not a conclusive argument. The more crucial consideration is how the act of giving rings is publicly framed. The nature of this action and its *halakhic* consequences will be conditioned by the care taken in framing the gift of the rings with the appropriate public declarations.

C. The Marriage Declaration

As Dr. Adler advocates, it is of crucial importance that there first be an explicit declaration by the parties or the officiant that the parties’ intent is specifically to create a mutu-

al relationship that is not to be confused with the unilateral *qinyan* of old. This declaration should be done in a spirit of both solemnity and celebration. This approach does not apologize for not being *halakhic*. It is firmly convinced that it is both legitimate and, indeed, preferable to the traditional approach. Besides serving this educational function and taking a step towards a more adequate religious expression of our values, the public declaration performs another important function. We must recognize that those Jews who remain committed to traditional *halakhah* will apply its criteria to judging all marriages, including those not performed under its auspices. An explicit declaration setting forth the egalitarian nature of the wedding and the disavowal of any desire to have the marriage abide by presently hallowed halakhic standards avoids the *halakhic* tendency to reinterpret inexact statements as valid when they are uttered during a “conversation regarding marital matters – *m'dabber itah 'al 'isqeい qiddushin*.⁷⁵

The *halakhic* formula which speaks of unilateral acquisition must be avoided. In fact, the new formula should purposely subvert the *halakhic* requirement that the groom make a unilateral declaration of *qinyan*, so as to avoid the problem of requiring a *get* should the marriage be dissolved. Thus the formula – *harei at m'qudeshet li* – should be avoided absolutely. Having the bride recite this formula in a form grammatically altered for gender does not solve the problem, since once the groom says the traditional formula there are grounds to consider the marriage as *halakhically* binding (while the bride's declaration becomes *halakhically* irrelevant).

Nevertheless, as argued above, the sense of exclusive “ownership” that is inherent in feeling love for another should be preserved and acknowledged – as a feeling and claim that each is entitled to have regarding the other. R. Feldblum’s proposed formula – *harei at m'yuhedet li* – is problematic, as he acknowledges. It is too close to the *halakhic* norm, and is, indeed, considered as “doubtfully valid” – *safeq m'qudeshet*. It has the further defect of preserving phraseology that continues the notion that the marriage partners have power to change the status of one another. The new formula should not fall into the trap of conveying a sense of objectification of the other. Instead we need a formula that affirms mutuality, is close to tradition and, yet, is different enough to clearly obviate the need for a *get* by not being valid *qiddushin* according to traditional *halakhah*.

The approach to take is to embrace the type of formula that is explicitly rejected by the *halakhah*, as found, for example, in Rambam, *Hilkhot Ishut* Chapter 3:

- (1) How is the woman taken in marriage? If he is marrying by means of money, he says to her “You are hereby sanctified to me,” [or] “You are hereby betrothed to me,” [or] “You are hereby mine as a wife,” and gives [the money] to her before witnesses. And it is the man who must say words whose meaning is that he acquires her for himself as a wife, and it is he who must give the money.
- (2) If she gave [money] and she said, “I am hereby sanctified to you,” [or] “I am hereby betrothed to you,” [or] “I am hereby yours as a wife,” or in any language of giving over ownership, she is not married. [...]
- (6) The words that the man should say when he betroths must convey in their meaning that he is the one acquiring the woman, and not that he has given himself in acquisition to her. [...]

The preferable formula need not be created out of nothing. It has been given to us by the *halakhic* authorities! In a marriage between a woman and a man, as each person gives a ring to their beloved, the bride should say – *harei ani mitqadeshet l'kha...* And the groom should say – *harei ani mitqadesh lakh...* – I hereby sanctify myself to you with this ring according to the religious tradition of Moses and Israel.

This formula expresses precisely the modern theory of marriage. The groom is not changing the bride's status by his act of giving her the ring. Rather, the gift of the ring is declared by this formula to exemplify a gift of self, rather than a *qinyan/acquisition* of the other. Thus each is creating a change of status to themselves and dedicating that changed status to the other, rather than presuming to effect a change upon the partner through the gift of the ring.

It is striking that this obvious alternative formula has been largely ignored in the modern quest for alternatives to unilateral *qiddushin*.⁷⁶ Perhaps the reason it has not been noticed is that this quest has either sought to distance itself completely from the traditional elements of the marriage ceremony or else it has been in thrall to the claim of exclusive legitimacy that the *halakhic* form has enjoyed for so long. The rejection by the *halakhah* of this formula has served to erase it as an option. But, ironically, this explicit rejection works to the advantage of this formula, since, as it expresses our values clearly, it also runs no risk of being co-opted back into the *halakhic* system. The *halakhah* has liberated this formula for our use.

