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## Is Kinyan (Purchase) of Woman in the Marriage Document Only a Metaphor?

Zusammenfassung:

Biblische Metaphern, die sich mit männlicher Dominanz, der Unantastbarkeit der Familie, und Frauen beschäftigen, die sich zum Wohle der Gemeinschaft in ihr Schicksal ergeben müssen, finden ihre konkrete Entsprechung im jüdischen Gesetz. Das Grundgesetz, das sich auf die Ehe anwenden lässt, wird *kinyan* (Akquisition) genannt. Ein Akt, bei dem eine Person das Recht auf Besitz oder Gebrauch im Tausch gegen eine (meist finanzielle) Entschädigung erlangt. Dieses Konzept ist zentral für die *ketubah*, den Heiratsvertrag.

Die problematischen Aspekte dieser Heiratszeremonie haben ihre Wurzeln sowohl in biblischen Quellen wie auch in den Midraschim. Die Verwendung einer Metaphorik die vom Männlichen dominiert wird ist nicht harmlos; dies zum Beispiel dann, wenn Gott als Ehemann wahrgenommen wird, der „sein Volk“ kontrolliert. Als Konsequenz liegt es daher in der Natur der Dinge, dass die Welt an sich als von Männern dominiert verstanden wird.

### The Marriage Document (The Ketuva Text)

On the \_\_\_\_\_ day of the week, the \_\_\_\_\_ day of the month \_\_\_\_\_ in the year five thousand seven hundred and \_\_\_\_\_ since the creation of the world, the era according to which we reckon here in the city of \_\_\_\_\_ that \_\_\_\_\_ son of \_\_\_\_\_ said to this virgin (*betulta* virgin is usual, or substitute woman, bride, divorcee, widow, convert, or other, as appropriate) \_\_\_\_\_ daughter of \_\_\_\_\_. “Be my wife according to the practice of Moses and Israel, and I will cherish, honor, support and maintain you in accordance with the custom of Jewish husbands who cherish, honor, support and maintain their wives faithfully. And I here present you with the marriage gift (*mohar*) of virgins (*betulechi*), (two hundred) silver *zuzim*, which belongs to you,

according the law of Moses and Israel; and I will also give you your food, clothing and necessities, and live with you as husband and wife according to universal custom.” [His level of obligation varies to some degree with his income and her background; a rich man has to give his wife more than a poor man has to give his wife. Likewise, her rights to sexual encounters vary with his profession; an idle man has more responsibility than a man who works away from home for lengthy periods.] And Miss \_\_\_\_\_, this virgin (*betulta*) consented and became his wife. The trousseau that she brought to him from her (father's) house in silver, gold, valuables, clothing, furniture and bedclothes, all this \_\_\_\_\_, the said bridegroom accepted in the sum of (one hundred) silver pieces, and \_\_\_\_\_ the bridegroom, consented to increase this amount from his own property with the sum of (one hundred) silver pieces, making in all (two hundred) silver pieces. And thus said \_\_\_\_\_, the bridegroom: “The responsibility of this marriage contract (*ketuvta*), of this trousseau (*nedunya*), and of this additional sum, I take upon myself and my heirs after me, so that they shall be paid from the best part of my property and possession that I have beneath the whole heaven, that which I now possess or may hereafter acquire. All my property, real and personal, even the shirt from my back, shall be mortgaged to secure the payment of this marriage contract (*shtar ketuvta*), of the trousseau, and of the addition made to it, during my lifetime and after my death, from the present day and forever.” \_\_\_\_\_, the bridegroom, has taken upon himself the responsibility of this marriage contract, of the trousseau and the addition made to it, according to the restrictive usages of all marriage contracts and the additions to them made for the daughters of Israel, according to the institution of our sages of blessed memory. It is not to be regarded as a mere forfeiture without consideration or as a mere formula of a document. We have followed the legal formality of symbolic delivery/ritual acquisition (*kinyan*) between \_\_\_\_\_ the son of \_\_\_\_\_, the bridegroom and \_\_\_\_\_ the daughter of \_\_\_\_\_ this (virgin), and we have used a garment legally fit for the purpose, to strengthen all that is stated above, and everything is valid and confirmed.<sup>1</sup> [The usual method is *kinyan sudar*, in which the groom gives an object of some kind to the witnesses, and in so doing, accepts upon himself the obligations he has specified.]<sup>2</sup>

