

Digitales Brandenburg

hosted by **Universitätsbibliothek Potsdam**

Marriage and its obstacles in Jewish law

Jacob, Walter

Pittsburgh, 1999

LOVE AND MARRIAGE: REFORM JUDAISM AND KIDDUSHIN

urn:nbn:de:kobv:517-vlib-10168

LOVE AND MARRIAGE: REFORM JUDAISM AND KIDDUSHIN*

Peter S. Knobel

Professor Mark Washofsky of the Hebrew Union College Jewish Institute of Religion and Chair of the Central Conference of American Rabbis' Responsa Committee suggests that Reform decision makers can be divided into two opposite and often opposing camps on the basis of how they understand their relation to tradition. Each group bears a narrative that explains its view. He writes:

We are children of the Enlightenment. We are the descendants of Jews whose world was altered irrevocably by the breakdown of traditional society. We are no longer what we were. For almost two centuries we have been enthusiastic participants in the world of liberal modernity. We are separated from the other world, the world of tradition and authority, by a gap of spirit and of intellect that is as deep as it is wide. We retain an affection for our tradition, but we are emphatically not of it. We do not justify ourselves according to its values, its teachings and its sacred texts. Our authority, instead, is modernity itself. As religion is an evolving consciousness, our gaze is fixed to the future and not to the past. Our hope, the thing for which we strive, is to construct a religion that is itself enlightened and rational, a religion that is morally and spiritually uplifting to the Jews of modernity, one that resonates with those whose world differs so profoundly from the world of the Jewish past.

Now the other, competing story, again roughly:

I want to thank Rachel Adler for allowing me to see a copy of her book *Engendering Judaism: An Inclusive Theology and Ethics* (Philadelphia, 1998) and to cite it when it was still in manuscript form. All the quotations in this paper, however, are from the printed edition.

PETER S. KNOBEL

We are Jews. We are the latest generation of that national, cultural and religious enterprise known as *Yisrael*. Our religion is therefore inextricably bound up with the historical religious experience of the Jewish people. We, too, stood at Sinai. We do not and cannot understand ourselves as separate and distinct from the ongoing tradition that, for millennia, we have called Torah. Yes, we are modern, able to look critically at our imperfect tradition. But we are not radically separated *from* tradition. We hold it, not at arm's length, but in a powerful embrace close to our heart. Thus, we seek to explain ourselves by constant recourse to our sacred sources; we justify our religious choices by means of argument that is constructed from, expressed through and energized by the texts of our tradition. Our discourse is not chiefly the discourse of science and philosophy, but rather that of Torah and text. We strive to build a religious life that, though it speaks to us as moderns, is unmistakably Jewish in form and content.

Each of these stories is an account of our religious reality, an attempt to place a general cast of meaning over and around the individual Jewish acts we perform. Each of them provides a satisfactory narrative rendition of a particular approach to Reform Judaism. And, when you get right down to it, the two of them are contradictory, incompatible, and irreconcilable.¹

Although Professor Washofsky points out that very few individuals identify completely with either narrative, the conflicting narratives do reflect the growing gap in methodology and ideological unity within liberal Judaism.² In effect, each group speaks a different language, and therefore neither group speaks to the other but instead speaks past the other. As a result, it can be difficult, if not impossible, to achieve a unified stand on controversial issues.³ But even among those who identify with the same narrative, there is always the possibility of disagreement.

LOVE AND MARRIAGE

This paper is the first of two that explore Reform Judaism and marriage. The goal of this paper is to demonstrate the transformation of marriage in Reform Judaism from its classical form as *kiddushin*,⁴ rooted in property law,⁵ into an egalitarian partnership, *Brit Ahuvim*, a Lovers' Covenant, a name Rachel Adler has coined. Dr. Adler makes explicit what has gradually been transpiring in Reform Judaism's understanding of marriage. Reform Judaism has reformulated the ceremony in both word and symbolic action to recognize that words and symbols that are identified with traditional Jewish marriage do not accurately reflect contemporary Progressive Jewish marriage. Progressive Judaism has spiritualized the term *kiddushin* and mutualized the act of *kinyan*.⁶

The second paper explores the implications of Reform Judaism's understanding of marriage for gay and lesbian Jews. The goal of the papers is to clarify the methodology of Reform halakhic decision making and its effects on Jewish marital law. In both papers I reach conclusions similar to those identified as the "the children of the Enlightenment," but methodologically I identify with "the Jews."⁷

A primary ethical and metahalakhic principle in Reform Judaism is the egalitarian principle. Rooting itself in the first creation narrative, humankind (*adam*) is created in the image of God; both male and female are identified as *adam*.⁸ The *halakhah* must be changed to reflect commitment of male female equality.⁹ If there is one principle agreed upon in Reform Judaism that is beyond compromise it is the egalitarian principle. In marriage it means that husband and wife have equal worth and equal responsibility. At least in theory, there are no predetermined role expectations or limitations.¹⁰

The *aggadah* (theology and ethics) are primary for liberal *halakhah*;¹¹ *halakhah* is also essential for liberal Judaism. Dr. Adler writes:

Halakhah belongs to liberal Jews no less than to Orthodox Jews because the stories of Judaism belong to us all. A *halakhah* is communal praxis grounded in Jewish stories. Ethicists, theologians and lawyers who stress the centrality of narrative would argue that all normative systems rest upon stories....A praxis is more than the sum of various practices that constitute it. *A praxis is a holistic embodiment in action at a particular time of the values and commitments inherent in a particular story.* Orthodoxy cannot have monopoly on *halakhah*, because no form of Judaism can endure without one; there would be no way to live it out.¹²

In Judaism, sanctification is an act of separation that causes one to be in God's presence and/or to live in relation to God. *Imitatio dei* (the imitation of God) is a major mode of sanctification. It is a reciprocal process.

