
A New Take on Kiddushin: Halakhic, Egalitarian, Non-Heterosexist

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On the 19th of Sivan 5761, my life partner and I stood under the chuppah. We had been a couple for more than seven years, and had shared a home for five. Deborah and I had resisted having a ceremony primarily because some of our closest friends who are gay or lesbian would not be permitted to get married or have a wedding, as defined by current U.S. law. To our friends' amusement, gratitude, and occasional annoyance, we were very strict in never calling our *simcha* a "wedding" or "marriage"—to us it would feel like eating at a segregated restaurant.

We also resisted the wedding ritual because of the difficulty of combining our commitments, not to each other, but to Jewish law and our egalitarian principles. After much study, thought, negotiations, and only a little last-minute panic, we stood under the chuppah with our *mesadrei kiddushin* (officiants), our hazan, and our assembled friends and family. One of the reasons that day could be "*mamash a simcha*" (such a joyous occasion) was that we had arrived at a halakhic, egalitarian, non-heterosexist ceremony that we could truly believe in. We would like to offer it as a proposal to those who share our commitments to egalitarian halakhah.

What do we mean by halakhah, and what is our commitment to it?

By halakhah, we mean the over two thousand year accumulation of practices, strictures, and definitions of "the path" for Jewish living. We view this accumulation as a social process that serves to bring Ha-Shem into our lives and our communities, and we consider ourselves bound by it. In

Jewish history, this process has often centered around a shared set of texts, from the Torah and Mishnah through the *rishonim* and *acharonim* (halakhic commentators), and up to modern works such as the *Aruch ha-Shulchan* or *Igrot Moshe* and countless other opinions offered today in the form of *teshuvot* and *p'sakei din* (respona and adjudications).

Throughout this evolution, the shared texts are examined in the light of new issues, unanticipated problems, or social change. As part of an ongoing social process, historical precedents and reasoning are brought forward to meet the current needs of the community. Since the enlightenment, however, a more radical break has occurred. Some communities have rejected the process and its strictures entirely, while others have demanded a wholesale overhaul of tradition. While we believe that in rare instances, *takanot* (extra-legal or precedent-breaking decrees) are needed, we do not choose to make either type of break, but to seek within traditional frameworks those transformations that may be considered *l'shem shamayim* (for the sake of heaven).

No single institution has ever had a monopoly on interpreting halakhah or defining normative practice. Jewish life and practice has always varied across communities, often geographically, but also even within single towns or regions. In today's world, a tiny minority of the Jewish population is often viewed as the "true" decisors, a privileged status we believe is antithetical to the traditional halakhic process. Many *poskim* (legal decisors) today have also been released from the reality of communal constraints which have historically governed halakhic decisions. That is, *poskim* no longer have to limit the strictness of the decrees they impose on the community or risk being run out of town. Nor do they always feel compelled—as their predecessors often did—to catch up to practices that have already been adopted by a broader Jewish community.

We believe that the survival of a halakhic way of life depends on the continued evolution of halakhah.¹ As I remember hearing Rabbi Chaim Brovender say in a *shiur* (lesson), "What do you mean, does halakhah evolve? It does nothing *but* evolve!" But of course, it evolves in distinctive ways, maintaining fealty to the texts, practices, and decisions that have come before

1 Although it is less traditional than our perspective, a good overview is Rabbi Moshe Zemer, *Evolving Halakhah: A Progressive Approach to Traditional Jewish Law* (Woodstock, VT: Jewish Lights Publishing, 1999).

and using only approved logical and exegetical devices. The *kiddushin* (sanctified union) ceremony described here attempts to conform to what we view as the traditional pattern of halakhic evolution.

Since halakhah is an evolving social practice, and not an exercise in pure logic, it has at key junctures in the past incorporated extra-halakhic principles which subsequently became enshrined in halakhic decisions and evolution. Prohibitions on unilateral divorce and slavery are examples of such *takanot*. A key element in current halakhic evolution and disputation is the status of women and egalitarian practices in general. In the near future, I believe that similar controversy and evolution will surround the status and treatment of gays and lesbians. Deborah and I define our personal halakhic practice as including the requirement of egalitarianism and non-heterosexism, even as we wait for and try to lay the foundation for the *takanot* that can establish those requirements more broadly.² May it happen speedily and in our days that all halakhic communities accept these principles as foundational elements of our beliefs and practice. And may this article in some small way contribute to that evolution.