Male God-language is not innocuous: metaphors matter! In 1995 Rosalind Gill wrote: “We have known for a long time that language is not a neutral, descriptive medium but is deeply implicated in the maintenance of power relations.”<sup>3</sup> Religious symbols are chosen carefully to communicate its values to the society and help the community to understand itself and its conception of the world. As Mary Daly pointed out long ago, when God is perceived as a father or a husband ruling and controlling “his” people, then the “nature of things” and the “divine plan”, and even the “order of the universe”, will be understood to be male dominated as well.<sup>4</sup> Metaphors are not benign. Should we be eliminating those, which are malignant? An example of a malignant metaphor is that of *kinyan*, purchase or acquisition of the bride in the Jewish marriage contract, the *ketuva*.

In the Bible there is no marriage ceremony as we understand it today. A man simply “takes” (*lakach*) a woman. For instance in Genesis 24:67 Isaac “took Rebecca and she became his wife”. Since the man’s family gives a gift, referred to as *mohar* (Genesis 22:17 and 34:12) to the woman, it appears that this is part of the process of getting a wife. The groom’s family made another marital payment to that of the bride. The husband is also referred to as *ba’al* (master or owner) which implies ownership and property. The word *kanah*, “to purchase” or “to acquire”, was used in Ruth 4:10 when Boaz married Ruth. Once a woman is married her husband has exclusive rights to her sexuality. It is presumed that he “buys” her virginity and if the husband claims that she is not a virgin anymore, there is a procedure to determine if the accusation is true in Deuteronomy 22:13–21.

<sup>13</sup> A man marries a woman and cohabits with her. Then he takes an aversion to her <sup>14</sup> and makes up charges against her and defames her, saying, “I married this woman; but when I approached her, I found that she was not a virgin.” <sup>15</sup> In such a case, the girl’s father and mother shall produce the evidence of the girl’s virginity before the elders of the town at the gate. <sup>16</sup> And the girl’s father shall say to the elders, “I gave this man my daughter to wife, but he has taken an aversion to her; <sup>17</sup> so he has made up charges, saying, ‘I did not find your daughter a virgin.’ But here is the evidence of my daughter’s virginity!” And they shall spread out the cloth before the elders of the town. <sup>18</sup> The elders of that town shall then take the man and flog him, <sup>19</sup> and they shall fine him a hundred [shekels of] silver and give it to the girl’s father; for the man has defamed a virgin in Israel. Moreover, she shall remain his wife; he shall never have the right to divorce her. <sup>20</sup> But if the charge proves true, the girl was

found not to have been a virgin,<sup>21</sup> then the girl shall be brought out to the entrance of her father's house, and the men of her town shall stone her to death; for she did a shameful thing in Israel, committing fornication while under her father's authority. Thus you will sweep away evil from your midst.

Rabbinic texts built on these biblical texts in creating the model for today's marriage ceremony.

In this paper I hope to show that the problematic aspects of today's Jewish marriage ceremony, in which a husband acquires a bride, has its roots in both biblical and midrashic sources and that the mindset that results is toxic to Jewish women. The *ketuva* is the marriage contract and it states that the woman is acquired (in Aramaic, *nikneyt*), with the root of the word being *kanah*, bought or purchased. In the Mishnah it is written that, "the woman is acquired [*nikneyt*] ... by money, or by document or by sexual intercourse" (*M Kiddushin 1:1*).

Many have argued that although the *ketuva* is evidence that the woman is "acquired" in marriage, she still retains important rights. However, according to Gail Labovitz, it is *kinyan* rather than the *ketuva*, which is legally constitutive of marriage, for the woman does not receive her *ketuva* until after she has been "acquired" in marriage. So although the woman is protected by the *ketuva*, it does not change the ownership model of marriage.<sup>5</sup> She points out that because women are associated with the property of the male householder, rabbis can use slaves to think and reason about wives, women, marriage and divorce. Thus divorce in rabbinic Judaism, and some strands of modern Judaism, is the process of undoing the husband's ownership. Rabbis can use the analogy of freeing a slave since divorce is a unilateral act of the husband.<sup>6</sup> Labovitz "persuasively disputes earlier apologetic characterizations of rabbinic thought and legislation [which claim to expand] the freedom and autonomy of women".<sup>7</sup> She asserts in her book that the terminology of *kiddushin* does not change the unilateral nature of the act in any way, and to prove this matter, she points to the many rabbinic sources that explore the terminology of *kiddushin* through an analogy to *hekdesh*, which is the dedication of property to God. Thus the man has the right to sexual exclusivity, which she does not have – since all these societies practiced polygamy, at least until around 1000 C.E.

