

Shevu'at Zugiyyut: An Oath Model for Jewish Marriage Ceremonies

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Introduction

At the basis of the traditional Jewish marriage ceremony (*qiddushin*) is the acquisition of the bride by the groom. The enactment of this ritual presents a conundrum for observant couples in recent times. How can one sanctify such a significant day in their lives with a process that involves, in whatever diluted rabbinic way, acquisition of one person by another? How can one celebrate a ritual that has left so many women manipulated, blackmailed, extorted, and/or abandoned by their husbands and by Jewish law, trapped without the ticket to freedom that only their husband-owner can grant?

It is not only textually-conscious couples that should be concerned; the effects of this traditional paradigm have far-reaching negative implications even if one does not buy into all aspects of Jewish law. A well-thought out ceremony may not be able to “save” a “bad” marriage, but an un-emended traditional ceremony *does* have the potential of being abused to wreak havoc on a person’s life. One rabbinic intellectual, Rabbi Feldblum, has noted that *qiddushin* done today probably is not valid from the outset, because if the partners fully understood what it meant, they would never consent to it, and therefore do not really mean it when they perform the act and their consent is the consent of the ignorant.¹

Some legal authorities feel the acquisition aspect of *qiddushin* has been counterbalanced by the Edict of R. Gershom (11th century) (*Taqqanat Rabeinu Gershom*) which restricts a husband from marrying more than one wife concurrently and which requires a wife’s consent in order to give a divorce.² In this way, there is mutual obligation because neither partner can be released without the other’s permission. The husband can refuse to grant a writ of divorce (*get*) and the wife can refuse to accept a writ of divorce. In this way, they are each bound to the other, and subject to the other’s power and will. One may perhaps derive a sense of security from this

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¹ M. S. Feldblum, “The Problem of ‘Agunot and Mamzerim: A Comprehensive Solution,” *Dine Israel* 19 (1998), 203-216 [Hebrew].

² This was one of a number of edicts regarding marriage traditionally attributed to R. Gershom, the exact formulation of the edicts varies in the manuscript tradition and see: Y. S. Spiegel, *Pages from the Annals of the Jewish Book* (Ramat Gan: Bar Ilan University Press, 2005), 111-126 [Hebrew].

mutual guarantee, though the possibility of reciprocal abuse is difficult to see as an improvement, and the core issue of acquiring a human being is not solved.

Moreover, this equality is no more than a veneer, because the heter me'ah rabbanimn created a legal opening for the husband to remarry without giving a *get* in divorce³ still leaving women vulnerable to manipulation, extortion or abandonment. Some people feel this dynamic is counterbalanced by a court's prerogative to annul marriages (*hafqa 'at qiddushin*) in extreme circumstances. This may be true, but the fact of the matter is that almost no Orthodox courts perform *hafqa 'at qiddushin*,⁴ at least not in a publicized manner. For people who place themselves under the jurisdiction of the Conservative movement, the Lieberman clause stipulating that the couple agrees to appear before a Conservative *Beit Din*,⁵ as well as *taqqanat Rabbeinu Gershom* and *hafqa 'at qiddushin* may be perceived as appropriately addressing concerns of the *qiddushin* model. If, however, one does not see him or herself under the jurisdiction of the Conservative movement, and *hafqa 'at qiddushin* is not an option, women are often constrained to negotiate their divorce with husbands who have the upper hand. While the majority of women do end up getting a *get* if they so desire, it is not rare for women to be forced to submit to extortion requiring them to hand over vast sums of money or give up property or custody rights in order to receive a divorce, or, in rarer but existent cases, to never receive a divorce.⁶

Even with *Taqqanat Rabbeinu Gershom* and *hafqa 'at qiddushin*, the symbology of the marriage ritual still centers around a unilateral male actor. A man gives a woman a ring and says "You are hereby consecrated to me through this ring according to the law of Moses and Israel." And then they are married. All the woman has to do is stand there, silently. Her silence is considered her agreement to the marriage, though she must accept the ring or object of value. In

³ This is not easy, *per se*, as it requires 100 signatures of Rabbis from three different lands but has been done by men who do not want to give their wives a divorce even though they want to marry another woman. One source for this is in the *Responsa Maharam*, Part 4, Subsection 1, 22.