You shall sanctify yourselves and be holy for I am the Eternal your God. You shall faithfully observe my laws. I the Eternal make you holy.¹³

In Reform Judaism, *kedusha* is primarily an ethical category but not exclusively so.¹⁴ In Genesis 2-3, for example, God rests, blesses, and hallows the seventh day, thereby creating Shabbat. Each week the Jew does the same thing to create Shabbat. Without human action Shabbat does not come. The time remains in the category of *chol* (ordinary) rather than *kadosh* (holy). If the Jew does not do what God does, Shabbat does not come. It remains only *in potentia*. The Torah itself provides the primary rationale for Shabbat observance as a reminder of Creation and Redemption.

LOVE AND MARRIAGE

These theological concepts have important ethical implications; and in relation to marriage, Creation and Redemption are the basic themes of the *Sheva Berachot* (Seven Wedding Blessings). In Leviticus 19:1ff., our imitation of God as the means to achieve holiness is described in great detail. An analysis of the passage demonstrates that the emphasis is overwhelmingly on ethical behavior, but there are also acts that distinguish a Jewish society from others. The hermeneutic of Reform Judaism is an ethical critique of *kedusha* (holiness), but to identify the holy only with the ethical is a grievous error. Holiness means living a life in relation to and in the presence of God. Marriage is the sanctified relationship par excellence that sets the parameters of all others. "*Kedusha* is acquired through fulfilling the *mitzvot*."¹⁵

Reform Judaism is its quasi-halakhic guide to Jewish living. In *Gates of Mitzvah*¹⁶ Rabbi Herbert Bronstein asserts that marriage is a *mitzvah* incumbent upon every Jew:

It is a *mitzvah* for a Jew to marry and to live together with his/her spouse in a manner worthy of the traditional Hebrew designation for marriage, *kiddushin*.¹⁷

It is the meaning of the term *kiddushin* that is essential to our understanding of Jewish marriage. Only when we understand the values that define the word will we be able to ask the appropriate halakhic questions. One of the best descriptions of the meaning of marriage as *kiddushin* in Reform Judaism is found in an essay in *Gates of Mitzvah*. The essay is both definitional and emblematic. It does not define the *halakhah* of marriage, but it describes the theology and ethics that must be represented by the *halakhah*.¹⁸

PETER S. KNOBEL

Nothing clarifies the Jewish attitude toward marriage quite as well as the traditional name for the wedding ceremony, *Kiddushin*, derived from the Hebrew *kadosh*—holy. As we come to understand the deeper meaning of *kadosh*, we may begin to appreciate why Jewish tradition reserved the word *Kiddushin* for marriage.

In the outlook of Judaism, all existence is derived originally from God and is, therefore, potentially holy. Time and space, God-given, are sacred but can also be desecrated by idolatry—the worship of things or of self. In consequence, we set special times and places aside for respect, for reverence, so that they may be kept apart from the realm of the profane, from exploitation for material gain and utilitarian usage....

Humanity lives, however, not only in the dimensions of time and space, but also, from birth, in the dimension of relationship. And while all relationships, like all time and space, should be considered essentially sacred, certain relationships are especially exalted. In Judaism the Holy of Holies of all relationships, to which the poetic genius of the Hebraic spirit turned most often for the paradigm of the covenant between God and Israel, was and is the covenant between husband and wife (see, for example, Hosea 1 and 2). A sacred entity comes into being in Jewish marriage. As in the *Kiddush* of Shabbat we set apart a period of time as holy, in *Kiddushin* husband and wife set each other apart. Jewish tradition considered the woman who married as *mekudeshet*—“made holy,” set aside and apart for her husband, consecrated and thus inviolate. In the view of Reform, this is mutual; both husband and wife are consecrated to each other.¹⁹ They create a sacred entity in the act of *Kiddushin* consecration.

In the Jewish marriage service, in the very act of consecrating a particular relationship as holy, the potential sanctity of all relationships is asserted. Husband and wife represent the bond between God and humanity, the ideal toward which all human relationships should strive. *Kiddushin* is the rooting of the human

LOVE AND MARRIAGE

in the realm of the sacred, with the goal that all our relationships become holy, bearing the blossom and fruit of life.

Rabbi Bronstein's analysis of the *Sheva Berachot* makes clear that they define the ultimate meaning of the ceremony and represent the primary values of Jewish marriage. Jewish marriage is a recapitulation of creation and an anticipation of redemption. Marriage is to relationships what Shabbat is to time. The process of sanctification has ritual aspects that lead to behavioral consequences. Both Shabbat and marriage entail positive and negative commandments.

Traditional Jewish worship was designed around the three overarching biblical motifs of Creation, Redemption (Exodus), and Revelation (Sinai). The entire round of Jewish observance is suffused by these same three themes. For *Kiddushin*, the act of marriage, the rabbis of our classic period chose the theme of Creation around which to design the celebratory blessings. These are known in our tradition as the *Sheva Berachot*, the Seven Blessings of Praise.²⁰

Indeed, the *Sheva Berachot* contain in brief compass the entire sweep of the Jewish conception of existence, from the miraculous glory of the original panoply of Creation to the sublime perfection of Creation in the Messianic Completion. Both the evocation of Paradise and the affirmation of the messianic celebration are comprised in a seven-versed poem on the theme of Creation....

Further, the purpose of Jewish existence is the partnership with God in the maintenance, the harmonization of Creation. And every good marriage is considered to be a *tikkun*, a "putting in order," for each good marriage lifts existence to a state of higher harmony....

And yet, while certainly expressing an ethos of pleasure in life, the *Sheva Berachot* do not encourage the couple to relinquish

social obligations or, through self-isolating privatism, to endeavor escape from the ills of the world. The text of the blessings also evokes the messianic hope....As the couple begins to create their own world, they know that together they must bring something to the perfection of God's Creation, so that the time may soon come when God, as it were, will rejoice with His bride, the people of Israel.