He has control over the use of the property that she brings to the marriage (even though she has the formal title and can expect to get the property or its value back if they get divorced); he has control over her earnings during the marriage; and finally he has the right to end the relationship by divorcing her.<sup>8</sup>

Tirza Meacham agrees with Labovitz and goes one step further: “Rhetoric has been used to misrepresent the acquisition of women, by referring to *kiddushin* as a holy act and connecting to it concepts of *kedusha* (holiness) and the stability of the Jewish family, community and halakhic Judaism.” She writes that “the acquisition of human beings should never be dignified by such concepts as ‘sanctification’ or ‘marriage’. Just as we would not dignify the institution of slavery by making claims of benevolent mastery and protection of the weak and disadvantaged, so too, we should avoid creating euphemisms around an institution which holds thousands of women worldwide as prisoners.”<sup>9</sup>

In contrast, Judith Hauptman writes that: “The move away from marriage as a purchase is borne out by the Mishnah’s terminology. The term *kinyan* (purchase) ... is superseded in most instances by the term *kiddushin* ... the root of which is K-D-SH [קדש] meaning holy or set aside. Marriage is an arrangement in which a man sets aside a woman to be his wife ... [Thus] marriage has now been infused with a sense of sanctification.”<sup>10</sup> And this state too, can only be dissolved by divorce. Hauptman argues that the *ketuva* document gives women more personhood than in biblical literature. She evaluates “the rabbinic system from a dynamic rather than a static perspective” and while acknowledging that the rabbis upheld patriarchy in Judaism, she argues that over the course of time they enacted legislation that was “helpful to women”.<sup>11</sup>

All that Hauptman has written may be true in the legal sense, but Judith Wegner answers the question posed in her title: Are women in the mishnaic system “chattel or person”? She writes that the Mishnah treats women as chattel under some circumstances and under other circumstances as full persons. For Wegner, the key is “patriarchal control over female reproductive functions”. In her discussion of mishnaic law expansion on “Scripture’s Taxonomy of Women”, she argues that the Mishnah rules that the “wife’s sexuality [is] the husband's property”.<sup>12</sup> When the man does not have a right to this function, the woman is an autonomous human being; when he does have this right she is “sexual chattel” with a market value of 200 *zuz* if she is a virgin. The father owns the daughter’s sexuality and if she is damaged goods, the shame is his, not hers [see *Mishnah Ketubot* 3:7]. Wegner also points to the woman’s lack of agency in the wedding ceremony, for in the traditional format, the “man recites a formal declaration to which the woman makes no reply” [*Mishnah Kiddushin* 2:3]. Of course the law does require her consent!<sup>13</sup>

I tend to agree that what actually takes place in the marriage ceremony is the act of acquisition, or *kinyan*, which is legally similar to the act of acquiring slaves or

property with its implications for the inequality of the woman. The bride agrees to the marriage by accepting the *kiddushin* money, which is symbolized by the ring. She stands there quietly, unlike the groom, who promises before witnesses to take care of the bride, gives her a ring and breaks the glass. The husband is active, she is passive. This theme is also picked up in the non-legal narrative material, namely the midrash.

It is time to take a look at the sources themselves. I have put them in chronological order, starting with the Torah, then the Ketuvim, and finally the Midrash.

### **The Biblical Origin of *kinyan***

The basic halakhic concept applying to marriage is *kinyan* [acquisition], an act in which a person obtains rights of ownership, or use, in exchange for monetary (or other) payment. This concept is central in the *ketubah*, the marriage contract.

