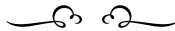


# The Choices of Marriage: One Couple's Attempt to Create an Egalitarian Jewish Wedding Ceremony within the Traditional Framework of *Kiddushin*

JILL JACOBS AND GUY IZHAK AUSTRIAN



When we decided to marry, we were determined that our wedding—like our lives—would be simultaneously grounded in *halakhah* (Jewish law) and egalitarianism. And so right away we found ourselves in a tough spot. As Jews who believe ourselves to be obligated to an ancient and ever-evolving tradition, we wanted our wedding to accord with our understanding of *halakhah*. Yet as feminists, we wanted our wedding to reflect a commitment and aspiration to an equal partnership between a man and a woman.

We knew it wouldn't be easy. The traditional formula through which Jewish marriage is enacted pivots on a man making a unilateral declaration and gift to acquire his intended wife. We wondered whether this framework could be reconstructed, or whether it was so incompatible with egalitarianism that we would need to start from scratch. Wanting to claim, rather than write ourselves out of, Jewish tradition, we decided to try to stay within the classical framework if at all possible.

The traditional marriage ceremony consists of two major parts: (1) *eirusin*, also known as *kiddushin* (betrothal), and (2) *nissu'in* (the marriage

## — The Choices of Marriage —

itself). The first of these sections consists of *birkat eirusin*, a blessing that acknowledges the biblical prohibition against sex with unmarried women; and the act of *eirusin/kiddushin* itself, in which the man gives the woman an object of value (usually a ring), and makes a verbal declaration of intent, in order to effect the marriage. Though this section is technically understood as betrothal, a couple that decides to cancel the marriage at this point in the ceremony would still need a *get*, a divorce document. *Nissu-in* consists of the *huppah* (marriage canopy), accompanied by the *sheva b'rakhot* (“seven blessings”), which place the individual couple’s marriage within the larger context of the redemption of the world.

We focused on the first part of the ceremony—*eirusin/kiddushin*—as these present the most difficulties for achieving an egalitarian halakhic marriage.

### *Birkat Eirusin*

The traditional text of *birkat eirusin* reads:

Blessed are You, Adonai our God, Sovereign of the universe, who has sanctified us with the commandments, and who has commanded us [i.e., men] concerning *arayot* [“forbidden sexual behavior”], and who has prohibited to us women who are betrothed [but not married] and who has permitted to us women who are married to us through *huppah* and *kiddushin*. Blessed are You, Adonai our God, who sanctifies Israel through *huppah* and *kiddushin*.

We felt that this blessing deserves its place in the ceremony because it speaks directly to the question of sexuality, a powerful and present factor in nearly all romantic partnerships. But the traditional text posed two problems for us. First, it addresses only a man’s obligations and assigns no sexual agency or autonomy to a woman. (This blessing reflects a time when betrothal and marriage might be separated by a period of a year or more, and reminds the man that he is not allowed to have sex prematurely with his intended.) Second, while we found the public acknowledgment that our marriage would involve a commitment to monogamy to be powerful, we did not agree with the assumption that only married, heterosexual sex is permitted, and we looked for a translation of *arayot* that affirms that

sex can be a positive element of consensual, respectful, and committed relationships even when there is no technical state of marriage.

We found that a number of early halakhic authorities also have problems, albeit of a different sort, with the formulation of *birkat eirusin*. A number of medieval rabbis notice that this blessing is unusual in that it refers to a prohibition, rather than to a positive commandment. Whereas virtually all other blessings acknowledge God as commanding us *to* do something, whether lighting candles, putting on *t'fillin*, or eating *matzah*, this blessing acknowledges that God has commanded men *not* to have sex with unmarried women. Presumably in response to the strangeness of *birkat eirusin*, Moses Maimonides proposes beginning the blessing by thanking God “who has separated us from *arayot*.” We decided to adopt this formula, which we found positive, rather than the traditional form of the blessing.

We also found significant debate over the final words of the blessing. Several early rabbis note that the Jewish people do not consider our sanctified relationship with God to rely *only* on *huppah* and *kiddushin*, and therefore end the blessing simply with the words “Blessed are You, Adonai our God, who sanctifies Israel.” Sensitive to the fact that many members of our community remain unmarried, either by choice or not, we selected this more general ending, which leaves room for many ways of achieving sanctity.