I have quoted this essay at great length because it sets the stage for a Reform understanding of marriage. It is the spiritualization of *kedusha*, which affects our halakhic concept of marriage.²¹ Reform Judaism takes theology seriously, and when its liturgical formulae and ritual actions do not accurately reflect its ethicotheological underpinnings the formulae and ritual actions are changed or reinterpreted.²²

The primary metaphor for marriage, which dominates Jewish theology, is *brit*. The marriage metaphor is used to describe the covenant between God and the Jewish people. The wedding took place at Sinai with the Torah as the *ketubah*. It is this theme of covenant that dominates the thinking of Eugene Borowitz as Reform Judaism's leading contemporary thinker. He has described marriage as the most appropriate ethical context for sexual relations because it is the best vehicle for expressing intimacy and perpetuating the Jewish people and because every Jewish marriage is a reflection of the covenantal marriage between God and the Jewish people.²³

The Jewish community has found no more central and significant form for the individual Jew to live in...than the personal covenant of marriage. In its exclusiveness and fidelity it has been the chief analogy to the oneness of the relationship with God as the source of personal worth and development. In marriage's intermixture of love and obligation the Jew has seen the model of faith in God permeating the heart and thence all one's actions. Through

LOVE AND MARRIAGE

children, Jews have found the greatest personal joy while carrying out the ancient Jewish pledge to endure through history for God's sake.²⁴

Contemporary Jewish marriage is ideally an I-Thou relationship between the lovers. For Buber, the Eternal Thou (God) is present in every I-Thou relationship, and the Rabbis believed that God was present in proper moments of sexual intimacy between wife and husband. Borowitz struggles theologically with an understanding of relationship with God, who is superior and more powerful than humankind, and how the relation to that deity is modeled in the marriage. Borowitz ultimately maintains that human dignity depends on autonomy and freedom.²⁵ He writes:

We have an old-new model for such open, unsettled but mutually dignifying relations, namely "covenant," now less a contract spelled from on high than a loving effort to live in reciprocal respect. As the pain of trying to create egalitarian marriages indicates, we cannot know early on what forms and processes most people will find appropriate to such relationships. We can, however, accept covenantal relationship as a central ethical challenge of our time and pragmatically learn how we might sanctify ourselves by living it.²⁶

Borowitz realizes that marriage is undergoing significant change. Central to the covenant of marriage as Borowitz describes it is its egalitarian nature. This, he indicates, represents a substantial shift from the past. The intimacy of the relationship and egalitarianism are reflected in contemporary readings of Song of Songs. One of the most frequently invoked wedding texts is from Song of Song *Ani ledodi vedodi li*, "I am my beloved's and my beloved is mine." The book seen as a whole is a description of an ideal, mutual, loving relationship in which both lovers initiate sex. The wo-

man's voice in the relationship is as prominent as the man's. The rabbinic interpretation of Song of Songs as an allegory about the relationship between God and Israel only heightens the religious meaning of sexual intimacy. Love is the dominant emotion. The lovers freely choose one another.

Feminist readings suggest that it provides a model for a loving relationship in which neither partner is dominant. The feminist theologian Judith Plaskow writes:

Unabashed by their desire, the man and the woman in these poems delight in their own embodiment and the beauty surrounding them, each seeking the other out to inaugurate their meeting, each rejoicing in the love with our dominion that is also the love of God.²⁷

The relationships of Jonathan and David and of Ruth and Naomi are marked by covenantal promises. Jonathan and David's is described as *brit* and is marked by a ceremonial gift.²⁸ Although neither relationship is a marriage, it illustrates the transfer of primary loyalty from the family of origin to another family. Each has elements of risk and sacrifice. Fidelity is its primary characteristic. The absence of a sexual component distinguishes it from marriage. The love and friendship it represents is paradigmatic for the ideal marriage.

Human love is also the love of God. Proper marriage has deep spiritual dimension. The *shekhinah* is present in the couple's sexual intercourse. This is further reflected in the text from Hosea (2:21-22)²⁹ "I will espouse you forever. I will espouse you with righteousness and justice and loving kindness and compassion. I will espouse you in faithfulness and you shall know God."³⁰ The bride

LOVE AND MARRIAGE

and groom might recite it together or it might be chanted after the rings have been exchanged.

A primary principle of Reform Judaism is the equal rights of men and women. It is rooted in our theological understanding of creation that "God created Adam in God's image, male and female God created them." Man and woman were created at the same time, and both are equally created in the divine image.³¹ This metaprinciple governs the way in which we interpret *halakhah*.³² Marriage takes place between two equals that choose to marry one another. Each individual has reached the age of majority and commits her/himself to the other person. This is a far cry from the traditional concept of *kiddushin*, whereby a woman moves from the authority of her father to the authority of her husband. Judith Plaskow, reflecting what is clearly the progressive Jewish ideal, writes:

Marriage will not be about the transfer of women or the sanctification of potential disorder through the firm establishment of women in the patriarchal family, but the decision of two adults to make their lives together, which includes sharing their sexuality.³³

Rachel Adler sees the debate over women's equality as reflected in the fourth blessing of the *Sheva Berachot*.³⁴ She translates,

Blessed are You, Adonai our God, ruler of the universe, who has shaped humanity in your image (*ahser yatzar et ha-adam b'talmo*), patterned after your image and likeness (*b'tzelem demut tavnito*), and enabled them to perpetuate this image out of their own being (*v'hitkin lo mimenu binyan adei-ad*). Blessed are You, Adonai, shaper of humanity (*yotzer ha-adam*).

She points out that Philip Birnbaum translates the phrase *v'hitkin mimenu binyan adai ad* as "who hast created man in Thy image and didst forever form woman out of his frame to be beside him."³⁵ Her elaborate discussion makes clear that the theological argument has halakhic implications. Women as equal partners are not secondary creations. They are part of the original male-female *Adam* and not the rib or the tail of Adam.

It is the *Sheva Berachot* that express the essence of marriage, and it is to this text that we must look if we are to understand marriage. As Adler says, it is these blessings that make it "respectable" and reframe *kiddushin* as acquisition as an archetype of redemptive union."³⁶ God is creator, and humankind shares the divine image with God, and, like Him, they are capable of creation. The couple's love participates in the perfection of the Garden of Eden and the first marriage of Adam and Eve, whose *mesadder kiddushin* was God; and its joy anticipates the messianic fulfillment promised by the prophets. Its symbols are a cup of blessing and the *chuppah*, the marital chamber that symbolizes the intimacy they will share and the sanctuary they will build. For the home is the replacement for the sanctuary. It is *mikdash meat*, the Temple writ small.