The idea of *kinyan*, goes all the way back to Eve, who, when she gave birth to Cain, said, I created (made, gained) a man with the help of God (קָנִיתִי אִישׁ אֶת ה'; Genesis 4:1). Before this, when Adam “gave birth” to Eve, it was said of her, from man, this thing was taken (כִּי מֵאִישׁ לָקַחָהּ זָאת) (Genesis 2:23). Thus the concept of purchase, ownership and the taking and consideration of a woman as object (*zot*) (even though in this case it was the man’s rib) are available for future use.

In Exodus 20:13 we are told: “You shall not covet your neighbor’s house: you shall not covet your neighbor’s wife, or his male or female slave, or his ox or his ass, or anything that is your neighbor’s.” In Exodus 21:22 it is written: “When men fight, and one of them pushes a pregnant woman and a miscarriage results, but no other damage ensues, the one shall be fined according as the woman’s husband [*ba’al ha-ishah*] may exact from him, the payment to be based on reckoning.” Thus the husband is not only owner of his wife; he is also the owner of her pregnancy. In Exodus 21:28 the word for husband, *ba’al*, implies ownership as well as lordship, in the case of the owner of the ox who gores a person to death. A price of virginity is paid to the father of the “bride” in both Genesis and in Exodus:

“Then”, Shechem said to her father and brothers, “do me this favor, and I will pay whatever you tell me. Ask of me a bride-price ever so high, as well as gifts, and I will pay what you tell me; only give me the maiden for a wife” (Genesis 34:11-12).

“If a man seduces a virgin for whom the bride-price has not been paid, and lies with her, he must make her his wife by payment of a bride-price. If her father refuses to give her to him, he must still weigh out silver in accordance with the bride-price for virgins” (Exodus 22:15-16).

The husband’s right to perform sexual intercourse, is called *liv’ol* [to take what is one's property] and the wife's status of "married woman" is referred to as *be’ulat ba’al* [i.e., she belongs to the owner by virtue of his having her]. This is a continuation of the verbs *lakach* [to acquire] and *ba’al* [to possess] used in Deuteronomy 24:1 to describe this act:

“A man takes a wife [*yikach*] and possesses her [*be-alah*]. She fails to please him because he finds something obnoxious about her, and he writes her a bill of divorcement, hands it to her, and sends her away from his house.”

Thus when she marries, the father's property rights are transferred to the husband. When she is divorced, the husband renounces his right to his (sexual) use of the property and announces that she is “now permitted to any man”. The use of *ba’al* to denote husband of course raises linguistic concerns because of its primary meanings of owner and master.

### *Hosea*

Hosea is the first prophet to describe God's relationship to Israel in metaphorical terms as a marriage.<sup>14</sup> Such a marriage metaphor is not found in the literature of any other ancient religion beside Israel's. Only the Hebrew God alone was described as husband and lover and only the people of Israel was described as a bride or wife. Hosea’s protagonist is himself, the husband who casts out his wife for being unfaithful to him and then takes her back – with the understanding that “she” will behave. God, not Ba’al, is Israel’s husband and lover and He demands complete loyalty of his people. The covenant between God and Israel made at Mount Sinai is a marriage; idolatry, which breaks the covenant, is adultery. This metaphor is developed in Hosea 2 when the prophet/God rebukes his wife/people for acting unfaithfully.

<sup>4</sup> Rebuke your mother, rebuke her – for she is not my wife and I am not her husband – and let her put away her harlotry from her face and her adultery from between her breasts.

He threatens to punish her if she continues to misbehave.

<sup>5</sup> Else will I strip her naked and leave her as on the day she was born: And I will make her like a wilderness, render her like desert land, and let her die of thirst.

He reproves her for thinking that other men/gods can supply her needs better than Him:

“I will go after my lovers, who supply my bread and my water, my wool and my linen, my oil and my drink.”

But for this she will be punished severely:

<sup>8</sup> Assuredly, I will hedge up her roads with thorns and raise walls against her, and she shall not find her paths. <sup>9</sup> Pursue her lovers, as she will, she shall not overtake them; and seek them as she may, she shall never find them.

And then she will come to the full realization that she is better off with her first husband/God.

“I will go and return to my first husband, for then I fared better than now.” <sup>10</sup>  
And she did not consider this: It was I who bestowed on her the new grain and wine and oil; I who lavished silver on her and gold – which they used for Baal.