These two modifications do not, of course, address the central problem of this blessing—namely, the unequal framing of monogamy as a man’s action alone. In this regard, we found no guidance from traditional sources, but took the very existence of multiple versions of *birkat eirusin* as license to adjust this blessing to reflect the monogamous and egalitarian relationship into which we saw ourselves entering. Adapting a version of the text written by our friends Rabbi Claudia Kreiman and Rabbi Ebn Leader for their own wedding, we specified that the process of *huppah* and *kiddushin* would permit each of us equally and exclusively to the other, without making broad statements about proper sexual relations for other people. The final version of *birkat eirusin* that we used at our wedding ceremony and the English translation that we printed in our program read:

*Barukh attah Adonai, elobeinu melekh ha-olam, asher kidd'shanu b'mitzvotav v'hivdilanu min ha-arayot, v'hittir zeh*

## — The Choices of Marriage —

*la-zo v'zo la-zeh al y'dei huppah v'kiddushin. Barukh attah Adonai, m'kaddeish yisra-el.*

Blessed are you, Adonai our God, Sovereign of the universe, who has sanctified us with the commandments and has separated us from unethical sexual behavior and has permitted each of these partners to the other by means of *huppah* and *kiddushin*. Blessed are You, Adonai, who sanctifies Israel.

### *Kiddushin*

In rewriting the traditional *kiddushin* ceremony, we sought changes that would satisfy halakhic criteria for enacting a valid marriage while addressing the following moral and ethical problems with the traditional ceremony:

1. *Kiddushin* is a unilateral action performed by a man upon a passive woman.
2. In using the language of *kiddushin*, a man may be understood to acquire rights to his wife as property.
3. The woman's consent is required, but passive; it is inferred from her silent acceptance of the ring.
4. Marriage takes effect upon the woman's acceptance of the ring, with any other declarations or statements made by her superfluous and lacking any legal performative force.

The term *kiddushin*, though typically translated as “sanctification,” comes from the root *k-d-sh*, which usually generates words related to the concept of setting things aside; by the act of *kiddushin*, a man establishes exclusive sexual rights to his wife. Traditionally, the man gives the woman a ring and says *harei at m'kuddeshet li b'taba-at zo k'dat moshe v'yisra-el*, “Behold, you are sanctified [that is, set aside] for me with this ring according to the laws of Moses and Israel.” The woman must understand what is happening, and must accept the ring in order for the marriage to go into effect; she may not be tricked into *kiddushin*.

There is a debate, going back to the Talmud, about whether *kiddushin* is more similar to the acquisition (*kinyan*) of property, or the setting aside (*hekdeish*) of donations for God when the Temple stood in Jerusalem.<sup>1</sup> According to either explanation, however, *kiddushin* is a one-way process

performed by and for the man. In explaining why a man must initiate *kiddushin*, the Talmud even offers the following analogy: “If a man loses an object, which goes looking for which? The man goes looking for the lost object” (*BT Kiddushin* 2b). The possibility of a woman pursuing a man is as impossible, according to this text, as a lost object going in search of its owner.

Furthermore, according to traditional definitions, a woman may not declare a man *m’kuddash* (set aside) exclusively for her, as polygyny (though not polyandry) was permitted in Ashkenazic communities until 1000 C.E., and until even later in some Sephardic communities. Within a polygamous society, a man cannot be set aside for one woman so long as he retains the legal right to marry a second wife. Although this is no longer the case, many traditionalists continue to follow this line of reasoning, and therefore maintain the Talmud’s explicit prohibition of parallel declarations of *m’kuddeshet/m’kuddash*.

Over the past thirty years, the Jewish feminist movement has challenged us to recraft the Jewish marriage ceremony to reflect an understanding of marriage as a partnership between equals. We remain in the experimental phase of this exploration, as there is not yet one standard form of the Jewish marriage ceremony with which all couples committed to egalitarianism feel comfortable.

The simplest and most popular option, used in most Reform and Reconstructionist (and in some Conservative) communities, is for the man and the woman each to give the other a ring, and for each to declare the other to be *m’kuddash/m’kuddeshet*. This parallel solution maintains the familiar liturgical formula, and thus preserves the recognizable (and therefore powerful) ritual moment, while also acknowledging that Jewish marriage today constitutes a mutual commitment by each party to have an exclusive relationship with the other. Given that a woman’s consent has always been necessary for *kiddushin*, and given that most Jewish women today would not consent to enter a polygamous marriage, we can say that it now *does* make sense for a bride to declare her groom to be *m’kuddash*—that is, set aside exclusively—to her.