Elements of Classical Kiddushin

As we began planning our simcha, we knew that we wanted to incorporate as much of the classical Jewish ceremony and text as possible, while still being egalitarian. We began reading descriptions of different ceremonies, and assembled our picture of the "standard" kiddushin—which was only standard for one portion of the Jewish world and for only about 300 years. Other communities followed myriad different practices. In some cases, the foundations of the institution differed, such as the legal-partnership model of the Palestinian communities witnessed in the Cairo Genizah's ketubah fragments or the polygamy of the Yemenite communities, abolished by a 20th century Israeli Sephardi chief rabbi.

In other times and places, the minutiae of the ceremony varied, such as the Syrian community's continued use of a coin instead of a ring, the Amsterdam community's variation on the order of the blessings, or the European understanding of *chuppah* to mean a canopy (introduced around

2 An early example of a halakhic requirement of egalitarianism was Esther Ticktin's "A Modest Beginning," in Elizabeth Koltun, ed., *The Jewish Woman* (New York: Schocken Books, 1976), pp. 129-35.

the 16th century). By the 20th century, secularization and the enlightenment had sparked today's dizzying variety of ceremonies and philosophies. But among almost all Ashkenazim from about 1600 to the late 1800s, and in the Ashkenazi Orthodox movements today, the kiddushin ceremony looks something like this:

A mixed-gender couple stands under a canopy, or a cloth or tallis is draped over the couple's heads and shoulders. A male *mesader kiddushin* (not necessarily a rabbi) recites the *birkat erusin* (the pre-nuptial admonitory blessing) over a cup of wine. The male partner takes a ring and places it on the middle finger of the female. (The ring is usually gold, usually a plain band, but with substantial variation possible.) He repeats the following formula after the *mesader kiddushin*:

Harei at mekudeshet li b'tabaat zo k'dat moshe v'yisrael.

Behold, you are sanctified to me with this ring according to the laws of Moses and Israel.

At least two kosher witnesses observe the transfer of the ring from the man to the woman. That completes the kiddushin, which in its most basic form takes approximately 60 seconds (really—try timing it yourself!). The ceremony then proceeds to the next phase, the *nissuin*. The kiddushin phase changes the halakhic status of the partner who accepts the ring to “betrothed”—that is, not quite married, but not available to anyone else either.

In thinking about this form of the ceremony, we found several issues problematic:

- Only the man and the *mesader kiddushin* speak (with the implicit assumption that one and only one member of the couple is a man).
- There is no spoken permission or acceptance from the woman.
- The physical act of transferring the ring is called *kinyan*, from the same root as “purchase,” or “acquisition,” implying that the man purchases or acquires the woman.
- It is unclear how one would follow this ceremony for same-gender couples.

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We knew that classical halakhah permitted many variations of the particulars, and that different communities have historically observed many different practices that were nonetheless considered halakhically valid.³ We therefore undertook to discover the core elements and procedures that would be necessary to constitute a halakhically valid kiddushin.

Classical Halakhic Requirements

About half a year before the date of our ceremony, I began to study the laws of kiddushin with our *mesader kiddushin*, Norman Shore. We wanted to understand the halakhic background and context of kiddushin, so as to be able to interpret the meaning of the act we were about to undertake and the change in halakhic status we would soon effect. Halakhah is not just about rules and regulation. It is the embodiment of the enormous claim that the past has upon us—a claim that we both struggle against and embrace. We come into this world drinking deeply of the patterns, prejudices, and potential passed down from previous generations. Halakhah traditionally preserves the explicit opinions and the implicit social history of centuries past, and the halakhah that we followed in our commitment ceremony is no different.

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For example, Jewish tradition originally began with a marriage ceremony that was essentially a commercial transaction, *kinyan*, that transferred the responsibility for a woman from her father to her husband. The legal structures were equivalent to securing the services of a slave or an ox, as seen from the context of other laws in the tractate Kiddushin. But we also see an evolution that is revealed by that tractate's name—Kiddushin—toward a sanctification of the relationship. Marriage began to draw from the legal traditions of the *hekdesh*, food or other goods that were set aside for sacred use at the *beit ha-mikdash* (house of sanctification), and women began to acquire a wide array of rights and protections (though by no means equality).