The advantages are enormous. The *halakhah* cannot claim to recognize this marriage. Therefore, ending the marriage can now be accomplished through a mutual process of divorce, rather than through the unilateral method of tradition with its invitation to abuse.⁷⁷ The status of the ex-wife is no longer to be defined by *halakhah* as “married,” and should she enter another intimate relationship she cannot be defined as an adulteress. Hence, any children she may have cannot be defined as *mamzerim* by the *halakhic* community. In addition, a widow of a childless marriage would be exempt from levirate marriage in cases where it would be obligatory in *halakhically* recognized marriages.

There is one more blessing that this approach bestows. This approach is equally applicable to marriages between men and women and between same-sex couples.⁷⁸ The trivial truism that traditional *qiddushin* has never applied to gay couples contributes nothing toward determining the essential nature of *qiddushin* as we value it, since the traditional theory is defective even in terms of heterosexual relationships. On the other hand, this approach recognizes that gender roles are not determinative in defining a sacred relationship. The modern theory of marriage affirms that *qiddushin* can be established through declarations of the deepest sense of love and commitment. These two ingredients of holiness are assuredly available to both gay and straight couples. This ceremony declares and celebrates that fact.

D) The Closing Phrase of the Formula – *k'dat Moshe v'Yisra'el*

The formula should conclude with the traditional phrase, “*k'dat Moshe v'Yisra'el* – in accordance with the religious norms of Moses and Israel.” Some would argue that a purposely non-*halakhic* ceremony cannot presume to state that it is done in keeping with this phrase. Nevertheless, our position is that declarative statements such as this do not only refer backward, to some inviolate set of norms, but also can produce the necessary emergent commitment to new norms. Of course, we know that the first person who ever stated

that he was acquiring a wife “*k’dat Moshe v’Yisra’el*,” was not pronouncing a phrase instituted by Moses or reflective of Jewish practice before that time. The utterance of the phrase in the present moment will be just as meaningful as it was then.

It is perhaps appropriate to allude to the well-known *midrash* that states that Moses could not understand the Torah taught by R. ‘Aqiva. Yet, R. ‘Aqiva legitimately declared that it was directly linked to Moses at Sinai.⁷⁹ In light of that *midrash*, *dat Moshe v’Yisra’el* should be understood as a reference to the dynamic of tradition and change that defines the Oral Torah. Understood in that sense, it is completely appropriate to recite this phrase under the *huppah*.

But it is even more important to recognize that this phrase was formulated specifically for the marriage ceremony. We do not light Chanukah candles “*k’dat Moshe v’Yisra’el*.⁸⁰” In that case we actually make a more radical claim. We pronounce a blessing that declares that God, and not the Sages, commanded us to light those lights. Why is the wedding ceremony the appropriate place and moment for this phrase? We are led to understand that “*k’dat Moshe v’Yisra’el*” alludes to the specifically communal nature of marriage itself, as discussed at the beginning of this essay.

The Talmud declares that “anyone who marries, marries according to the understanding of the Sages.”⁸¹ Tosafot immediately note: “Therefore we say at the time of the *qidushin*: ‘*k’dat Moshe v’Yisra’el*.⁸²’” Rashi explains: “Anyone who marries a woman does so in accordance with the understanding that the Sages of Israel put into practice in Israel. The *qiddushin* are valid according to the words of the Sages and they are cancelled according to the words of the Sages by means of bills of divorce authorized by the Sages.”⁸³ A traditional reading would insist that Rashi’s comment forecloses any innovations. The Sages have already made their understanding known. But for the community of Jews who see tradition as the continuous unfolding of religious life throughout the generations, Rashi’s statement is a reminder that marriage is a socially constructed institution subject to changing understandings. This more fluid reading of the phrase makes sense of the choice of Moses, rather than the Sages, as the authority figure mentioned. The understanding of marriage advanced by the Sages was their faithful development beyond what was practiced in Israel a thousand years before. It is clear that when Moses married Zipporah he did not pronounce the phrase, “*k’dat Moshe v’Yisra’el*.⁸⁴” Rashi’s comment further alerts us to the sense of obligation felt by the Sages as representatives of the community of Israel. They understood that they were called to refract the practices of the community of Israel through the lens of their commitment to creating a community of holiness, expressed as a *dat Moshe v’Yisra’el*.

So, too, it is our obligation to promote a *dat Moshe v’Yisra’el* – a religious practice that is faithfully rooted in the traditions of Moses and Israel even as it is faithful to our own best understanding – as *Yisra’el* – of what makes a relationship sacred. The wedding ceremony proposed below is an attempt to fulfill that obligation.