For us, this solution, though elegant, was not sufficient, as it leaves unaddressed two core problems of the traditional ceremony. First, in preserving the traditional language, it leaves in place the connotation of *kinyan*, the idea

## — The Choices of Marriage —

of marriage as an acquisition (albeit mutual) of property. Second, from a Jewish legal perspective, the marriage would take effect as soon as Guy declared Jill to be *m'kuddeshet* to him. Jill's parallel declaration would then serve as a statement of intent, but would not carry any legal weight.

Many couples have experimented with foregoing the framework of *kiddushin* entirely. Some follow Rachel Adler's *B'rit Ahuvim* ceremony, which revives an ancient ritual of forming a business partnership (*shutafut*) as a model for jointly forming a marriage partnership; others have suggested a double *neder* (vow) ceremony, in which each partner makes an independent vow not to have sex with anyone but his or her partner. Both of these models achieve real gender equity: both partners' participation is necessary for the marriage to go into effect, and the two partners enter the marriage on equal terms. Neither of these forms of marriage constitutes *kiddushin*, however, and the dissolution of a marriage established according to one of these models might not require a *get*.

While drawn to these inherently egalitarian options, we remained committed to reconstruct *kiddushin* if at all possible, and thereby to affirm our position both as legitimate inheritors of Jewish tradition and as shapers of the continually evolving legal system.

We also wanted, as much as possible, to preserve the powerful ritual moment in which the marriage becomes official. We therefore sought to develop a new form of *kiddushin* that would enable us to make clear our intentions to enter into an equal partnership that would take effect only with both of our participation, and that would feel, in the words of Rachel Adler, "as if it was always like this."<sup>2</sup>

Since the language of *kiddushin* has often been understood as a declaration of acquisition, we decided first to seek alternative language for our declarations to each other. This step proved easy, as both the Talmud and later commentaries offer multiple versions of the formula for *kiddushin*. The man may say "you are my wife," "you are special to me," troublingly, "you are my purchase," or "any other language that will be understood as *kiddushin* in that time and place" (*BT Kiddushin* 6a; *MT Hilkhot Ishut* 3:6–8). The man may even be able to say nothing at all. As long as the intended bride accepts the betrothal gift and understands that she is accepting a marriage proposal, and the community as a whole recognizes that *kiddushin* is taking place, the specific form of the utterance is flexible.

We took this permission to vary the particular language of *kiddushin* as an opportunity to articulate the nature of the relationship to which we were committing ourselves. We therefore each said to the other, “By your consent and your will, be my life partner.” This phrasing reflects two major changes from the standard form of the declaration. Most obviously, we elected to use the language of “life partner,” as this phrase most accurately describes the marriage to which we aspire. Given that we had spent months discussing marriage, that our friends and families had come from all over the world to celebrate with us, and that the caterer was plating the vegetarian egg rolls even as we stood under the *huppah*, we felt confident that everyone present would understand that a wedding was taking place.

In addition, we chose to frame the declaration as an explicit request, rather than use the phrase “behold, you are,” since the latter casts the recipient of the ring into a more passive position. We therefore requested of each other, *hayiy/heyeh li*, “be my [life partner],” thereby requiring the consent of the other.

The more difficult question was how to specify that the marriage would go into effect only when both of us had taken some action. We turned again to the Talmud, which offers a model of *kiddushin al t'nai*—that is, *kiddushin* that goes into effect only when some condition has been met. The talmudic examples of *kiddushin al t'nai* all involve the man making some condition—for example, that the woman must give him some amount of money, or that she or her father must take some action in order for the *kiddushin* to be considered complete.

Based on this idea, we crafted a double *t'nai* ceremony, in which each of us stipulated that the *kiddushin* would go into effect only when the other accepted the terms of the *k'tubbah*. Our *k'tubbah*'s form and content are fully egalitarian, using Rabbi Gordon Tucker's ritual formulations, along with text that we added in which we describe our shared responsibilities to create an egalitarian partnership. Thus, our *kiddushin* inscribes within itself the structure of *shutafut*.

And so, on August 5, 2007, Guy said to Jill:

*Bi-r'shuteikh u-vir'tzoneikh, kabb'li et tabba-at zo v'hithayy'vi  
b'khol hovot ha-k'tubbah. V'al m'nat zeh, hayiy li l'shutafat  
hayyim, k'dat mosheh v'yisra-el.*

## — The Choices of Marriage —

With your permission and according to your free will, accept this ring and obligate yourself to all of the obligations laid out in the *k'tubbah*. On these conditions, be my life partner according to the laws of the Jewish people.