³ Rabbi Aryeh Kaplan is generous in his footnotes in pointing out many of these varying yet valid customs. Kaplan, *Made in Heaven*, (New York: Moznaim Publishing Corporation, 1983).

We wanted to build on that first transition from over two thousand years ago. We came to understand that we were not merely declaring that we are “set aside” for each other in a monogamous relationship, but that we were doing so for a holy purpose, in order to sanctify the relationship and move it toward the ideal of a lasting house of holiness.

We also wanted to address the specific issues we encountered in the form of kiddushin described above. If we were going to make changes to that form, then we had to establish what the detailed requirements and criteria were for a valid kiddushin, from the perspective of classical halakhah. Only then could we know what changes would still be halakhically permitted. Although we reviewed a number of primary and secondary sources, Norman and I focused on a single halakhic text in our study, the *Aruch Ha-Shulchan* (specifically *Even Ha-Ezer* 26-65), by Rav Yechezkel Michel Epstein of Bobroysk (1829-1888). Although it is not accepted as widely as Yosef Caro’s *Shulchan Aruch*, it incorporates the opinions of many later commentators on that foundational 16th century work. What follows is our (heavily paraphrased) understanding of the *Aruch Ha-Shulchan*’s rulings about kiddushin.

The declarative formula for kiddushin

The formula for kiddushin (*Harei at...*) is a fascinating mix of silence and voice. One member of the couple is silent. The other member traditionally speaks and is heard—but not necessarily. A completely valid kiddushin can be conducted without either partner saying a word (see below). The basic elements are order (who goes through kiddushin first), person (whose status is changing), direction (who is changing that person’s status), action (usually the verb KDSH, but only intent is required, not a specific word), and context (e.g., standing under the chuppah, or any context where intent is clear).

On the basis of the *Aruch Ha-Shulchan*’s presentation of the components of the ceremony, we could say that the spoken formula for kiddushin is valid:

- If one is standing under the chuppah.
- If the *birkat erusin* (the betrothal blessing) is recited.
- For mixed-gender couples (the only kind addressed by the *Aruch Ha-Shulchan*), if the woman is betrothed to the man first, before any

declaration of mutuality, and before he is betrothed to her (same-gender couples are discussed below).

- If we indicate which person the betrother is betrothed to (for example, by using the word *li*, “to me”)
- If we use the language or form of “betrothal” (for example, by using the word *mekudeshet*).

If all these are true, then the kiddushin is completely valid, and the couple would require a *get* (Jewish divorce) to effect a divorce. If one adds other words in addition to the essentials of the formula, these are considered *divrei ahavah* (words of love) and do not influence the validity of the formula, unless they are directly against the intent (e.g., “I’m only practicing”, or, “Now, you say that to her”).

When is the spoken formula for the kiddushin either not valid or not necessary, according to our understanding of the *Aruch Ha-Shulchan*?

- If one were to say, “I am your partner,” it would not be valid. It is the other person’s status that is being changed, not the one reciting the formula.
- If, in a mixed-gender couple, the woman were to say first, “You are my partner,” it would not be valid, because the Torah specifies the order (“if a man takes a woman”).
- If one said, “You are betrothed,” but did not specify to whom, there would be doubt if the betrothal were valid.
- If neither said anything at all, but stood under the chuppah and one gave the other a ring, it would be valid. But if one said something that contradicted the intent of kiddushin (e.g., “I’m giving you this ring as a loan, not as a wedding ring”), it would not be valid.
- If they did something valid, and then immediately tried to go back and invalidate it (“Wait, I didn’t really mean it”), some who are strict would require a *get*, and others would say that they had invalidated the kiddushin.

The kinyan (acquisition)

In order to effect a kinyan, an article of value must be used. In modern legal parlance, there must be some “consideration.” The halakhah requires that the article:

- Be owned by the person giving it, at the time of its use.