¹ While definitions and directives tend to be explicitly set forth, assumptions are often implicit and must be brought to the surface.

² We will see, later, that this is one message included in the traditional wedding blessing recited under the *huppah*.

³ BTShabbat 33a. The tension between public and private is further expressed by the continuation of this sage’s statement – “However, anyone who sullies his mouth [by mentioning this], has any good decree, even one for 70 years, reversed upon him.” (Except where noted, all translations are mine.) Thus, while this is public knowledge, it should not be talked about in public.

- ⁴ BT Ketubot 7b, tr., Soncino CD-ROM.
- ⁵ R. Menachem Ha-Meiri (1249-1315) – *Beit Ha-B'hirah*, Ketubot, 7b, s.v. *nusah birkat erusin*, ed. A. Sofer, Jerusalem, 1947, p. 35. See the notes in that edition for other views and, for the view of the Rosh, see below.
- ⁶ See Rashi to Lev. 19:1, “You shall be holy: Be distanced from forbidden sexual relations and from sin.”
- ⁷ However, it is accurate to say that, based on traditional understandings of the Biblical texts, homosexuality was seen as prohibited as an abomination by Judaism, until this generation. For a discussion of the issue, with reference to the current positions of the major movements in contemporary Jewry, and with a proposal for a new reading of the Biblical verses that supports full acceptance of homosexuality, see my essay, “*Pi’hu Li Sha’arei Tzedeq*: Open the Gates of Righteousness for Me: An Opening Toward a New Reading of the Torah in Light of the New Status of Gays and Lesbians in the Jewish Community,” *The Journal of The Academy for Jewish Religion* 3:1 (May 2007), pp. 1-21, available on line at – http://www.ajrsem.org/uploads/docs/article_greenstein.pdf.
- ⁸ Another debatable aspect of the argument limiting marriage to heterosexual couples is its limited view of what constitutes a family, excluding homosexual couples, with and without children.
- ⁹ Targum and Rashi, *ad. loc.* Rashi bases his reading on BT Sanhedrin 58a. Ramban, *ad. loc.*, rejects Rashi’s view and explains that the point is that the human male cleaves to his mate in a bond that is unique.
- ¹⁰ R. Yosef Karo, *Shulhan ‘Arukh* (SA), Even Ha-‘Ezer (EH) 1:1.
- ¹¹ See, for example, A. Eliyahu Kitov, *The Jew and His Home* (Shengold, 1961, p. 19): “[...] Judaism views the married state as an intrinsic good, as commandment and obligation.” R. David Feldman, in his *Marital Relations, Birth Control, and Abortion in Jewish Law* (Schocken, 1974, p. 21), writes: “Marriage – to begin with the first of the relevant factors – is, in Judaism, a *mitzvah*, a religious duty. Moreover, the particular constellation of values in the Jewish concept of marriage – procreation, companionship, etc. – is a unique one [...]” In his *Jewish Living: A Guide to Contemporary Reform Practice* (UAHC, 2001, p. 154) R. Mark Washofsky writes: “It is a *mitzvah* for a Jew to marry and to live together with his or her spouse in a manner worthy of the traditional designation *kiddushin* – set apart for each other in a sanctified relationship.” See also Dr. J. H. Hertz, *Pentateuch and Haftorahs*, Soncino, 1981, “On Marriage, Divorce, and the Position of Woman, in Judaism,” p. 930ff.
- ¹² Rosh, Ketubot 1:12. See *She’iltot* §165 and the comments of R. Naftali Zvi Yehudah Berlin in his *Ha’ameq Sh’elah*, there.
- ¹³ Rachel Biale, *Women & Jewish Law*, Schocken, 1984, p. 198. The feminist critique of traditional Judaism has noticed this and other problems and is fundamental to the development of my thinking. Especially important have been Judith Plaskow’s *Standing Again at Sinai: Judaism from a Feminist Perspective*, HarperCollins, 1990, and Rachel Adler’s crucial work, *Engendering Judaism: An Inclusive Theology and Ethics*, JPS, 1998. This latter work will be referred to below, when I will try to delineate what I accept from Adler’s analysis of marriage and where I differ.
- ¹⁴ It can be shown that Torah study is conceived by rabbinic tradition as a form of procreation. (See the beginning of Maimonides’ *Hil. Talmud Torah*.) In that light, it is no coincidence that men, and not women, are traditionally obligated in Torah study, as it is they, and not women, who are obligated to procreate. For additional discussion about procreation as a male obligation, see below.
- ¹⁵ SA, *op. cit.*
- ¹⁶ *Ibid.*
- ¹⁷ BT Ketubot 47b.
- ¹⁸ For example, Daniel H. Gordis, “Marriage: Judaism’s ‘Other’ Covenantal Relationship,” in *Celebration & Renewal: Rites of Passage in Judaism*, Rela M. Geffen, ed., JPS, 1993, pp. 116, under the heading, “Judaism’s Positive Orientation Toward Sexuality.”
- ¹⁹ See D. Feldman, *op. cit.*, p. 69, who discusses the views of RaBa”D, formulated in his legal manual of marriage, *Ba’alei Ha-Nefesh*, regarding permissible motivations for engaging in intercourse. While one of these is the fulfillment of the *mitzvah* of ‘onah, the satisfaction of the wife’s needs, none of the four motivations includes the male’s pursuit of his own sexual satisfaction. Alyssa Gray examines these attitudes in her essay, “The Ministering Angels Told Me: Bavli Nedarim 20a-b and Its Medieval Interpreters,” in *Sexual Issues in Jewish Law: Essays & Responsa*, Walter Jacob, ed. with Moshe Zemer, Solomon B. Freehof Institute for Progressive Halakhah/Rodef Shalom Press, Pittsburgh, PA, 2006, pp. 31-81. She discusses RaBa”D’s views and compares them to Maimonides’ (see pp. 53-68). She notes that, unlike RaBa”D, Rambam (Hil. Ishut chs. 14 and 21) formulates the laws of ‘onah