In Reform Judaism the symbolic act of *kinyan* (acquisition) has become a mutual exchange rather than a unilateral exchange. Such an exchange in the traditional *halakhah* invalidates the transaction. *Birkat Erusin* (the betrothal blessing) has either been eliminated or severely truncated because there is no longer the assumption of virginity before marriage. Specific reference to the *arayot* (forbidden sexual relationships) is eliminated in every progressive version of the current wedding ceremony.³⁷

LOVE AND MARRIAGE

A brief look at *Birkat Erusin* will further our understanding of how we have separated ourselves from the traditional understanding of marriage. The traditional blessing, "Blessed is Adonai our God, ruler of the universe, who has sanctified us with Your commandments and commanded us concerning the forbidden sexual relations/'nakedness' (*arayaot*)." You have forbidden us the merely espoused (*arusot*) and permitted us those who have been fully wed to us (*nesuot*) by means of the bridal chamber and the holy setting aside (*huppah vekiddushin*). Blessed are You who sanctifies Israel by means of the bridal chamber and the (holy) setting aside (*huppah vekiddushin*).³⁸

It was eliminated in earlier versions of the CCAR *Rabbi's Manual*, but it was reintroduced in *Maaglei Tzedek* in an egalitarian form. "We praise you, Adonai our God, Ruler of the universe, who hallows us with *mitzvot* and consecrates this marriage. We praise you, Adonai our God, who sanctifies our people Israel through *kiddushin*, the sacred rite of marriage at the *chuppah*. (*Vehitir lanu et hanesuim vehanesuot lanu al yedi huppah vekiddushin*)."³⁹

The text in *Forms of Prayer*, the *siddur* of the Reform Synagogues of Great Britain, is "Blessed are You, Lord our God, King of the universe, who makes us holy through doing His commands, and who makes His people Israel holy by the ceremony of *chuppah* and the sanctity of marriage."⁴⁰ The text of the Union of Liberal and Progressive Synagogues is, "We praise you, Eternal God, Sovereign of the universe. You teach us the ways of holiness, and by Your laws Jewish marriage is sanctified" (*Mekadeish amo Yisrael al yedei chuppah vekiddushin*).

The *ketubah* has been replaced by a marriage certificate or by an egalitarian document that eliminates most if not all the halakhic language. The text of a traditional *ketubah* is primarily an economic document that stipulates a man's obligation to his wife during the marriage and in case he dies or divorces her. The document is not mutual and is rarely used in Reform weddings. In fact, ethically, it ought not be used.⁴¹

As will be clear from even a cursory reading of the text below, the traditional *ketubah* is a one-sided document that deals with economic rights of women, who must be protected from the disproportional power of men in patriarchal marriage. Although some will argue that the *ketubah* represents an improvement in the status of women, Judith Hauptman points out that the main change that takes place between the biblical and the rabbinic view of marriage is "from the purchase of a woman from her father to a kind of 'social contract' entered into by a man and a woman, albeit with him dominant and her subordinate. The critical difference between her old status in marriage as chattel-like and her new status as 'second-class citizen' is that she acquired, in exchange for sexual and other service to her husband, a wider array of rights and protections."⁴²

On the _____ day of the week _____ the day of the [Hebrew] month of _____ the year _____ after the creation of the world, according to the manner in which we count here in the community of _____, the bridegroom, _____ son of _____, said to this virgin _____, daughter of _____, Be my wife according to the law of Moses and Israel and I will work, honor, feed and support you in the custom of Jewish men who work, honor, feed and support their wives faithfully. I will give the settlement of virgins, two hundred silver zuzzim, which is due you according to Torah law, as well as your food, clothing,

LOVE AND MARRIAGE

necessities of life and conjugal needs, according to universal custom.

Miss _____ agreed and became his wife. The dowry that she brought from her father's house, was in silver, gold, jewelry clothing, home furnishing or bedding. Mr _____ our bridegroom, accepts [this] as being worth one hundred silver pieces. Our bridegroom, Mr _____, agreed, and of his own accord added an additional one hundred silver pieces paralleling the above. The entire amount is two hundred silver pieces.

Mr _____, our bridegroom, made this declaration: The obligation of this marriage contract, this dowry and this additional amount I accept upon myself and my heirs after me. It can be paid from the entire best part of the property and possessions that I own under all the heavens, whether I own [this property] already or will own it in the future. [It includes] both mortgageable property and non-mortgageable property. All of it shall be mortgageable and bound as security to pay this marriage contract, this dowry and this additional amount. It can be taken from me, even from the shirt on my back, during my lifetime and after my lifetime, from this day and forever.

This obligation of this marriage contract, this dowry and this additional amount was accepted by Mr _____, our bridegroom, according to all the strictest usage of all marriage contracts and additional amounts that are customary for daughters of Israel, according to the ordinances of our sages of blessed memory. It shall not be a mere speculation or a sample document....

We have made a kinyan from Mr _____, son of _____, our bridegroom, to Miss _____, daughter of _____, this virgin, regarding everything written and stated above, with an article that is fit for such a kinyan. Everything is valid and confirmed.

_____, son of _____, witness

_____, son of _____, witness⁴³

When one of the many individualized or standardized progressive *ketubot* are used, the bride and the groom sign the *ketubah*, and both men and women can serve as witnesses. The promises are always mutual; they affirm the quality of the relationship as well as a commitment to Jewish life.⁴⁴ In North America, civil divorce, at least, has been substituted for the *get*, and most Reform rabbis will remarry people who have not obtained a *get*.⁴⁵ The almost exclusive recognition of civil divorce is due to the lack of power a woman has to initiate divorce proceedings and the many abuses that occur when men refuse to give their wives a *get* or they extract extraordinary conditions. In Reform Judaism we have abandoned the category of *aguna* on ethical grounds.

Jewish marriage is an agreement, a *brit*, between two Jewish adults who love each other and want to share faithfully every aspect of their lives. It is the individuals who enter into the contract by signing the *ketubah* in addition to the two witnesses and the officiating rabbi. They exchange rings and make a declaration of sanctification, and they share a cup of wine over which the seven blessings describing marriage are recited.