OUR CEREMONY

Birkat erusin (betrothal blessing):

ברוכה את יי אלהינו מקור החיים בוראת פרי הגפן

Brukah at Adonai, Eloheinu m'kor ha-hayim, boreit p'ri ha-gafen.
Blessed are You, our God, Source of Life, who creates the fruit of the vine.

ברוך אתה יי אלהינו מקור החיים אשר קדשנו במצותיו וצונו על

דבקות ורחוק ואסר לנו את הארוסים והתיר לנו את הנשואות לנו על ידי חפה וקדושין.
Barukh atah Adonai, Eloheinu m'kor ha-hayim, asher kidshanu b'mitzvotav, v'tzivanu al dveikut v'reehuk, v'asar lanu et ha-arusim v'heetir lanu et hannissu'ot lanu, al y'dei chuppah v'kiddushin. Barukh atah Adonai, m'kadesh amo Yisrael al y'dei chuppah v'kiddushin. Blessed are You, our God, Source of Life, who has made us holy through Your commandments, and instructed us regarding all forms of closeness and distance, forbidding to us those who are only espoused and permitting to us those who are married to us through chuppah and kiddushin. Blessed are you, God, who makes Your people Israel holy through chuppah and kiddushin.

First Kinyan (acquisition):

I presented Deborah with a coin to effect the kinyan. I used a 1901 silver dollar that was a gift to me from my parents, and said to Deborah:

הרי את מקדשת לי ואני מקדש לך במטבע זה כדת משה וסרח וישראל

Harei at m'kudeshet li, v'ani m'kudash lakh, b'matbei'a zeh k'dat Moshe, v'Serach, v'Yisrael. Behold, you are made holy to me, and I am made holy to you, with this coin, according to the custom of Moshe, Serach, and Israel.

Second Kinyan (acquisition):

In the nissuin portion of the ceremony, Deborah presented me with a coin to effect the kinyan for me. She used a 2000 Sacagawea dollar and said to me:

הרי אתה מקדש לי ואני מקדשת לך במטבע זה כדת משה וסרח וישראל

Harei atah m'kudash li, v'ani m'kudeshet l'kha, b'matbei'a zeh k'dat Moshe, v'Serach, v'Yisrael. Behold, you are made holy to me, and I am made holy to you, with this coin, according to the custom of Moshe, Serach, and Israel.

- Be worth at least a *prutah* (estimated as anywhere from less than a penny to a quarter in current U.S. currency).
- Have value that is evident to any normal person (i.e., that does not require an expert to assess its value).
- Be transferred with appropriate witnesses paying attention.
- Be used for its monetary value, not as a barter or exchange.

Although the ring entered Jewish law through Roman tradition, many communities have used other articles that meet the above requirements, for example, a kiddush cup, or most commonly, a coin. Some communities today (for example, in Syria) always use a coin instead of a ring; the roots of the Hebrew words are even the same (*taba'at* and *matbei'a*).

Our Ceremony

What we actually did is shown in the shaded box on the previous page. The explanation and justification of this halakhic, egalitarian, non-heterosexist kiddushin follows.

Birkat erusin

The *birkat erusin* expresses how separating and drawing near are closely bound. The blessing was originally a warning to engaged couples that they have not completed the rituals and legal steps to become sexually permitted to each other. Back in the days when kiddushin and nissuin were separated by a year or more, this warning was given extra rhetorical punch by including a reference to *arayot* (the category of forbidden sexual relations that are punishable by death), even though the punishment for intercourse in between kiddushin and nissuin was only flogging.

The reference to *arayot* in the *brakhah* (blessing), in addition to now being superfluous, is also an explicit reference to the extensive listing of *arayot* in Leviticus 18. This text is an important source of mitzvot and of our revulsion at incestuous relationships and at using sex as an abuse of power. But it also contains the verse, "You [masc.] shall not lie with a man as one lies

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with a woman,” that has been misused so appallingly as a condemnation of homosexuals. Mentioning *arayot* would therefore violate the principal of *ein busha* (that one should go far out of one’s way to avoid potentially shaming or to be seen as unjustly chastising anyone), and should be avoided.⁴