without discussion of the wife's receiving sexual satisfaction. She also notes that, while RaBa"D has a more expansive view of sexuality than Rambam, he does not allow for the idea that the male should seek his own sexual satisfaction. Rambam's position is stated in *Hil. De'ot* 5:4 in a somewhat conflict-ed way. The husband must not force himself upon his wife against her will, "but rather with the desire of them both and their joy." Yet he continues that, having accomplished this state, the husband should "penetrate in shame and without arrogance, and withdraw immediately."

- 20 See the views of Rambam and RaBa"D noted above. Dr. Patricia Beattie Jung, Professor of Theological Ethics at Loyola University, has pointed out that the linkage of sex with procreation is based on a male experience of sex. Males, in theory, are potentially procreative with every sex act. Women, however, experience sex and procreation as distinct realms, for during large portions of their lives women can be sexual beings while they are necessarily not fertile. See, *A Symposium: New Jewish and Christian Approaches to Homosexuality*. San Francisco: Swig Judaic Studies Program at the University of San Francisco, 2002, p. 8.
- 21 Rambam, *Hil. Ishut* 4:1, SA EH 42:1 [note how far along the Shulhan 'Arukh proceeds in marriage law before reaching this detail!], based on BTQiddushin 2b and BTBava Batra 48b.
- 22 The term 'agunah originally referred to a woman whose husband had disappeared, leaving her without the means to leave her marriage. In modern times the term has been extended to apply to women who suffer at the hands of husbands who refuse to give them a *get* (*m'soravot get*), although they are divorced in every other way. Defenders of traditional Jewish marriage sometimes argue that the 'agunah problem is overblown or does not exist in significant numbers because they refuse to allow for this modern usage of the term. The use of the term in this paragraph is intentionally extended to all wives in order to indicate that such tragic situations are embedded in the very foundations of traditional Jewish marriage theory.
- 23 Thus, as long as the wife knows that adultery is wrong, she is forbidden to her husband even if she commits adultery with his permission. See R. Moshe Feinstein, *Igrot Moshe*, EH Part IV, Responsum 95, at the end. (*Bar-Ilan Responsa Collection*).
- 24 BTNedarim 50b
- 25 Rambam, *Hil. Sotah* 1:9-11.
- 26 SA, EH 178:9.
- 27 This is the usual term, based on Biblical verses, for referring to a promiscuous woman. It is not possible to differentiate between its legal usage and its derogatory connotation. The guilty sage is sometimes referred to in the responsum as the "no 'ef - fornicator."
- 28 R. Ezekiel Landau (1713-1793), *Responsa Noda ' bi-Yehudah*, M'chon Yerushalyim, 1990, First Series, OH §35, p. 63. It can be argued that it is no coincidence that this discussion takes place precisely as the notions of marriage were changing toward a more individualistic, "romantic" theory. See Jacob Katz, *Tradition and Crisis: Jewish Society at the End of the Middle Ages*, New York University Press, 1973, 1993, pp. 231-232.
- 29 This view is cited in the name of R. David Golinkin, but not in the name of the *Noda ' bi-Yehudah*, by Rabbis Dorff, Nevins and Reisner, in their *t'shuah*, "Homosexuality, Human Dignity and Halakhah," p. 30, n. 88. See http://www.rabbinicalassembly.org/docs/Dorff_Nevins_Reisner_Final.pdf. They reject it. Their own position, that a rabbinic prohibition may be set aside on an ongoing basis when it is for the sake of the ongoing preservation of human dignity was already advocated by R. Shlomo Kluger, *Sefer ha-Hayyim* on S.A. O.H. 13:11, cited by Nahum Rakover, *Human Dignity in Jewish Law* (Hebrew), Library of Jewish Law, 1998, p. 94.
- 30 *Noda ' bi-Yehudah*, op. cit., p. 67.
- 31 *Ibid.*, p. 63.
- 32 R. Shlomo Kluger (1785-1869), *Responsa Ha-Elef L'kha Sh'lomo*, OH §7. (*Bar-Ilan Responsa Collection*).
- 33 R. Hayyim Halberstam (1793-1876), *Responsa Divrei Hayyim I*, OH §35. (*Bar-Ilan Responsa Collection*).
- 34 His concern is for the good name of the repentant adulterer, who is a Torah scholar and is of a good family.
- 35 R. Yosef Hayyim al-Hakham (1834-1909), *Responsa Rav Po'olim*, I:EH §1. (*Bar-Ilan Responsa Collection*).