⁴ See controversy surrounding Emmanuel Rackman's innovations in this area: Ben Harris, "Emanuel Rackman, leading Orthodox thinker, dies at 98," *Jewish Telegraphic Agency*, 2008. <http://www.jta.org/2008/12/03/life-religion/emanuel-rackman-leading-orthodox-thinker-dies-at-98>. An innovation that has had more acceptance in the Orthodox community is the RCA prenuptial agreement requiring the recalcitrant husband to pay support until he delivers a *get*, and see <https://jewishweek.timesofisrael.com/rca-prenup-mandate-draws-mixed-reactions/>. In this volume see the article by Michael Brody.

⁵ See <https://www.ritualwell.org/ritual/lieberman-clause>.

⁶ Up to date information about the *agunah* crisis can be found at www.jofa.org and see also <http://www.jewishvirtuallibrary.org/'agunot-abandoned-wives>; by Mayer Rabinowitz <http://www.myjewishlearning.com/article/'agunot-a-different-kind-of-hostage/> by Robert Gordis.

some ceremonies the woman also articulates this formula towards her husband and gives him a ring. While this is symbolically meaningful, it is technically meaningless according to Jewish law—and according to some authorities problematic—because Jewish law (*halakhah*) only grants men the right to perform the act of *qiddushin*. Thus, it is only the male act that effectively changes the legal status of the couple.⁷ Furthermore, a double standard remains in terms of exclusivity, making it a more serious crime for a woman to commit adultery than for a man. *Qiddushin* renders a woman's act of infidelity as a core biblical crime (*de-oraita*) while the concept of male infidelity with an unmarried woman is rabbinic and of lesser legal weight (*de-rabannan*) since polygyny was practiced biblically and post-biblically. There can be a negative psychological effect due to this double standard, and it has also led to some ugly *halakhic* decision making.⁸

In sum, while *qiddushin* does not truly entail full acquisition of another person today, the ceremonial significant act represents a man unilaterally taking his passive bride. Furthermore, there are still real effects of the power differential created by *qiddushin*, particularly since *hafqa 'at qiddushin* is rarely performed.

Alternatives

There has been some movement in the last 45 years in addressing these issues. It is beyond the scope of this paper to give adequate consideration to all the options that exist today, below I provide a non-representative sample of some noteworthy alternatives. Harry Fox and Tirzah Meacham (leBeit Yoreh), for example, had drafted their own *qiddushin* without acquisition (*qinyan*) contract in the early 1970s. Recently published in the Jewish Women's Archive *Jewish Women: A Comprehensive Historical Encyclopedia*,⁹ this contract incorporates traditional

⁷ Some argue this point, saying that if it becomes common practice for women to perform *qiddushin* as well it will grow into a legally binding custom. See the mutual *qiddushin* ceremony which Tirzah Meacham and Harry Fox used for their own marriage which did not include *qinyan*, discussed below, and see also Orthodox feminist views in <http://jewishstandard.timesofisrael.com/alternatives-to-kiddushin/>

⁸ These include the rare rabbinic rulings that advise husbands to go to prostitutes if they can't wait for their wives to become ritually pure to have sexual relations, and see *Hag. 16a*: "Rabbi Ila'a the Elder said if a man see that his sexual desire is overcoming him, he should go to a place where he is unknown, should dress in black, and cover himself in black and do what his heart desires..." This can not only cause feelings of jealousy and betrayal, but also can pose health risks of spreading sexually transmitted diseases. While I am not proposing that changing a ceremony would necessarily change these men's behavior, it could at least prevent rabbinic validation for such behavior. For modern day rabbis permitting this practice see: <http://daatemet.org.il/he/question/הההלכה-פי-הההלכה-על-פי-הההלכה> /

⁹T. Meacham leBeit Yoreh, "Legal Religious Status of the Married Woman," *Jewish Women's Archive*: <https://jwa.org/encyclopedia/article/legal-religious-status-of-married-woman>.