In the *halakhah*, only a woman's status is changed completely. She becomes permitted sexually to her husband and forbidden to all other men. Her husband's status, on the other hand, hardly changes. He is still permitted to most of the women to whom he was previously permitted, except for certain relatives of the bride. Although monogamy is the norm in Orthodox Judaism, in countries where it is standard for men to have more than one wife it is still potentially and maybe actually permissible. In addition, a married man that "commits adultery" with an unmarried woman is still not subject to the same penalty as a woman that commits the

LOVE AND MARRIAGE

same offense. If a woman commits adultery, her husband is required to divorce her and she loses the monetary settlement of the *ketubah*.

In an extended analysis of the Jewish wedding ceremony, Rachel Adler points out that two different visions of the relationship of husband and wife are presented: possession and covenantal partner:

By the time of the Mishnah...a wedding has become a religious event of cosmic significance. Taking a woman to wife is categorized as a unique kind of acquisition, blending characteristics of both purchase and the religious act of setting goods aside for sacred donation, *hekedesh*. The ceremony of taking acquires a new rabbinic name reflecting its sanctification: *kiddushin*.⁴⁶

The ceremony is about normalizing the place of women. It represents a view of women that Reform Judaism rejects. The maintenance of the ceremony of *kiddushin*, even in its egalitarianized form, is insufficient to symbolize the radical nature of the change that Reform Judaism has made in the status of women. A new ceremony would mean that women were more than honorary men, but that they were full partners whose gender is acknowledged as being part of the original creation of humankind:

Mishnah cannot make women into men. But it can provide for a world in which it is normal for women to be subject to men—father or husband—and a system to regularize the transfer of women from the hand of the father to that of the husband. The regulation of the transfer of women from the Mishnah's way of effecting the sanctification—that is, special handling—of what, for the moment, disturbs and disorders the orderly world. The work of sanctification becomes necessary in particular at the point of

danger or disorder so as to preserve the normal mode of creation so that maleness may encompass all, even at the critical point of transfer.⁴⁷

We can reinterpret a ritual, or we can create a new ritual to symbolize the newly understood reality. This is the choice that Rachel Adler's description of marriage as *Brit Ahuvim* poses to us. Most Reform Jews would already understand their marriage to be an egalitarian covenantal partnership.⁴⁸ The double *kinyan* is understood to accomplish this, but it already changes the halakhic paradigm, because a double *kinyan* invalidates the transaction. Further, a man cannot bestow himself on a woman; he must declare "you are mine" and not "I am yours."⁴⁹

A woman cannot initiate a marriage. I would have thought, if she [the wife] gives him [the husband] money and betroths him, it would be a valid *kiddushin*: therefore Scripture wrote, "When a man taketh," but not, "When a woman taketh," nor can it result from mutual exchange:⁵⁰

It is the woman who must be acquired, because only the woman undergoes a status change. She will belong exclusively to that man. The man will not belong to the woman because, in relationships, men are subjects but never objects, unless they are slaves. Hence, a man can validly declare, "Be espoused to half of me," because he may divide himself among as many women as he chooses, but if he declares "I hereby espouse half of you," no *kiddushin* has been effected, because unlike a slave who may be owned fractionally by several masters, a woman can only be espoused as the exclusive acquisition of one man.⁵¹

Rachel Adler also rejects mutual *kinyan* for the additional reason that it is a continuation of the commodification of people.⁵² She argues that this does not reflect contemporary egalitarian Jewish

LOVE AND MARRIAGE

marriage. She takes seriously the ritual of marriage as a statement of the *halakhah* as well as of theology and ethics. She proposes, therefore, to call marriage what it has become, *Brit Ahuvim*, a Lovers' Covenant, and to create the covenant as a partnership, creating a ritual that reflects the way partnerships are created in the *halakhah*.

She points to three elements in the creation of a partnership:⁵³

1. A partnership deed
2. A statement of personal undertaking in which partners commit themselves to certain acts on behalf of the partnership
3. A *kinyan* or symbolic act of acquisition of the partnership

Her *brit* document contains the following elements: (1) a pledge of sexual exclusivity; (2) a commitment to the rights and duties of a familial relationship; (3) an assumption of joint responsibility for children; (4) a pledge to live a holy life as a Jewish family; (5) a pledge to fulfill communal responsibilities; (6) a pledge that either spouse will protect the dignity and comfort of the other in his or her dying.⁵⁴

The text *Brit Ahuvim*, a Lovers' Covenant, should be contrasted with the text of the traditional *ketubah* cited above:

On ____ (day of the week) the ____ day of ____ (month) ____
according to Jewish reckoning (____ month ____ day ____ year
according to secular reckoning) in the city of ____, ____ (state or
region), ____ (country), ____ (Hebrew name) daughter/son
of ____ and ____, whose surname is ____ and ____ (Hebrew name)
daughter/son of ____ and ____, whose surname is ____, confirm

PETER S. KNOBEL

in the presence of witnesses a lovers' covenant between them and declare a partnership to establish a household among the people of Israel.

The agreement in which _____ and _____ are entering is a holy covenant like the ancient covenant of our people, made in faithfulness and peace to stand forever. It is a covenant of protection and hope like the covenant God swore to Noah and his descendants saying,

When the bow is in the clouds, I will see it and remember the everlasting covenant between God and all living creatures, all flesh that is on earth. That, God said to Noah, "shall be a sign of the covenant I have established between me and all flesh" (Gen. 16-17).

It is a covenant of distinction like the covenant God made with Israel saying,

You shall be My people and I shall be your God (Jer. 30:22).

It is a covenant of devotion, joining hearts like the covenant David and Jonathan made, as it is said,

As Jonathan's soul was bound up with the soul of David. Jonathan made a covenant with David because he loved him as himself (1 Sam. 11:3).

It is a covenant of mutual loving kindness like the wedding covenant between God and Zion as it is said,

I will espouse you forever. I will espouse you with righteousness and justice and loving kindness and compassion. I will espouse you in faithfulness and you shall know God (Hos. 2:21-22).