- 36 R. Ovadiah Yosef (1920 -), *Responsa Yabia` Omer* II, EH §2. (*Bar-Ilan Responsa Collection*).
- 37 A unique opinion is that of R. Moshe Mordecai Epstein (1866-1933), who states that sexual relations between husband and wife are not prohibited through the act of the wife's adultery if the husband has no reason to suspect her. (*Resp. L'vush Mord'khai*, E.H. §39, in *Sefer L'vush Mord'khai* (Shabbat, K'tubot, etc.), Jerusalem, 5739 (1979), p. 54a. R. Yehiel Yaakov Weinberg reports: "I will not deny it – that when I read these words in *L'vush Mord'khai* I stood trembling and astounded at this new idea." He proceeds to vigorously reject it. (*Resp. S'rudei Esh*, Vol. III, Mossad Harav Kook, 2003, p. 335).
- 38 There is no *halakhic* precedent for such a possibility. But there is precedent in the prophetic literature. Both Hosea (Ch. 2) and Ezekiel (Ch. 16) picture God as a husband betrayed by His adulterous wife – Israel – and Who forgives Israel and reestablishes a loving marriage with her. The theological and legal implications of this imagery for contemporary Jewish marriage theory are discussed by Rachel Adler, *op. cit.*, pp. 156-167, and will be further examined below. (See also, M. Fishbane, *Biblical Interpretation in Ancient Israel*, Oxford, 1985, pp. 307-312, for a discussion of the related issue of palingamy – remarrying a wife after she has been divorced, married another man and been divorced by him.)
- 39 This is the term used in mQid. 1:1, cited above.
- 40 R. Shneur Zalman (1745-1813). This teaching is excerpted from his *Liqqutei Torah* by R. Yehoshua Zelig of Hommel, in the latter's *Siddur T'shilah 'im Liqqutei Torah*, Vilna, 1912, p. 240, as part of the notes to the Seven Blessings. For the complete Hebrew text see *Liqqutei Torah*, Tzav, 9b (and see the surrounding discussion for elaborations of this idea) – http://chabadlibrary.org/books/default.aspx?furl=/admur_hazoken. Tamar Ross, while not citing this particular text, has remarked on a tendency evident in the Chabad tradition to elevate the feminine in the Messianic future. She sees this stance as an example of adopting "essentialist arguments ascribing women's *halakhic* status to their innate superiority." (*Expanding the Palace of Torah: Orthodoxy and Feminism*, Brandeis, 2004, p. 39).
- 41 R. Dov Linzer, "Ani Li 'Dodi vi 'Dodi Li: Towards a More Balanced Wedding Ceremony," *JOFA Journal*, Summer 2003, Iyar 5763, pp. 4-7.
- 42 www.kolech.org (Hebrew) and www.youngisraelrabbis.org.il (English).
- 43 Rabbi Hayyim Yosef Arnest, *Torat Eretz Tzvi*, NY, 1969, pp. 155. R. Arnest introduced the essay with this note:

My brother-in-law, may the memory of the righteous be a blessing (*zt"l*), was a *gaon* in the full sense of the word, sharp and amazingly encyclopedic, and a purely righteous person. He was modest and humble and, therefore, avoided any official position. While he lived in Baronowitz he was a close friend and confidant of the *gaon* R. Elchanan Wasserman, *zt"l*, and there in the *yeshivah* he greatly influenced the students, and almost all the students who went from there to the great *yeshivot* passed under his care. He was a great innovator in Torah concepts and wrote many novellae in various aspects of Torah. While alive he had already prepared for publication a book on *Tóharot*, and when it came to the attention of the Greats of Israel they encouraged him to publish it. But it was not published for lack of funds. Then the days of the *Shoah* came and he was murdered by the Nazis, may their name be erased, along with his wife and their only son, the young man Rafael, who carried the name of his teacher, the *gaon* R. Rafael of Volozhin, *zt"l*. So his book did not get to see the light. None of his manuscripts was saved except for a small kernel that he had given to one of his students. It seems to be a section of a larger work... His student graciously produced it for me and I hereby make a place for it in my book in his sacred memory.

His sacred memory will never leave me or my wife, his dear sister Hasia Reisha, may she live, all of our days. May his memory be a blessing and may God avenge his blood.

- 44 *Ibid.*, pp. 155-157. Based on the idea that the wife of a *kohen* becomes a *kohenet* by virtue of the *qinyan* that merges them as one flesh, R. Milikovsky earlier argues that the reason that the wife of a priest may eat *t'rumanah* is not because she is granted a dispensation but because she has actually taken on priestly standing, herself. R. Arnest, in a note, points out that this is in direct contradiction to the explanation of the *gemara* (BTK'tubot 57b, Qiddushin 5a) that allows the wife to eat priestly gifts because she is the priest's acquisition (*qinyan kaspo*). He posits that R. Milikovsky bases his approach on a different source, the *Sifre* (Qorah §2). That R. Milikovsky was willing to overlook the talmudic source is intriguing.
- 45 The thinking of R. Holdheim (1806-1860) is set forth in, "Samuel Holdheim on the Legal Character of Jewish Marriage: A Contemporary Comment on his Position," David Ellenson, in *Marriage and Its Obstacles in Jewish Law*, Eds., Walter Jacob & Moshe Zemer, Freehof Institute of Progressive Halakhah, Rodef Sholom Press, 1999, pp. 1-26. R. Ellenson also sets forth the arguments used by R. Zechariah Frankel (1801-1875) to counter R. Holdheim's position. While R. Ellenson says that he is

unconvinced by R. Holdheim's analysis, in the end he states that he "cannot say absolutely whether his characterization of the nature of Jewish marriage law was wrong or right." (p. 22)

46 *Ibid.*, p. 9. Transliterations are retained as spelled in the article.

47 Quoted in Mark Washofsky, *Jewish Living: A Guide to Contemporary Reform Practice*, UAHC, 2001, p. 170. R. Washofsky notes that outside of the USA the Reform movement has created a Jewish divorce proceeding that is, like its marriage ceremony, egalitarian. Subsequently this ceremony and instrument has gained some adherents in the USA, as well. See below.

48 See R. Ellenson's comments, *op. cit.*, pp. 14-17.

49 Rachel Adler, *op. cit.* (note 10), p. 176.

50 *Ibid.*, p. 177.

51 *Ibid.*, p. 192.

52 *Ibid.*, p. 194.

53 Her work includes a thorough discussion of the stages of the entire ceremony, including the texts of the blessings, and the nature of the way such a covenant should be dissolved, when necessary.

54 *Ibid.*, p. 158.

55 *Ibid.*, p. 164.

56 *Ibid.*, pp. 165-166.

57 Hosea 2:21-22, as translated in Adler, *ibid.*, p. 166.

58 "Ba'ayat 'Agunot u-Mamzerim – Hatza'at Pitaron M'qifah v'kollelet (Hatza'ah l'Diyyun Hilkhati v'Hashqafati), Meyer Simhah ha-Kohen Feldblum, *Dinei Yisra'el* 19 (5757-5758) [1998], pp. 203-216, (Hebrew).

59 *Ibid.*, p. 209. Emphasis in the original.