obligations of husband and wife and makes them mutual. Each partner commits to supporting the other financially, neither partner can have sexual relations with anyone else, neither can leave the other for a length of time without permission, etc. Additionally, the contract begins with a negation of *qinyan* (acquisition), explicitly stating the parties involved are participating in *qiddushin*—designating themselves exclusively for each other—without engaging in *qinyan*—exchange of objects as a sign of acquisition. The *qiddushin sans qinyan* model is appealing as “a have the cake eat it too” model. It allows for a sense of continuity with the Jewish tradition of *qiddushin*, without the power problematics. But this route too has its pitfalls. Observant Jews who are immersed in the world of *halakhah* may struggle to find halakhic meaning behind *qiddushin* without *qinyan*. In *qiddushin*, the meaningful legal act is the object exchange, which indicates the inception of *qiddushin* simultaneously with *qinyan*. The contract, at the basis of the Meacham-Fox ceremony certainly seemed like a good start, but is not ceremonial enough on its own. Symbolically speaking centering a marriage ceremony around negation is difficult. At its core the marriage ceremony is supposed to be an affirming positive ceremony.

If one still operates within the traditional marriage model of *qiddushin* and *gittin* (divorce writs), it is impossible to ignore the biblical foundations of this relationship as “when a man takes a wife” and “when a man sends away a wife.”¹⁰ To avoid perpetuating the problematics of this kind of relationship, negation must be explicitly made in each detail that could hark back to the traditional male-centered approach, as the Meacham-Fox ceremony does.

Negation turns out to be a central theme in many “*qiddushin* alternatives” that exist currently.¹¹ There is *derech qiddushin* (literally “the way of *qiddushin*”), the basis of which is how to do *qiddushin* without actually doing *qiddushin*.¹² Or *qiddushin ‘al tenai* (conditional *qiddushin*), the basis of which is how *qiddushin* can negate itself in problematic circumstances.¹³ Sometimes negation occurs through the vehicle of supplementation, negating female passivity by

¹⁰ Deut. 24:1: “Suppose a man enters into marriage with a woman, but she does not please him because he finds something objectionable about her, and so he writes her a certificate of divorce, puts it in her hand, and sends her out of his house; she then leaves his house.”

¹¹ For a sample of such ceremonies see alternativestokiddushin.wordpress.com.

¹² See <https://alternativestokiddushin.wordpress.com/2006/08/03/derech-kiddushin/> and Feldblum’s article, *supra* n.1.

¹³ Here is one formulation for *qiddushin al tenai*:

At the time of *qiddushin*, the man says: “Behold you are consecrated to me according to the practice of Moses and Israel and the conditions stipulated by you.” Upon receiving the ring the woman says: “Behold I am consecrated to you based on the conditions I stipulated for consecration and marriage in front of witnesses.”

incorporating additional things for the woman to say or do.¹⁴ While many of these rituals can be effective and meaningful, the approach behind them seems to be this: we are stuck with a discriminatory model, so how can we overcome or negate its inequality?

What if we tackle this “problem” from a positive perspective—by not treating it as a problem at all, but as an opportunity! What if we build up from what we want instead of getting lost in a struggle of resistance? There are some aesthetically attractive options that take this path. One is Rachel Adler’s *Brit Ahuvim* (A Covenant of Lovers) model.¹⁵ Based on notions of partnership, this ceremony has blazed new way of conceptualizing marriage. Emotionally inspiring as it is, one may not be drawn to this model since the commitment ceremony she offers does not have precedent and legal weight in *halakhah*.

An option that offers this, perhaps, is the vow/oath (*nedarim/shevu‘ah*) model. It is the most accurate expression of what many couples wish to affirm on that day: to voluntarily commit themselves to each other, to voluntarily take on obligations and restrictions for which couples be accountable to both a Jewish court and to themselves. And it is something that consenting adults of any gender or sexual orientation can participate in.

Before delving into the details of this model, I would like to offer a short overview of the legal categories of *neder* and *shevu‘ah*.¹⁶

Overview of *Neder* and *Shevu‘ah* in Jewish Sources

A *neder* is a proclamation in which a person forbids benefit to one’s self from a tangible thing. This can include sexual relations, by either prohibiting sexual benefit from others, or prohibiting one’s own body to others. A *shevu‘ah* is a declaration to do or not to do something; it does not have to involve a tangible thing.

The *neder/shevu‘ah* must be declared orally, though there is some discussion regarding the validity of a written *neder/shevu‘ah*.¹⁷ There are options of using an object to make a *shevu‘ah*, or of reciting God’s name. This last practice is not necessary—it is implied that the weight of God’s name is behind a *shevu‘ah* even if God’s name is not specifically mentioned.