Provisions of the Covenant

The following are the provisions of the lovers' covenant into which _____, (Hebrew name) daughter/son of _____ and

LOVE AND MARRIAGE

_____ and _____, (Hebrew name) daughter/son of _____
and _____, now enter:

1. _____ and _____ declare that they have chosen each other as companions as our rabbis teach:

Get yourself a companion. This teaches that a person should get a companion to eat with, to drink with, to study Bible with, to study Mishnah with, to sleep with, to confide all one's secrets, secrets of Torah and secrets of worldly things (*Avot d'Rabbi Natan* 8).

2. _____ and _____ declare that they are setting themselves apart for each other and will take no other lover.

3. _____ and _____ hereby assume all the rights and obligations that apply to family members to attend, care, and provide for one another [and for any children with which they may be blessed and for _____ child/children of _____].

4. _____ and _____ commit themselves to a life of kindness and righteousness as a Jewish family and to work together toward the communal task of mending the world.

5. _____ and _____ pledge that one will help the other at the time of dying by carrying out the last rational requests of the dying partner, protecting him/her from indignity or abandonment, and by tender, faithful presence with the beloved until the end, fulfilling what has been written:

Set me as a seal upon your arm, for love is stronger than death (*Song of Songs* 8:6).

To this covenant we affix our signatures:

The Partners:

Witnessed this day _____ of Parashat _____ (Hebrew date)

The witnesses:

_____ ⁵⁵

One may quarrel with some of the formulations and provisions, but it is a far-reaching revision of marital *halakhah*. It does not tinker around the edges but moves the whole enterprise from property to partnership law. Adler's proposal, whether it is accepted in detail or not, is a way of normalizing liberal Jewish marriage in a halakhic framework. She suggests that the *kinyan* be a symbolic pooling resources where each partner places an object of value in the bag and the bag is held together. Since rings are metonymically not incidental to the wedding ceremony but in fact are understood to constitute marriage, she suggests that the couple put the rings in the bag.

The ceremony she proposes takes place under a *chuppah*, begins with *Mi addir*, and is followed by an officiant's speech explaining the ceremony and its difference from *kiddushin* as well as speaking personally about the couple. This is followed by the blessing over the wine, which is then shared among those who are under the *chuppah*. The *brit* document is read. The *kinyan* takes place. The partners place objects in the bag and then lift the bag and recite a blessing. The *Sheva Berachot* are recited, a glass is broken, and the couple departs for *Yichud*.⁵⁶

LOVE AND MARRIAGE

The rewriting of the ceremony in such a dramatic way would, in fact, make it clear that in Reform Judaism we have reformulated our concept of marriage. It would have implications for the dissolution of marriage as well.

Many Reform rabbis have rejected the necessity of the *get* because, just as only the man has power to execute a marriage, only the man can initiate divorce. Adler raises the question of whether this nontraditional form of marriage would require a *get*. Whereas for the sake of consistency we would insist on a ceremony that indicates that the partnership has been dissolved, that ceremony would obviously be different from a *get*. The *Seder Predah* ceremony created by the Central Conference of American Rabbis might suffice. At least in North America, acceptable *gittin* are issued only by the Orthodox, and although some of us suggest a *get* to preserve the marriageability of the divorced and to protect unborn children against the accusation of *mamzerut*, we in Reform have eliminated the category of *mamzerut*, will marry a *kohen* and a divorcee,⁵⁷ and have our own standards for conversion, all of which are unacceptable to the Orthodox. It is clear to me that we should evolve our *halakhah* according to our theological and ethical standards. We should stand on solid ground, but we must reject Orthodoxy as the standard by which we determine what is halakhic.

If ethical categories are determinative for our halakhic conceptualization and effectuation of marriage, we should expect that in the future, as society's understanding of intimate relationships and sexual identity continue to undergo transformation, we will make other changes.

Radical transformation can take place within a halakhic framework. In the paper "Reform Judaism and Same Sex Marriages: A Halakhic Inquiry," I will outline in greater detail the halakhic categories that justify change based on the authority of the contemporary *posek/et* to alter the decisions of previous generations, and the use of extrahalakhic material to change the *halakhah*.

Notes

1. Mark Washofsky, "Reinforcing Our Jewish Identity: Issues of Personal Status," Central Conference of American Rabbis *Yearbook*, 1994.

2. At the end of the twentieth century, the old ideology of the Enlightenment and Rationalism, which were the underpinnings of modernity, have run their course. They have been replaced by Post-Modernism. But, in fact, there is no clear dominant ideology in liberal Judaism beyond autonomy of the individual, which has been translated, often in the name of justice, into support for the individual right to choose one's life style options and then to normalize this as Jewishly acceptable. Society as a whole has undergone a revolution in relations between men and women, in its understanding of sexual identity, and in relations between Jews and non-Jews. As we have rediscovered particularism, we have not fully explored how it affects our decision making. Having spent six months on sabbatical in England, I have learned first hand that the attitude of Progressive Jews, who are a minority in the Jewish community, are more conservative about making controversial changes in Jewish law, especially in matters of personal status. The issue of our relation to *Klal Yisrael* and the effect of our decisions on other liberal Jewish communities, especially Israel, dominates these discussions. In North America we are freer to find our own course because we represent the majority of the North American Jewish community. In a world of instant communication, what happens in one community has an immediate impact on another community. On the other hand, the realities of each community are different, and what might be appropriate in one place may not be in another. One community will frequently make a decision that only later will become acceptable elsewhere.

3. "We discovered we were no longer talking *to* or even arguing *with* each other, rather we were conducting a series of parallel monologues in place of the dialogue that has served us so well in the past one." CCAR *Responsum* 5756.8, "On Homosexual Marriage," p. 1. This statement illustrates the difficulty that this issue poses, but in a deeper sense it poses a dilemma for Reform Jewish decision making. The Responsa Committee, for example, can formulate a decision precisely at the same time as another committee; in this case the Ad Hoc Committee on Human Sexuality, is working on the same issue. Their respective methodologies and conclusions can be similar or disparate. Such a situation provides a plurality of responses. One can either decry the lack of a unitary position or one can applaud the respect for diversity. But this can also lead to organizational paralysis. In a time when neither methodology nor ideology can be understood as a given, decision making becomes much more complex.