The broader point of the term *arayot*, and of the entire *brakhah*, is to remind us that people who are becoming as close to each other as married couples, are undertaking a dangerous as well as precious act. All forms of deep and invasive attachment are liminal acts that bear the seeds of both birth and destruction. Warnings about boundaries, and reminders of both holiness and danger are therefore appropriate. We adapted the concept of *arayot* (forms of closeness that must be kept far away) to cover all forms of closeness and distance: *dveikut v’reehuk*. We also adapted the text of these *brakhot* to be symmetric with respect to male and female gendered language, which is our standard practice and has already been the subject of much writing.⁵

The formula for kiddushin

We follow the same basic structure as the classical formula (*harei at*), but with some changes. Our study of the sources revealed that when standing under the chuppah and exchanging an object of value, no declaration at all is really necessary. All doubt is removed by the first four words—*harei at mekudeshet li*—which specify order (Deborah’s status was being changed

4 Even within traditional interpretations, Chazal (the Rabbis) understood that *mishkevei* in Leviticus 18:22, which is translated as “lie with,” means anal penetration (Sanhedrin 54). So, Chazal tell us, the Torah says that two men should not have anal sex; it is a *to’evah*—an “abhorrence,” or better, a “grave mistake” (a more appropriate translation given the term’s use in contexts such as arrogant behavior, using false scales, and most often, *avodah zara*, worshiping idols). We learn from the Talmud that *to’evah* is a contraction for *to’eh atah bah* (“being led astray”) (Nedarim 51A). A man may be led astray from his wife and home by having anal intercourse with men (Tosafot on Nedarim 51A) or go astray from the foundations of creation—from procreation (*Torah Temimah* on Leviticus 18:22).

In our view, in circumstances where a man is not lying with another man in the manner of lying with a woman, that is, does not break up a stable heterosexual domestic situation and does not detract from the mitzvah of procreation, then no halakhic problem should exist. In any event, no condemnation of homosexuals themselves is implied, especially since the very concept is a modern invention.

5 Some of my favorite discussions on this subject include Havurat Shalom Siddur Project, “Introduction,” *Siddur Birkat Shalom* (Boston: Havurat Shalom, 1991); Rachel Adler, *Engendering Judaism: An Inclusive Theology and Ethics* (Boston: Beacon Press, 1999); and Judith Plaskow, *Standing Again at Sinai* (New York: Harper & Row, 1990).

first), person (*at*, meaning Deborah), direction (she was betrothed *li*, to me), and action (*mekudeshet*, betrothed, sanctified, set apart). As noted earlier, the subsequent phrases in the classical text or in our text are essentially *divrei ahavah*, words of love.

One such phrase that we added to our text affirms the other partner's role by explicitly stating, *v'ani mekudash lakh*, not as a means of effecting a change in halakhic status, but as an articulation of the equal partnership we are entering into. We also use a coin instead of a ring, for reasons explained in the *kinyan*, below. And finally, we make the connection to our history and to the foundations of our traditional egalitarianism by including both Moshe Rabbeinu and Serach bat Asher (*k'dat Moshe v'Serach v'Yisrael*).

Who is Serach? According to the midrash, Serach was the adopted daughter of Asher, one of the twelve sons of Jacob, and she was counted among the seventy who descended to Egypt (Genesis 46:17). We are told that Serach saved Jacob's life by gently breaking the news that Joseph was alive in Egypt to her grandfather in verse and song.⁶ She was rewarded with eternal life (according to the Talmud, *Derekh Eretz Zuta* 1, based on Num. 26:46), and subsequently saved the people numerous times through her memory of tradition and her recounting of stories.⁷

To us, Serach symbolizes the truth that tradition is not only about rules. Its survival also depends on memories, stories, and the wisdom they contain. We therefore tell stories as a means of consciously engendering our Jewish tradition, as opposed to creating a category of women who are merely honorary Jewish men. In our ceremony, we included some stories as an essential part of fulfilling the mitzvah of *kiddushin* and *nissuin* according to the wisdom of Serach as well as the laws of Moshe.

The first kinyan

On the simplest level, we concur with the sentiment of *kinyan*: Yes, you are mine, and I am yours, more so than anything else in the world. The concept

6 For a particularly rich rendition of this midrash, see Avivah Zornberg, *Genesis: The Beginning of Desire* (Philadelphia: Jewish Publication Society, 1995), pp. 280-83.