Yet nothing she does can save her from the anger of God for the first betrayal:

And none shall save her from Me, <sup>13</sup> and I will end all her rejoicing: Her festivals, new moons, and Sabbaths – all her festive seasons. <sup>14</sup> I will lay waste her vines and her fig trees, which she thinks are a fee she received from



her lovers; I will turn them into brushwood, and beasts of the field shall devour them.

Like a suspicious husband, God cannot tolerate unfaithfulness, even when the people come back to Him:

<sup>15</sup> Thus will I punish her for the days of the Baalim, on which she brought them offerings; when, decked with earrings and jewels, she would go after her lovers, forgetting Me – declares the Lord.

Yet, as in the cycle of violence, that is well known, God takes her back and promises to be a good husband and provider:

<sup>16</sup> Assuredly, I will speak coaxingly to her and lead her through the wilderness and speak to her tenderly. <sup>17</sup> I will give her her vineyards from there, and the Valley of Achor as a plow land of hope. There she shall respond as in the days of her youth, when she came up from the land of Egypt.

And once they have made up (or rather once he has decided to let her come back) and he has given her gifts, he promises her a marriage on his terms. One *can* argue that by using the marriage metaphor we are allowed a glimpse at the compassionate side of God. Because of the intimate relationship, God is more accessible to His people. Not only do we have descriptions of an intimate relationship with God, but also, we have allusions to the idyllic, pre-expulsion relationship of equality between God and humanity.

<sup>18</sup> And in that day – declares the Lord – you will call [Me] *Ishi*, and no more will you call Me *Baali*. <sup>19</sup> For I will remove the names of the Baalim from her mouth, and they shall nevermore be mentioned by name. <sup>20</sup> In that day, I will make a covenant for them with the beasts of the field, the birds of the air, and the creeping things of the ground; I will also banish bow, sword, and war from the land. Thus I will let them lie down in safety. <sup>21</sup> And I will espouse you forever: I will espouse you with righteousness and justice, And with goodness and mercy, <sup>22</sup> and I will espouse you with faithfulness; then you shall be devoted to the Lord.

However, unlike the relationship between Adam and Eve, the relationship between God and Israel is one-sided. God would like the uncomplicated pre-expulsion relationship, before the people “knew” [*yada*] about choice. God promises the returning nation an intimate covenantal relationship with Him despite the fact that knowledge [*da’at*] was the reason Adam and Eve were punished (see Genesis 3). When God decides to espouse Israel forever with faithfulness, the people will “know” [*yada*] only God. If Israel wants to know more than just God, if “she” wants to take fruit from the tree again, the implication is that she will again be expelled from the Garden of Eden, stripped naked and left as on the day she was created – with nothing (Hosea 2:5). God is telling Israel/Gomer that she can either be intimate with Him (her husband) or with other gods/lovers but not with both of them at the same time. She can have knowledge of good and evil from Him or from others. If she chooses others, He will destroy her. So despite the potential glimpse of a compassionate God, His covenant is accessible to His people only on His own terms. God's ownership is clear. The people/women who respond, who are exhausted by the previous abuse and whose identity is negative (*lo ruhamah* and *lo ammi*) passively respond to God when he takes them back.

<sup>25</sup> I will sow her in the land as My own; and take Lo-ruhamah back in favor; and I will say to Lo-ammi, “You are My people”, and he will respond, “[You are] my God”.

### *Song of Songs*

Many feminists consider the mutuality expressed in the *Song of Songs* between the male and female lovers to be redemptive. Ilana Pardes contrasts the patriarchal marital model in Hosea with the anti-patriarchal model of love in the *Song of Songs*. She writes that the *Song* could have been made to function as a counter-voice to the misogynist prophetic degradation of the nation. It could offer an inspiring consolation in its emphasis on reciprocity. For a change, the relationship of God and His bride relies on mutual courting, mutual attraction, and mutual admiration, and thus there is more room for hope that redemption is within reach.<sup>15</sup>

Rachel Adler, in particular, has used the *Song of Songs* to demonstrate that an egalitarian “mutuality” between two sexual partners is possible, in contrast to many Biblical and Talmudic sources that portray normative sexuality as one of male dominance over women.<sup>16</sup>