LOVE AND MARRIAGE

4. A central thesis of my argument is that *kiddushin* is understood as a legal process in which a partnership is sealed using symbolism drawn from property law. The meaning of the transaction is understood through the medium of the *Sheva Berachot*. Rachel Adler in *Engendering Judaism*, pp. 169-207, makes an important proposal to change the ceremony using partnership law not property law. This will be discussed in detail below. Central to my argument is that we have created a new legal institution that has similarities to the old and uses a ceremony to effectuate it that is drawn from the old paradigm. The similarity of name and ceremony has prevented us from recognizing the changes that Reform Judaism has made.

5. It is clear that the Rabbinic tradition and Orthodox authorities such as Maurice Lamm in *The Jewish Way in Love and Marriage* (San Francisco, 1980) are uncomfortable with the concept of a woman as property, but they have largely failed to change the *halakhah* to redress the unequal distribution of power and to permit women to initiate divorce so that they do not have to remain married against their will. In addition, during the wedding ceremony the woman is a passive rather than an active participant, making it clear she is a "second class citizen."

6. This does not mean that our understanding of marriage is merely spiritual, not halakhic. Although a considerable amount of current liturgical creativity is in relation to marriage, it only reflects the fact that the marriage paradigm is undergoing a significant shift. The ceremony is a legal act whose language is performative. Its speech acts to create a new reality, i.e., two unrelated individuals become a married couple. These acts have legal and economic consequences and must be terminated by a legal process. Our spiritualization of *kiddushin* reflects a changed halakhic, not merely aggadic, understanding.

7. It is for others to judge whether I have been successful in using the language of tradition and texts.

8. Gen. 1:27, 5:1-2.

9. Societal change constitutes *shinnui ha'ittim*, change in the times. New information justifies a change in the *halakhah*.

10. I say "in theory" because women who work still carry a disproportionate share of family responsibilities. Marriage as an institution is still in a state of flux.

11. Peter S. Knobel, "Suicide Assisted Suicide, Active Euthanasia: An Halachic Inquiry," in *Death and Euthanasia in Jewish Law*, edited by Walter Jacob and Moshe Zemer (Pittsburgh, 1995), pp. 28-34.

12. Adler, *Engendering Judaism*, pp. 25-26.

13. Lev. 20:7-8.

PETER S. KNOBEL

14. We do not believe that God commands the unethical. If a particular law is deemed unjust we therefore exercise our authority using the principle *Ein lo la-dayyan ella mah she-einav ro'ot*. See Joel Roth, *The Halakhic Process* (New York, 1986), pp. 85ff. We also would apply the concept attached to some of the laws in Leviticus and Deuteronomy that anything that oppresses or exploits another is prohibited because we were strangers and slaves in Egypt. A hermeneutic of justice strictly and carefully applied is part of the Reform halakhic process.
15. See Max Kadushin, *Worship and Ethics* (New York, 1964), p. 223.
16. Simeon Maslin (Ed.), *Gates of Mitzvah* (New York, 1979), citing Herbert Bronstein, p. 123. This slim but important volume is a guide to Reform Jewish religious living created by the Central Conference of American Rabbis. It is designed to list and briefly describe the essential deeds, *mitzvot*, that constitute an observant Jewish life. The footnotes and the essays were written to clarify the meaning of the *mitzvot* in a Reform context. In Reform Judaism, *taamei hamitzvot*, i.e., providing the rationale for a *mitzvah*, is an important aspect of the halakhic process. It is used to defend or refine the meaning of an ancient practice or as a means to change that practice so that it conforms to contemporary understanding. In addressing an essentially minimally observant community, the rationale becomes part of the deed. This is especially important when societal change or new knowledge requires a break with the past. Rabbi Maslin reminds us that the burden of proof remains on the one that wishes to change a practice rather than on the one that wishes to maintain a practice. This is a fundamental principle of the approach of Reform Judaism to the *halakhah* for those in the Reform movement that claim that Reform Judaism is a halakhic movement.
17. Maslin, *Gates of Mitzvah*, pp. 123-24. The concept that marriage is the norm is problematic for those concerned about our sensitivity to single people and also for those that believe marriage is an outmoded or incorrigibly patriarchal institution. Marriage is understood as a *mitzvah* only for those that are physically and psychologically able. Reform Judaism reaffirms even in the face of criticism and the high divorce rate that marriage is a Jewish norm, and, in a similar vein, that procreation is a *mitzvah*. The assertion of norms or ideals that some cannot or will not abide by may cause pain, but this in and of itself is insufficient to cause us to abandon it.
18. *Halakhah* is the crystallization of *aggadah*. This is clearest in Reform Judaism, in which the tradition of *taamei mitzvah* is taken for granted as providing the rationale for observance. Reform has tended to reject or reformulate that which it cannot justify ethically, psychologically, or aesthetically.
19. The issue of mutual *kinyan* is discussed in detail below.
20. Certain specific aspects of the *Sheva Berachot* are analyzed below, p. 158. In Reform Judaism it is the *Sheva Berachot* and not *Birkat Erusin* and *kinyan* that have provided understanding of marriage.
21. The *Sheva Berachot* soften the most objectionable aspects of the *kiddushin* as ceremony of *kinyan* acquisition. It seems clear that the rabbis used the blessings to transform the meaning of the event and to distinguish it from other economic transactions. Reform Judaism makes explicit what is implicit in the *Sheva Berachot*.