7 Rachel Adelman, "Serach bat Asher: Songstress, Poet, and Woman of Wisdom," in Ora Wiskind Elper and Susan Handelman, eds., *Wisdom of Our Mothers* (Jerusalem: Urim Publications, 2000), pp. 218-43.

of kinyan is much broader than mere purchase. For example, we say three times a day in the first brakhah of the Amidah, that Ha-Shem is *konah ha-kol* (who acquires all)—a deep concept in which Ha-Shem is seen as “owning” and taking responsibility for every being and every action in the universe. In the kinyan of kiddushin, we declare before our *kahal* (community) that we are endeavoring to enter into the same relationship with each other that Ha-Shem has with every living thing.

The tractate of Mishnah that deals with the process of kinyan is called Kiddushin (making holy). The primary chapter is called *Ha-Isha Nikneit* (“a woman is acquired”), which the Gemara points out is in a passive voice (although the action is not entirely passive—even in biblical times, the woman’s consent was required). The *ketubah* (marriage contract) focuses on each person “acquiring” a set of responsibilities. Kiddushin, by contrast, focuses on choosing to enter into a relationship where the other is permitted power over the self, that is, another person is permitted to take responsibility for you—a decision that requires a tremendous amount of faith and trust. We each publicly declared that decision under the chuppah, through kinyan.

Finally, the act of kinyan is a general legal device in Jewish law, by no means limited to the act of kiddushin. One may indeed acquire property through kinyan, but it is also the mechanism for accepting obligations or entering into business partnerships, corresponding to “consideration” in American and British contract law. It is often performed with an object such as a handkerchief or pen (as when accepting the obligations of the *ketubah*), without certain restrictions that apply to the kinyan of kiddushin (for example, the pen can be returned and need not belong to the party offering it). But the underlying legal principles of any kinyan are the same.

Because of the way we understand kinyan, we did not feel the need to distance ourselves from the concept and the ritual as other

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feminist writers have discussed.⁸ First, we arrived at the understanding of *kinyan* described here. In addition, we used a second *kinyan* to ensure that the actions and sentiments were completely egalitarian, and finally, we built a halakhic egalitarian *ketubah* using the contractual language of *shutafut* (partnership).⁹

We therefore made the first *kinyan* using a coin that I clearly owned, that Deborah and the witnesses could easily tell had a monetary value of at least a *prutah*, and that Deborah and the witnesses could easily tell had a monetary value of at least a *prutah* more than what she would give to me in the second *kinyan*.

Kosher witnesses for kiddushin

A rabbi is not necessary to effect *kiddushin* (or *nissuin* or *ketubah*). Rather, as a legally binding change of status, one needs only to fulfill the halakhah before at least two “kosher” (i.e., proper) witnesses. A kosher witness is one who is an upstanding member of the community, who fully observes the mitzvot, and who is not related by blood or marriage to either of the people standing under the *chuppah*. If any of the witnesses are discovered to not be kosher for some reason (e.g., if they were selected without realizing that relatives are not permitted), then all of the witnesses become unkosher. Therefore, the usual custom is to minimize the risk and use the smallest number of permitted witnesses, that is, two. However, lest someone think that we do not believe that women are capable of witnessing legal transactions, we felt that we needed to include at least one woman among the witnesses.

As discussed below, we tried to follow both non-egalitarian and fully egalitarian halakhot. In the case of witnesses, if we had one man and one woman witness the *kinyan* of *kiddushin*, then non-egalitarian authorities would hold it to be invalid. If we had just two men, then the still-nascent

8 See, for example, Chaya Beckerman, “Kiddushin and Kesharin: Toward an Egalitarian Wedding Ceremony,” *Kerem* 5 (5757 [1997]), pp. 84-100, and Rachel Adler, *Engendering Judaism*, although they reach opposite practical conclusions.