In my previous work I pointed to the Song of Songs as an antidote to the battering metaphors of Hosea 2 and wrote in a footnote, that it “is probably the only completely non-sexist account of a relationship between a man and a woman”.<sup>17</sup>

Fokkelien Van Dijk Hemmes argued about the intertextuality between the texts of Hosea 2 and the Song of Songs, and suggested that we replace “the quotations back into the love songs from which they were borrowed, [so that] the vision of the woman in this text is restored”.<sup>18</sup>

The Orthodox feminist perspective is to co-opt the Song of Songs and to look at “the aggadic sources that expound upon it [to] provide a different perspective on the role of the bride at the *chuppah*”.<sup>19</sup> The *aggadah* does this by understanding the book as “an allegory for the loving relationship between the nation of Israel and God, in which Israel is portrayed as the bride and God the groom”. Karen Miller Jackson points to Chapter 4 and quotes the bride singing out to her husband: “Awake O north wind, and come south; blow upon my garden, so that the smell of the spices may flow out. Let my beloved come to *his* garden and eat from his choicest fruit” [original italics]. Miller Jackson recognizes the problematic of the verse, and quotes Rabbi Hanina who radically reinterprets this verse by saying that “the Torah teaches you appropriate behavior, that the *chatan* should not enter the *chuppah* until the *kallah* gives him permission to enter ...”.<sup>20</sup> She uses this reading to show that since the “consent of the *kallah* must be granted before the wedding ceremony in the *chuppah* begins”, the symbolism has been changed and the tradition is “no longer about the transfer of the woman from one man’s space to another’s, but is rather representative of the voice of the *kallah*.” She thus concludes (as have many before her) that “the midrash and *Shir Hashirim* ... offer a view of marriage as a joint endeavor in which both individuals participate and share responsibilities”.<sup>21</sup>

We must however remember that, despite all of our well-meaning interpretations, rabbinic interpretation appropriated the Song of Songs for its own theological purposes when the sages co-opted the female beloved and male lover images by identifying her as male Israel and the man as God. In light of that I have recently been looking at the Song of Songs with less rosy colored glasses. In Chapter 5 of the Song of Songs, just under the surface of this mutuality lies the horror of the unprotected woman wandering the town in search of her lover, who, when not in his protection, gets beaten up and stripped by the guards of the town. Some of these sources are very reminiscent of Hosea 2 which we have seen shows that the relationship between God/Hosea/Husband and Israel/ Gomer/ Wife is fraught with danger and potential abuse of women.<sup>22</sup>

Here is a sampling of some problematic verses:

Song of Songs 3:1-4

Upon my couch at night I sought the one I love – I sought, but found him not. “I must rise and roam the town, through the streets and through the squares; I must seek the one I love.” I sought but found him not. I was found by the watchmen who patrol the town. “Have you seen the one I love?” Scarcely had I passed them when I found the one I love. I held him fast, I would not let him go till I brought him to my mother’s house, to the chamber of her who conceived me.

Song of Songs 5:6-7

I opened the door for my beloved, but my beloved had turned and gone. I was faint because of what he said. I sought, but found him not; I called, but he did not answer. I was found by the watchmen who patrol the town; they struck me, they bruised me. The guards of the walls stripped me of my mantle.

Song of Songs 8:5-7

Who is she that comes up from the desert, Leaning upon her beloved? Under the apple tree I roused you; It was there your mother conceived you, There she who bore you conceived you. Let me be a seal upon your heart, Like the seal upon your hand. For love is fierce as death, Passion is mighty as Sheol; Its darts are darts of fire, a blazing flame. Vast floods cannot quench love, Nor rivers drown it. If a man offered all his wealth of his house [הון בִּיתוֹ] for love, He would be laughed to scorn [בוז יְבוֹזוּ].<sup>23</sup>

So although there might be much that is promising in the Song of Songs, there are also very problematic texts, especially if we take into account that the rabbinic tradition relates to this book as a love story between God and Israel. Some of the verses from the Song are shockingly similar to Hosea 2, verses 5 & 8, where the woman is stripped naked and left to her own devices. Her roads are hedged with thorns and walls are raised against her. Amazingly there are still those modern rabbis who would argue that these acts of prophetic desperation are “about love, not wife-battering. They are about forgiveness, not punishment. . . [and about the] man who has the right to . . . strip her, humiliate her, etc., but doesn’t, and, instead, seeks reconciliation”.<sup>24</sup>