¹⁴ Rabbi D. Linzer, “*Ani l’Dodi v’Dodi Li: Towards a more Balanced Wedding Ceremony*,” *JOFA Journal* 3 (2003), 4-7.

¹⁵ R. Adler, *Engendering Judaism: An Inclusive Theology and Ethics* (Boston: Beacon Press, 1999), 169-208.

¹⁶ For a halakhic compendium of the laws of *neder* and *shevu‘ah* see E. Cohen, *Halakhic Compilation of the Laws of Nedarim and Shevu‘ot* (Bnei Berak: n.p., 2005) [Hebrew].

¹⁷ See for example *Responsa Rashba*, 3,308.

This may be important to couples with different theological outlooks for whom the weight of this commitment is Jewish culture or tradition rather than God's name. A *neder/shevu'ah* is valid even without witnesses, or court, because it is a self-imposed commitment. Having the presence of witnesses makes it a more publicly validated act.¹⁸

Release from the Prohibitive Vow

A *neder* can be released by a court if it is ascertained that unexpected circumstances or outcomes arose and there is full regret about having made the *neder*. There is more debate about the possibility of releasing someone from a *shevu'ah*. From geonic (early medieval legal authorities) literature we see that it is possible to release a *shevu'ah* in cases of great need or harmony in the household (*shalom bayit*). There is also discussion of making a *neder al da'at aher*—with the knowledge of another person. In this case, the other person may prevent the *neder* from occurring and must be informed (or possibly consent) for the *neder* to be released.

Vows in the context of marriage

There is precedent in Jewish tradition for *shevu'ot* to be used in relation to marriage, particularly in *shidukhin* (matchmaking). For example, there are references to people making a *shevu'ah* either to marry a particular person, or not to marry a particular person.¹⁹

Taking a vow is a serious matter, and has generally been discouraged by rabbis over the generations.²⁰ However, joining one's life with another is also a serious matter, and should be circumscribed by a serious act of commitment. The consequences of *qiddushin* can also be quite grave, and one would argue that the implications and risks of *qiddushin* are more serious than the concern of "Better not to vow than to vow and not fulfill."²¹ Additionally, once there is a clause in the *neder/shevu'ah* that allows for the possibility of separation, there is less concern of breaking the vow. Adultery remains a violation of the vow, and it is entirely appropriate for this violation to have serious stakes.

¹⁸ For *shevu'ot* that include witnesses, and sometimes "upon the advice of Rabbi X," see for example *Responsa Ra"n*, Part 38. Traditional *qiddushin* was to be performed in the presence of a quorum of ten for the sake of publication within the community.

¹⁹ See for example, *Shulhan Arukh, Yoreh De'ah*, part 208, 5.

²⁰ See introduction to vows in *Shulhan Arukh, Yoreh De'ah*, part 203.

²¹ Qoh. 5:4-5: "When you make a vow to God, do not delay fulfilling it; for he has no pleasure in fools. Fulfil what you vow. It is better that you should not vow than that you should vow and not fulfil it."

Some rabbis have started to use vows in a *qiddushin* ceremony to negate the gender imbalance of *qiddushin* in terms of the severity of infidelity.²² By having the man take on a prohibitive vow of monogamy, there is a more equivalent commitment of exclusivity because his prohibitory vow has *d'oraita* status. One formulation of this prohibitive vow is as follows:

Male:

I hereby vow that if you (feminine) give me this ring I will be forbidden to all other women for as long as we are married, just as you are forbidden to all other men by virtue of the law of *qiddushin*.

Female:

With my acceptance of this ring you are hereby sanctified to me through the vow that you have sworn.

Or:

Male:

I hereby vow that by accepting this ring from you I will remain exclusive to you so long as you are exclusive to me by virtue of the law of *qiddushin*.

Female:

With my acceptance of this ring you are hereby sanctified to me through the oath that you have sworn.

While the *qiddushin-nedarim* model creates a more equal commitment of exclusivity, and responds to some aesthetic elements of the ritual, a double standard remains. The children of an adulteress are legally considered bastards (*mamzerim*), who carry a permanent social stigma and cannot marry most other Jews, while children of an adulterer would not be stigmatized this way as a result of a husband violating his self-imposed *neder/shevu'ah* with an unmarried woman. It also still operates in the world of *qiddushin-gittin* because the *neder/shevu'ah* is dependent on the *qiddushin* being in effect.