LOVE AND MARRIAGE

22. The double ring ceremony and substitution of either a marriage certificate or an egalitarian *ketubah* for the traditional one are among the most obvious examples in the wedding ceremony.
23. Maslin, *Gates of Mitzvah*.
24. Eugene Borowitz, *Exploring Jewish Ethics*, as cited in Laura Levitt, *Jewish and Feminist: The Ambivalent Search for Home*, p. 75.
25. Eugene Borowitz, *Renewing the Covenant* (Philadelphia, 1991), Passim.
26. Eugene Borowitz, *Exploring Jewish Ethics*, as cited in Levitt, *Jewish and Feminist*, p. 79.
27. Judith Plaskow, "Toward a New Theology of Sexuality," in Christie Balka and Andy Rose (Eds.), *Twice Blessed: On Being Gay and Lesbian* (Boston, 1984), p. 144.
28. See Ruth 1 and 1 Sam. 18.
29. For discussion of this text, see Adler, *Engendering Judaism*, p. 156-67. The culmination of the passage is, according to her, nothing less than a prophecy of "a time when marriage will not be a relationship of master to subordinate, owner to property or omnipotent giver to extractive dependent." In a striking 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, pp. 165-66.
30. This text is often added or substituted for *Harei at makedushet li be taba'at zo kedat Moshe ve Yisrael*. David Polish (Ed.), *Maaglei Tzedek, Rabbi's Manual*, (New York, 1988), p. 54. See Adler's discussion, *Engendering Judaism*, pp. 165-66.
31. See Adler's discussion of the translation of Blessing No. 4, p. 158.
32. I have deliberately used the term *halakhah* rather than *the halakhah* to indicate that *halakhah* is not monolithic, and that although some would deny that Reform is a halakhic movement, a good case can be made for a Reform *Halakhah*.
33. Judith Plaskow, *Standing at Sinai Again* (San Francisco, 1990), p. 145.
34. Adler, *Engendering Judaism*, pp. 183-87.
35. Adler, *Engendering Judaism*, citing Philip Birnbaum (Ed.), *Siddur* (New York, 1949).
36. *Ibid.*, p. 181.

PETER S. KNOBEL

37. The elimination of the *arayot* may simply reflect an ambivalent aesthetic appropriateness of the language in the wedding ceremony and male orientation of the table of consanguinity. However, the category of incest and adultery remain significant. The question of the *arayot* needs to be explored in detail.
38. Adler, *Engendering Judaism*, p. 177.
39. Polish, *Maaglei Tzedek, Rabbi's Manual*.
40. The Assembly of Rabbis of the Reform Synagogues of Great Britain (Eds.), *Forms of Prayer for Jewish Worship*, 1. Daily, Sabbath, and Occasional Prayers, 7th Ed. (Oxford, 1977), p. 281.
41. Some will argue that, for the sake of *Klal Yisrael*, we ought to use the *ketubah*. As Moshe Feinstein has pointed out in *Resp. Igerot Moshe*, EHE, 1:76-77, Reform weddings are *safei kiddushin* at best because there is a prima facie assumption that no kosher witnesses were present. Although his decision allows a woman married by a Reform rabbi to remarry without a *get* (Jewish divorce) and may be considered a leniency, our decision must not be based on trying to satisfy the halakic requirements of other movements unless it can be done in a way that maintains the ethical nature of *kedusha*. The use of the traditional *ketubah* calls into question the *kedusha* of our marriage ceremony.
42. Judith Hauptman, *Rereading the Rabbis: A Woman's Voice* (Boulder, 1998), p. 60.
43. Levitt, *Jewish and Feminist*, pp. 32-33.
44. For new type of covenantal document, see below, Rachel Adler's *Brit Ahuvim*.
45. A rethinking of Reform halakhah requires a rethinking of Jewish divorce. How ought a marriage be dissolved? The traditional *get* is unacceptable. A new ceremony, *Seder Peredah*, has not gained wide acceptance. One fundamental question remains unresolved, and that is the question of remarriage of a divorced woman without a *get* outside Reform Judaism. What are our ethical obligations as well as our relation to *Klal Yisrael*? If we reject the traditional concept of *kiddushin* as unethical, how do we encourage women and men to participate in such practices. Adler, *Engendering Judaism*, pp. 203-212.
46. *Ibid.*, p. 172.
47. Jacob Neusner, *A History of the Mishnaic Law of Women: The Mishnaic System of Women*, Part 5, (Leiden, 1980), p. 268.
48. I suspect that most Orthodox Jews would understand their relationship similarly. In this situation there is a cognitive dissonance between what is done ritually and what is believed theologically. Orthodox feminists, however, have begun to offer an increasingly insistent critique of Jewish marriage law.

LOVE AND MARRIAGE

49. *Kid.* 4b.
50. *Kid.* 3a, 6b.
51. Adler, *Engendering Judaism*, p. 176.
52. *Ibid.* Adler strives for an ethical consistency while looking for a proper halakhic paradigm for marriage. Her solution is very much in keeping with the founders of Reform Judaism, who justified their changes on the basis of traditional texts. She acknowledges that marriage is legal and not only spiritual and therefore must have a legal framework for its initiation and termination.
53. *Ibid.*, p. 193.
54. *Ibid.*, p. 194.
55. *Ibid.*, pp. 214-15.
56. *Ibid.*, pp. 197-98.
57. Reform Judaism, in fact, has rejected the concept that *kohanim* have special privileges or restrictions.

LOVING MARRIAGE

...the law of marriage is not a mere technicality, but a moral principle which should be applied with discretion and common sense. The law of marriage is not a mere technicality, but a moral principle which should be applied with discretion and common sense.

36. ...the law of marriage is not a mere technicality, but a moral principle which should be applied with discretion and common sense.

37. ...the law of marriage is not a mere technicality, but a moral principle which should be applied with discretion and common sense.

38. ...the law of marriage is not a mere technicality, but a moral principle which should be applied with discretion and common sense.

39. ...the law of marriage is not a mere technicality, but a moral principle which should be applied with discretion and common sense.

40. ...the law of marriage is not a mere technicality, but a moral principle which should be applied with discretion and common sense.

41. ...the law of marriage is not a mere technicality, but a moral principle which should be applied with discretion and common sense.

42. ...the law of marriage is not a mere technicality, but a moral principle which should be applied with discretion and common sense.

43. ...the law of marriage is not a mere technicality, but a moral principle which should be applied with discretion and common sense.

44. ...the law of marriage is not a mere technicality, but a moral principle which should be applied with discretion and common sense.