60 R. Asher b. Yechiel (c. 1250-1327), BTQid., Ch. 2, *Siman* 8, quoted in *Ibid.*, p. 208. Emphasis in the original.

61 He suggests (p. 210) that some divorce procedure be instituted, with involvement of the Rabbinate.

62 Another important consideration is his argument that "derekh qiddushin" should not be dismissed as another attempt to reinstate concubinage – *pilagshut*, a form of relationship that has been forbidden by the majority of *halakhic* authorities. The main differentiating factor is that *derekh qiddushin* involves the performance of the marriage ceremony while concubinage is defined as lacking such a ceremony. It is the similarity between this approach and concubinage that was the basis for the rejection of Dr. Feldblum's suggestions by the one serious discussion devoted to it in subsequent Orthodox rabbinic circles. See "Can There be Marriage without Marriage?" J. David Bleich, *Tradition* 33:2 (Winter 1999), pp. 39-49. R. Bleich, in his article, "Kiddushei Ta'ut: Annulment as a Solution to the Agunah Problem," *Tradition* 33:1 (Fall 1998), pp. 112-115, also rejects Dr. Feldblum's argument that women today do not really accept the basic premises of traditional marriage. R. Bleich defines the traditional theory of Jewish marriage as follows: "The legalistic essence of marriage is, in effect, an exclusive conjugal servitude conveyed by the bride to the groom." (p. 114) For further discussion about concubinage, see below.

63 *Ibid.*, p. 212.

64 *Ibid.*

65 *Ibid.*, p. 213.

66 R. J. D. Bleich is cited in footnote 62, above.

67 R. M. Pitkowsky and R. M. Susskind Goldberg, p. 254 in "Ch. 6: 'Derekh Qiddushin' instead of 'Qiddushin,'" *Za akat Dalot: Halakhic Solutions for the Agunot of Our Time*, Monique Susskind Goldberg and Diana Villa, ed. David Golinkin, Richard Lewis, Moshe Benovitz, The Schechter Institute of Jewish Studies, 2006, pp. 235-255. For their discussion on concubinage see Ch. 5, pp. 205-234.

68 See Bleich, *op. cit.*

69 <http://alternativestokiddushin.wordpress.com/>.

70 As R. Ruttenberg writes, “I don’t want to overturn traditional (*halakhic*) Jewish marriage. I just want people to be able to make informed decisions about the ritual that symbolizes their entering into a life-long relationship. I’m not anti-*kiddushin* (though it might sound like I am); I’m anti-doing something that has deep symbolic meaning without knowing what one is doing. This site, then, is intended to educate and help people make informed decisions.”
(<http://alternativestokiddushin.wordpress.com/background/>)

In personal communication to me, R. Ruttenberg has clarified that the website she created does not reflect her own preference, but was intended to be a more open forum. She writes: “In putting together the site, I wanted to create a series of resources for anyone who was interested in thinking through this issue in a more nuanced way. It’s clear to me that not everyone will choose not to do *kiddushin* and I wanted to create some options for them as well. The purpose of the site is about opening a conversation, and offering some possibilities.” She also intends to rework the site to make its presentation clearer.

71 The question of creating new blessings and new formulations for blessings is not a new one and is not peculiar to modernist challenges to tradition. Blessings have ever been the organically developed religious expressions of members of the community. They either eventually attain legitimacy or are forgotten through unpredictable historical processes. The power of *halakhic* authorities to control this area of religious expression is the subject of ongoing dispute. See the study by R. (Barukh) Zvi Groner, *B'rakhot Sh'nishtaq 'u*, Mossad HaRav Kook, 2003.

72 In “Wedding Services, Version I,” in Rabbi’s Manual, *Ma’ag’lei Tzedeq*, CCAR, 1988, pp. 52-53, the text, beginning with the traditional blessing formula, states, “asher qid’shnu b’mitzvotav v’hitir lanu et ha-n’su’im v’han’su’ot lanu ‘al y’dei (*huppah* v’) *qiddushin*...” The English translation is not literal, reading: “who hallows us with *mitzvot* and consecrates this marriage.” It is striking that the 1997 Reconstructionist Rabbi’s Manual, does not alter the traditional text of this blessing, although it makes extensive changes to the rest of the wedding service, including the *sheva b'rakhot*.

73 See, e.g., Rabbi Nancy H. Weiner, “A Reform Understanding of *To’evah*. *CCAR Journal*, Fall 2005, pp. 5-19.

74 The Biblical allusions are to the prohibition against covetousness in the Ten Commandments and to the love of one’s soul in Song of Songs 3:2. A more radical approach has been offered by R. David Lazar (shared with the author in private communication, August 2006). It reframes the concern of the blessing away from prohibited and permitted persons to negated and allowed attitudes toward life and states of being. Thus, preserving the opening, standard blessing formula, and closing with the traditional formula acknowledging that God sanctifies Israel through *huppah* and *qiddushin*, the middle of the blessing reads: “v’tzivanu ‘q’doshim tih’yu’ v’amar ‘lo tov heyot ha-adam l’vado’ v’al ken tidbaq nefesh b’nefesh big’dushah u’v’tohorah. Barukh...”