A Vow of Intimacy

The following proposal takes the *qiddushin-nedarim* model one step further, and in some ways runs with this model in an entirely different direction. If there is already a (small) growing recognition in the halakhic world that *neder/shevu'ah* is a meaningful Jewish expression for how

²² Rabbi Richie Lewis has incorporated this into some weddings at which he has officiated.

a couple joins together, why not center the entire ceremony around this mechanism? It represents a shift from holding power over the other through acquisition (or more accurately unilateral acquisition) to voluntarily committing to each other. The fact that this mode has already been partly incorporated by some rabbis shows that it is an organic reflection of how some perceive marriage today.

For some the *neder/shevu'ah* model may resonate in more than one way. Jewish marriage between a man and woman is often analogized to the relationship between God and the Jewish people. This is not a legal consideration, but in biblical and rabbinic literature God and Israel's marriage is one of the most significant metaphors informing Jewish marriage rituals, which one should acknowledge wherever one is on the theological spectrum, and the metaphor has real-world implications for how Jewish marriage is implemented. There is more than one variation of this metaphor. In the more dominant metaphor, God takes the Jewish people to him as a groom takes a bride in a unilateral act of acquisition as some Jews sing every Friday night in the song *Lekha Dodi*: "may God rejoice on/over/about you [Israel] as a groom rejoices on/over/about a bride."²³ In this divine heterosexual parallel, the formative moment—or wedding day—was Sinai, where after leading His bride out of the place she grew up, God took Israel as a wife. The forcefulness of this act of acquisition is debated in various *midrashim*, perhaps the most famous of which is the story of God holding Mount Sinai over the heads of the Israelites, threatening destruction if they would not agree to receive the Torah.²⁴

There is a different description of the formative moment at Sinai, where the literary relationship between God and Israel was sealed as though it were a marriage. Throughout Talmudic literature, Israel's acceptance of the Torah is construed as taking on an oath or *shevu'ah*.²⁵ While often referred to in legal discussions, Sinai as *shevu'ah* carries broader implications for how one understands the relationship between Israel and its cultural heritage. By taking a *shevu'ah* at Sinai, the people of Israel declared their commitment as fully responsible adults, making a choice to be under obligation. This is also reflected in the famous recapitulation of the covenant in Ezek. 16:8, in which God and Israel are married: "I passed by you again and

²³ Some alter the wording slightly in order to emphasize mutuality: *Yasis itakh elokayikh ki-msos hatan 'im kalah* – May your God rejoice with you as a groom rejoices with his bride. See also T. Yoreh, *Humanist Prayer Omnibus* (New York: Modern Scriptures, 2014), 72-80.

²⁴ Shab. 88a.

²⁵ As is reflected in the phrase: "Obligated through a vow since Mount Sinai" (*mushba' ve-'omed me-har sinai*), and see for example Yom. 73:2.

looked on you; you were at the age for love. I spread the edge of my cloak over you, and covered your nakedness: I pledged myself to you and entered into a covenant with you, says the Lord God, and you became mine.” This literary relationship emphasizes mutuality and voluntary commitment, and though one may see God as merely a literary character, the metaphors employed to describe this relationship remain central in Jewish thought and writing. In a *neder/shevu‘ah* ceremony, two adults can voluntarily commit to each other, both as an expression of mutual devotion towards each other, and to highlight the strand of our tradition that inscribes our relationship to a code of ethics informed by Judaism in similar terms.²⁶

Though this paradigm may seem attractive, there are many aspects of this ceremony that need to be fleshed out. What exactly would the terms of the *neder/shevu‘ah* be? If circumstances required, how could mutual obligations end? Would ending the relationship require the other person’s consent? If yes, how was this any better than *qinyan*, except offering each partner the opportunity to abuse the other? If someone could end the relationship without the other’s consent, what would make the commitment serious? If sex outside of marriage is forbidden according to *halakhah*, would that make this *shevu‘ah* null and void? The discussions one may have about these concerns have the potential for being intense, and quite difficult. It may be good for everyone to talk through these issues very carefully and thoroughly before getting married. I do not think every ceremony should be contingent on having specific answers to these questions, but it may be very rewarding, and may serve to deepen relationship. Below I flesh out a ceremony that does answer some of these questions, though I acknowledge that these are not the only possible answers.