Per Guy's declaration, the *kiddushin* would not go into effect until Jill had accepted both the ring and the terms of the *k'tubbah*. Rather than fulfill these conditions right away, thereby completing the *kiddushin*, Jill made some conditions of her own:

*Akabbeil et tabba-at zo im kol ha-t'na-im ha-eilleh, al m'nat she-attah t'kabbeil et tabba-at zo v'tit-ḥayyeiv b'khol ḥovot ha-k'tubbah. V'im kein, beyeiv li l'shutf ḥayyim, k'dat moshe v'yisra-el.*

I will accept this ring with all of the accompanying conditions on the condition that you accept this ring and obligate yourself to all of the obligations laid out in the *k'tubbah*. If so, be my life partner according to the laws of the Jewish people.

At this point, the *k'tubbah* was read aloud in Hebrew and English under the *huppah*, so that the community could hear the egalitarian terms of our partnership.

Guy then took hold of the *k'tubbah* and accepted the ring from Jill. Seeing that her condition had been met, Jill also took hold of the *k'tubbah* and accepted a ring from Guy. We specified within our program book that we gave these rings as separate gifts, and we also made sure to pay slightly different prices for the rings, lest an equal exchange appear to cancel out the gifts altogether. Only once both of us had actively accepted the stated conditions did the *kiddushin* go into effect.

We then had the witnesses sign the *k'tubbah* under the *huppah*. In signing the *k'tubbah*, the witnesses were attesting that they had seen the *kiddushin* take place. This, in fact, is the predominant Sephardic custom. While Ashkenazic Jews (which we are) generally sign the *k'tubbah* before the ceremony—even though the *kiddushin* has not yet happened—we wanted to make clear that the acceptance of the *k'tubbah* was an essential part of the process.



### *Continuing the Process of Innovation*

The language that we used demonstrated our commitment to establishing an egalitarian partnership and to ensuring mutual, active consent to the terms of this partnership. The double *kiddushin al t'nai* allowed us to specify our intent that the *kiddushin* would go into effect only when both of us had accepted the relevant conditions.

Yet we know that our ceremony does not solve all of the problems inherent to the Jewish wedding ritual, nor will it suit all couples.

A strict traditionalist watching the ceremony would argue that *kiddushin* took place when Guy gave Jill a ring and when Jill consented to accept this ring, and that our declarations of intent were superfluous. On the other hand, had we allowed that traditionalist to rule on the legality of our marriage, we could not have worked with our wonderful *m'sadderet kiddushin*, Rabbi Shira Stutman, and we could not have had a woman sign the *k'tub-bah* as a witness. It is our opinion that our ceremony is valid from a progressive halakhic perspective.

We also recognize that our ceremony seeks to solve problems of patriarchy and sexism in *kiddushin* between a man and a woman, and therefore does not necessarily address the particular needs of same-sex couples. Same-sex halakhic marriages could innovate other variations on *eirusin/kiddushin*, as well as in the *sheva b'rakhot* of *nissu-in*. We are delighted that many rabbis and couples have been working through these possibilities in recent years.

For the two of us, the solution that we found represented the best means of declaring our egalitarian commitments within the context of a halakhic ceremony, and of claiming our place within the process of halakhic change. We know that other couples will find other variations that work for them, and we look forward to more innovations, experiments, and vegetarian egg rolls at our friends' weddings. *L'hayyim!*<sup>3</sup>

### NOTES

1. Readers of this journal will find this specific issue discussed at length by Gail Labovitz in two essays: "The Language of the Bible and the Language of the Rab-

— The Choices of Marriage —

bis: A Linguistic Look at *Kiddushin*, Part 1” (*Conservative Judaism* 63:1 [Fall 2011], pp. 25–42), and “He Forbids Her to All: A Linguistic Look at *Kiddushin*, Part 2” (*Conservative Judaism* 63:2 [Winter 2011–2012], pp. 27–48).

2. Rachel Adler, *Engendering Judaism* (Boston: Beacon Press, 1999), p. 197.

3. We would like to thank Rabbis Jane Kanarek and Aryeh Cohen for their generous assistance with our ceremony and with this article.

---

*Rabbi Jill Jacobs is the Executive Director of Rabbis for Human Rights—North America. Her most recent book is Where Justice Dwells: A Hands-On Guide to Doing Social Justice in Your Jewish Community, published by Jewish Lights in 2011.*

*Guy Izhak Austrian is a rabbinical student at the Jewish Theological Seminary. He expects to be ordained in 2013.*