9 Our deep gratitude to our friend Prof. Aryeh Cohen for his help with our *ketubah* text. He not only did the original research to create a halakhically grounded *shutafut* *ketubah* for himself and his partner, Andrea Hodos (the text has been used by a number of couples, and is based in part on Palestinian *ketubah* fragments from the Cairo genizah). He also worked with us over many months to modify his existing text and add new sections, including translations back into medieval Aramaic. For additional information on the *ketubah* text, please contact him through the University of Judaism.

egalitarian halakhah might or might not permit it after the fact, but it would be preferable to have at least one woman as a witness. If we had at least two men who are otherwise kosher witnesses, and then non-kosher witnesses in addition, then all authorities agree that the kiddushin would not be valid. But there is a question as to whether non-egalitarian authorities consider women to be non-kosher witnesses, or just not witnesses at all.

We relied on the opinion of the *Aruch Ha-Shulchan* (*Choshen Ha-Mishpat* 36:1) that the signatures of women (who cannot possibly be witnesses, from within that system) do not invalidate the signatures of otherwise kosher witnesses. We therefore included two men and two women as witnesses for our kiddushin and ketubah.

The second kinyan: egalitarianism and layers of halakhah

There is a *machloket* (dispute) about the requirements for a binding kiddushin. The opinion found in non-egalitarian (classical) halakhah states that the only required change of status is that of the woman (and by implication, only mixed-gender couples can undergo nissuin). That is, the woman is set apart or made holy through a kinyan. Accordingly, any ceremony or marriage can be invalidated if the object used in kinyan is not actually owned by the person giving it. According to many variations of this opinion, the nissuin is also invalid if the receiving person in the couple proceeds to *give back* an object of equal or greater value. In such a case, the act of kinyan is not a legally binding act, for nothing of value has really been received (in American legal terms, the contract lacks "consideration"). This issue has been a stumbling block for decades, and the subject of much halakhic disputation, for those trying to be both traditional and egalitarian.

For those who believe in egalitarianism and are planning traditional ceremonies, the first question they often hear is, "Are you using a double ring ceremony?" Traditional *poskim* have tried to find ways of orchestrating ceremonies that ameliorate the tension, such as the woman presenting a gift to the man using biblical verses (such as *v'ayrastich li*, Hosea 2:21-22) in a different part of the ceremony, so that the differentiation from an actual kinyan is clear. But the tension remains—for what could be less egalitarian than the man simply "purchasing" the woman? And yet, what could be less traditional than an invalid kiddushin?

While we do not usually follow non-egalitarian rulings, we do believe that the classical halakhic opinion invalidating an equal exchange is

l'shem shamayim (for the sake of heaven). At a minimum, we can support its attempt to avoid any restrictions on whom the next generation is halakhically permitted to marry (see the Conclusion below). At the same time, we also view as *l'shem shamayim* a new layer of egalitarian halakhah; indeed we view such opinions as an essential part of the evolution of halakhah: kiddushin must be symmetric or egalitarian in order to be valid, without gender-based requirements (nor requirements about genders). Such an opinion helps to bring all of Ha-Shem's creation into full relationship with one another, fulfilling the intent of our creation as described in Genesis: *b'tzelem elokim*, in the image of Ha-Shem, and *ezer k'negdo*, as equivalent helpmates to each other.

While we would follow egalitarian rulings in all respects, we do not wish to contravene the classical halakhah either. People have so many reasons for following traditional halakhah, some of them in that inarticulate realm between faith and reason. Those reasons often converge in a sense of urgency that no other choice is possible; that somehow the fate of individuals, or the Jewish people, or the whole world, depends on that continuity of observance stretching in theory back to the revelation at Sinai or to Sarah and Abraham. We, too, feel bound to seek ways to fulfill our commitments to classical halakhah, but seek with the same intensity to live out the egalitarian and non-heterosexist halakhah that will someday ensure the survival of the Jewish people. Therefore, we created a ceremony that respects both opinions.

Halakhah frequently decides between competing opinions, and sometimes comes down in favor of an inclusive approach. For example, because of the *machloket* in the Talmud (B. Brakhot 11B) about which brakhah one should say over words of Torah, the siddur includes all three blessings to be recited every morning. Similarly, when Rashi and his grandson, Rabbenu Tam, give two different opinions about the order of the texts inside tefillin, many find ways to wear both sets. We also have a general rule that when someone travels from one place to another, one must observe the stringencies of both the locality one came from and the place where one now resides (B. Pesachim 50A)—a rule that may hold as we move forward in time as well.