The *Neder/Shevu‘ah* of Monogamy and Contract

There are two options of what happens in the event of the relationship ending according to the *neder/shevu‘ah* partnership model. One is to have a court annul the *neder/shevu‘ah*. The other is to have a condition built into the *neder/shevu‘ah* that addresses circumstances under which living together is no longer desired or possible. While release from *nedarim/shevu‘ah* is theoretically a valid vehicle for ending the relationship, there are two reasons not to rely on this. First, it frames the process of ending the relationship as a violation. While divorce can be difficult and upsetting,

²⁶ Rabbi Shimon Brand offered the kernel of this idea in an oral communication with my spouse Aviva Richman.

traditional divorce is not viewed as a sin. Sometimes ending the relationship is the appropriate decision given the circumstances. Second, while there is general agreement on the possibility of release from *nedarim* (though there is some debate among early rabbis), there is much more resistance to *release from shevu'ah* as we related above. While ending the relationship should not be overly easy, it does not seem desirable to have to rely on a contingency legislated by later authorities which permits *release from shevu'ah* in extremely dire circumstances be a part of this model.

A way to address this is to include terms for the possibility of ending the relationship, if necessary, as conditions to the commitment itself. This accurately reflects the level of commitment desirable in a modern marriage of equals, a built-in safety mechanism enabling either side a way to get out of it if necessary.

Due to the severity of *neder/shevu'ah* one may decide to include only the most non-negotiable element of their partnership in the *neder/shevu'ah*; the commitment to be sexually exclusive. The ceremony offered below consists of two parts: a *neder/shevu'ah* of monogamy, made orally and in writing, and a contract that spells out more detailed obligations.

The oral component of the *neder/shevu'ah* made under a *huppah* (canopy) by both partners could be as follows:

Behold I vow that I will be forbidden to engage in sexual relations with all other people except for you.

And behold I swear to be [sexually] exclusive to you according to the terms that we articulated before witnesses.

The other responds:

Behold you are [sexually] exclusive to me by the power of the oath that you articulated.

As is clear from the language, the *neder* formulates the restrictive aspect of monogamy while the *shevu'ah* encompasses the prohibition to cohabit with others and the positive commitment to be sexually involved with one's partner. This formulation corresponds to the requirement for a *neder* to restrict something tangible, while a *shevu'ah* can be any positive or negative commitment.

As a starting point, this ceremony presumes that it is acceptable to have sexual relations without *qiddushin* as long as there is an understanding of the parameters of the relationship, as

demonstrated in Zvi Zohar's article on concubinage (*pilagshut*).²⁷ It also takes into account the Rambam's prohibition against random acts of sex, because it frames sexual relationship within a long term, exclusive commitment.²⁸ Therefore, one cannot invalidate the *shevu'ah* by saying it is a *shevu'ah* to commit a sin, i.e. sex without *qiddushin*.

It is clear from the sources that a vow/*shev'uah* is subject to any condition articulated at its inception. In this case, the condition spells out what happens in circumstances where living together is no longer feasible or desirable. Since this outlet is included in an original condition, there is no need to go through the process of release from *nedarim* in case of a need to end the relationship. All of these conditions are articulated in the written version of the *neder/shevu'ah*, which is signed by witnesses before the *huppah*.

The text of these conditions builds upon the first section of Harry Fox and Tirzah Meacham's contract and is used here with their permission.²⁹

The Written Formulation

We swear, with the knowledge of Rabbis: x, y, z

That we will be exclusive to each other for as long as we can live together in peace and happiness according to the conditions enumerated below:

1.

a. If one or both parties is not able to live together in peace and happiness with the other, s/he or they will declare this before a Jewish court (that acknowledges the validity of our vow and agreement that we have signed upon, including all the details of the contract and its implications for us and our heirs. For these purposes, the court should consist of no less than three rabbis or scholars) or if a court like this cannot be found the declaration should be made in a public gathering of ten witnesses (quorum).

b. After this declaration, both sides are obligated to meet with a counselor for an attempt at reconciliation for a period of six months, if there are no children, and a year if there are children.

c. After the period of counseling and attempt at reconciliation required above, if one or both parties still feels that s/he cannot live with the other in peace and happiness s/he or they should present a document that testifies to their attempt at reconciliation before the Jewish court or quorum of ten, or if this document is lacking, the court or quorum will decide if the attempt at reconciliation was enough and then at least one of the parties should

²⁷ Z. Zohar, "Unions according to Halakhah without *Huppah* and *Qiddushin*," *Akdamut* 17 (2006), 16-82 [Hebrew]. And see a critique of Zohar in the same journal: Y.H. Henkin: "What will then become of it? A Response to Zvi Zohar," *Akdamut* 17 (2006), 33-40.