75 BTQiddushin 6a.

76 A telling example is the approach of Dr. Aryeh Cohen, entitled “Obviation,” and reported in the website “The Kiddushin Variations,” cited above. He comes very close to the approach advocated here. However, his suggestion is that the bride speak first and for the declaration under the *huppah* to be: “Harei atah mikudesh [sic] li...” (Behold, you are set apart for me according to the laws of Moses and Israel.)”

77 See Dr. Rachel Adler’s thoughtful discussion, “Dissolving the B’rit Ahuvim,” in *Engendering Judaism*, *op. cit.*, pp. 198-207.

78 For the appropriate adjustments in the Hebrew, see the complete text of the ceremony, in the Appendix. And see my article, “*Pithu Li Sha arei Tzedeq*” cited above, footnote 7.

79 BTMen. 29b.

80 BTKetubot 3a. This phrase is found in the context of Talmudic discussions about nullification of marriages – *hafqa’at qiddushin*. For a review of the Talmudic sources and their traditional commentaries, see *Entzyclopedia Talmudit*, Vol. 2, Jerusalem, 1952, s.v. *afq’in ho rabbanan*, pp. 137-140. For contemporary discussions, see the chapter, “Chapter Nine: *Hafqa’at Qiddushin*,” by R. Monique Susskind Goldberg, in *Za’akat Dalot*, *op. cit.*, pp. 333-387, and the bibliography there, pp. 388-389.

81 Tosafot and Rashi, *loc cit.*

Appendix

A New Wedding Ceremony Proposed by David Greenstein

A. Words of welcome and explanation:

This new Jewish wedding ceremony expresses our understanding that marriage is a sacred relationship of mutuality. Based on this understanding, we have fashioned a ceremony that explicitly distances itself from any attempt to follow the laws and understanding of *halakhic* marriage. There is no acquisition – *qinyan* – effected by the groom upon the bride. This ceremony does not, in any way, mean to be taken as a *halakhically* valid marriage. Nevertheless, it affirms the validity and sanctity of our bond in Jewish terms of commitment and holiness.

B. The Birkat Erusin

After the traditional blessing is recited over a cup of wine, this blessing is recited:

a) Egalitarian-Traditional Option

Barukh atah Adonai, Eloheinu Melekh ha-olam, asher qid'shanu b'mitz'votav v'tzivanu 'al ha-'arayot, v'asar lanu et ha-arusot v'et ha-arusim, v'hittir lanu et ha-n'su'ot v'ha-n'su'im lanu 'al y'dei huppah v'qiddushin. Barukh atah Adonai, m'qadesh 'amo Yisra'el 'al y'dei huppah v'qiddushin.

You abound in blessing, Eternal One, Our Source of Strength, Who has sanctified us in God's commandments, commanding us regarding forbidden sexual relations, and Who forbade to us betrothed women and men, and Who has permitted our marriage partners to us by means of *huppah* and *qiddushin*. You abound in blessing, Eternal One, Who has sanctified God's people Israel by means of *huppah* and *qiddushin*.

b) Preferred Option

Barukh atah Adonai, Eloheinu Melekh ha-olam, asher qid'shanu b'mitzvotav v'tzivanu 'al ha-'arayot, v'asar lanu et ha-himmud, v'hittir lanu et sh'ahavah nafshenu 'al y'dei huppah v'qiddushin. Barukh atah Adonai, m'qadesh 'amo Yisra'el 'al y'dei huppah v'qiddushin.

You abound in blessing, Eternal One, Our Source of Strength, Who has sanctified us in God's commandments, commanding us regarding forbidden sexual relations, and Who has forbidden covetousness to us while permitting to us our soul-love by means of *huppah* and *qiddushin*. You abound in blessing, Eternal One, Who has sanctified God's people Israel by means of *huppah* and *qiddushin*.

C. The Gift of Rings and Marriage Declaration

Each loving partner in this union will now be giving a ring to the other. That gift expresses the act of freely giving one's self to one's partner. This sacred bond of commitment is thus created, not unilaterally, but in mutuality.

When the ring is given, each loving partner recites:

A man recites: *Harei ani mitqadesh*

To a man: *l'khah*

To a woman: *lakh*

B'taba'at zo, k'dat Moshe v'Yisra'el

A woman recites: *Harei ani mitqadeshet*

To a male: *l'khah*

To a woman: *lakh*

B'taba'at zo, k'dat Moshe v'Yisra'el

I hereby sanctify myself to you with this ring according to the religious tradition of Moses and Israel.

[Recitation of the appropriate texts of the *Ketubah* and the Seven Blessings, etc.]

May we merit to hear the voices of wedding partners exulting in sacred joy and echoing through the hills of Judah and the environs of Jerusalem, uniting truth and peace in love.