In order to provide space for a second kinyan that fulfills egalitarian requirements, without halakhically invalidating the first kinyan, we

make use of the fact that today's classical ceremony emerged from what had been two separate ceremonies, kiddushin and nissuin. Though they haven't generally been used for separate ceremonies in about a thousand years, the form is still preserved. We do the same, as we move into the next phase of egalitarian partnership. We preserve the form—the first part, kiddushin, setting aside and prohibiting from others, and the second part, nissuin, lifting up and permitting to each other. We also add a new symmetric layer to those two parts, which rests atop the anachronistic betrothed-but-not-married structure of kiddushin and nissuin. The kinyan of the first part commits one to the other and the commitment is accepted, and the kinyan of the second part commits the other to the first and the commitment is accepted. A set of mutual commitments, which we obligate ourselves to through our ketubah, is read as a separation between these two parts. We thereby comply with both sets of halakhic requirements, to follow the past, and to create the future, as has always been the path of halakhah.

Deborah carried out the second kinyan with something worth at least a *prutah* less than the coin used for the first kinyan, in order not to contravene its effect. She used a dollar coin, just as I did when I changed her status in the first kinyan. The objects were thus of completely equivalent value for our egalitarian kiddushin, namely \$1 of U.S. legal tender. But they were also of readily apparent different value, a large century-old pure-silver dollar compared to today's base-metal (though appropriately feminist) Sacagawea dollar.

Same-gender marriages

We wanted to ensure that any text and ritual we used in our ceremony would be fully applicable to same-gender couples. We believe that in the future, such non-heterosexism will be a halakhic requirement, so we treated it as such today. Ceremonies that emphasize full egalitarianism are generally more compatible for same-gender couples, since any questions about "the man's

Respecting the halakhic opinions of others, even while disagreeing with them, is an essential part of maintaining *klal Yisrael*.

role” or “the woman’s role” become irrelevant, and either member of the couple can be the first to undertake any of the ritual actions. By creating a paired, symmetric *kinyan* (and also a symmetric *ketubah* based on the contractual language of *shutafut*, partnership), the major ritual incompatibilities are eliminated. We even found a way for both of us to break the glass at the same time (hint: use a board). We also excised the reference to *arayot* (nakednesses) in the *birkat erusin*, as described above. Finally, we completely separated, in time and emotion, the halakhic ceremony described here from the legal paperwork required to attain certain rights and privileges under U.S. law, which to our great shame does not yet recognize the committed relationships of same-gender partners.

Conclusion: Egalitarian Halakhah, Mamzerut, and Klal Yisrael

The halakhah has always been concerned to be as permissive as possible in invalidating a marriage, for the sake of *klal Yisrael* (the unity of the Jewish people). It may seem that finding technicalities to declare *kiddushin* and *nissuin* to have been improper and not binding is being strict. On the contrary: the desire was to find ways to avoid requiring a *get* in the event of a recalcitrant or missing husband. If a woman remarries without a *get*, any children of her second marriage will be considered *mamzerim* (bastards) and will only be permitted to marry other *mamzerim*. But if the first marriage is deemed invalid, then a *get* is not necessary and the children from either marriage can marry whomever they like. Modern halakhic decisors, such as Rav Moshe Feinstein, are particularly concerned that many Jews who are not strict in following halakhah will not receive a *get* before remarrying. Therefore the *poskim* go out of their way to find reasons why a *get* isn’t necessary, for example, by declaring that any marriage performed by a Reform rabbi is not halakhically valid.

While we believe that this approach, in its non-egalitarianism and its anti-pluralism, is itself halakhically invalid, we also understand its motivations in trying to ensure that all Jews remain a single people, particularly in being able to form families together. We went through the lengthy process of learning and innovating to ensure that our ceremony followed such opinions, as well as following what we see as the halakhic requirements of egalitarianism. After all, respecting the halakhic opinions of

others, even while disagreeing with them, is an essential part of maintaining *klal Yisrael*. As the Mishnah tells us (Yevamot 1:4):

Nevertheless, even though one permits what the other forbids and one cancels what the other validates, the school of Shammai did not refuse to marry women from the school of Hillel and the school of Hillel did not refuse to marry those from the school of Shammai.



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