²⁸ *Mishneh Torah, Hilkhot Ishut* 1:4, and see also *Mishneh Torah, Hilkhot De'ot* 3:2.

²⁹ See T. Meacham leBeit Yoreh, "Legal Religious Status of the Married Woman," *supra* n.9.

declare the declaration again before the court or quorum and both parties shall be released from the other.

2.

a. If one of the parties becomes ill, whether physically or mentally, and cannot be attentive to the other, or if one of the parties disappears for any reason and the other party does not desire to live in this situation, that party should declare their lack of desire to live in this situation before a court as described above.

b. After this declaration, the party that declared must wait one year if there are no children and two years if there are children for an attempt at recovery or locating the missing party.

c. After the period for attempt at recovery or locating the missing party that is required above, if one party feels that s/he cannot continue to live in this situation, s/he should present a document that testifies to the attempt at recovery/locating the missing party to a court or quorum of ten, or if this documentation is lacking the court of quorum may decide whether the attempt at recovery/locating the missing party suffices and then at least one of the parties should declare the declaration again before the court or quorum and both sides will be released from each other.

In a joint wish to seal our commitment we have sworn each to the other this oath of partnership. We are aware that one should not take vows lightly, as it says in *Kohelet*: “Better not to vow than to vow and not fulfill,” and the severity of this vow should be a guiding light for us all the days of our lives together.

Explanation of Conditions

The words “able to live together in peace and happiness” are only legally meaningful because of the details that follow. To protect against the possibility of one side abusing their power and forcing the other to remain in the relationship, either party has the power to initiate the end of the relationship unilaterally. To protect against one side simply walking out on the other, and to encourage serious thought before ending the relationship, there is a required period of reconciliation,³⁰ which is longer if then couple has young children. After the reconciliation period has elapsed, the couple must bring proof that they have attempted reconciliation. In case one party is extremely uncooperative and refuses to attend counseling sessions, the court has the prerogative to decide that enough of an attempt has been made even in the absence of documentation. If either party declares that they still cannot live with the other in peace and happiness, each is released from the other. Each individual’s prerogative to end the relationship may be mediated by a contract that spells out responsibilities to the other side that may still apply even when the relationship ends, such as financial obligations to children.

A similar possibility of release is spelled out for the circumstance of extreme illness or disappearance of one party. There is not an obligation to pursue release in any of these scenarios,

³⁰ Time periods for reconciliation are based on the Fox/Meacham contract.

but there is an option. In this case, documentation is required to ascertain that a sufficient attempt has been made at recovery or determining the whereabouts of the missing party.

Ideally, a Jewish court made of three rabbis or scholars who fully understand the details and ramifications of the *shevu'ah* and contract is required for these processes. Given that such a group may not always be easy to convene, there is an allowance for the separation process to occur in a public gathering of ten or more.

Conclusions

This proposal goes to the heart of the debate over halakhic innovation. How does one reconcile one's modern feminist value system with a legal corpus that is rooted in the patriarchy? If the Jewish legal system is to remain relevant and vibrant clearly it must innovate, The question is how fast and in what way. The wedding ceremony described in this paper offers a blueprint of how one may perhaps proceed. The approach taken is that one should not seek to put legal bandages on systems that are very problematic, such as *qiddushin*. Instead one should take alternative halakhic routes which, in the rich corpus of Jewish law, often exist. But when halakhic precedent is thin, this corpus may be supplemented by non-legal literary sources as well. The vow of intimacy I propose is rooted in *halakhah* but is also one the frameworks and metaphors offered in *aggadah* or *midrash* for understanding marriage. This ceremony is also informed by a modern value system, in fact I would argue that it goes a good deal farther than most Jewish ceremonies in this respect. The vows offered here can be made between any consenting adults regardless of their sexual orientation or gender. One hopes that others will engage with the arguments offered here and advance the dialogue around this vital life-cycle ceremony.