### ***kinyan* in Midrashic Texts**

Legal literature merges with midrashic material in a talmudic text which discusses Hosea's relationship to his wife and children (similar to the relationship of God to Israel). Hosea complains to God that it is difficult for him to separate himself from his wife and divorce her. God asks: why should it be a problem since she's a prostitute and his children are the fruit of prostitution? How do you know whether they are yours or not? And, I, God (in contrast to Hosea), know that the people of Israel are My children "...one of four possessions [*kinyanim*] that I purchased in this world. The Torah is one possession (purchase) ...heaven and earth is another...the temple is another ... and Israel is another..." (B. *Pesachim* 87b).

It is interesting that the marriage ceremony is likened to *kinyan*. Also, note the four categories of *kinyan* in this text. They are all instances of eternal possession and mastery over someone or something else. These four cases (Israel being the fourth) all are based on an inherent, not acquired "ownership". Despite all protestations that *kinyan* in marriage does not give the husband possession of his wife, the metaphor suggests otherwise. Israel (the wife) is God's property to do with as He pleases.

In a midrash in which God is likened to a heroic figure with great strength, we see an acceptance by the sages that Israel is God's possession. He hits another man and the man immediately dies from the blow. This hero then goes into his house and hits his wife and she withstands the blow. Her neighbors say to her, "all the great athletes have been killed from one of the hero's blows – but you are able to survive more than one blow." She answers them that "he hits them with all his might, out of anger, but to me, he gives what I am able to take" (presumably out of love). In a continuation of this same midrash, the rabbis ask why is it that the people of Israel can stand up to God's anger? The answer is, because God hits us and then returns immediately and re-creates us. This is the comfort that Israel can take in their unique relationship to God (Bereshit [Buber Version], Chapter 8:3).<sup>25</sup>

The ancient rabbis also often try to depict an ideal world. In a midrash on Psalms 73 we find the following: R. Samuel b. Nahmani said, although in this world the man courts the woman, in the ideal or future world the woman will court the man, and he uses as his proof text, a verse from Jeremiah 31:21, "God has created something new on earth: A woman will court (*tesovev* – future tense) a man".<sup>26</sup> Maiden Israel is expected to return, and show more faith in God, because now there will be a new order. Clearly the rabbis sensed some injustice in the world and used this passage to redress the iniquity.

But there are less promising *midrashim*, such as one which connects the passage “For the Lord your God is a consuming fire, an impassioned God ‘*el qana*’” from Deuteronomy 4:24 with the passage “I will espouse you with faithfulness” (Hosea 2:21). Here we have a different kind of relationship: God as a jealous husband. In contrast to those who merit ‘*olam habba*’ – the next world – are those who are consumed by a great fire. The rabbis ask: “How do we know that God is jealous?” And the rabbis have no qualms whatsoever in answering: “Just as a husband is jealous of his wife, so is the God of Israel.”<sup>27</sup>

Besides the passage in which Israel is referred to as one of God’s four possessions there is another long passage in a midrash on the Song of Songs which refers to the seventy names by which Israel, Jerusalem and God are known. For each attribute there is an explanation. Thus Jerusalem is known as *Beulah* (owned or taken by God), since there is no one to support her except God – or *Hevtzibah* (God’s desired), because God wants her from all the nations; or *lo Azuvah* not abandoned, because she will never be abandoned. Among God’s attributes is *kana* (jealous) for he is a jealous, vengeful and angry God (Nahum 1:2).

#### *Linking the Midrashic texts to Legal Literature*

There fore it should come as no surprise to us that biblical metaphors having to do with male control, sanctity of family, women having to “take it” for the future of the group, still find concrete expression in *halakha* [Jewish law]. For instance, the plight of “chained” wives (*agunot*) and women whose husbands refuse to divorce them (*mesuravot get*) can be blamed on the issue of *kinyan* (acquisition) in *kiddushin*. We have seen differing views of those who believe that the act of acquisition is symbolic, and just a formality and those who view the wife as having been “acquired”, and “belonging” to her husband. The wording of the Mishnah supports those who argue that the wife is her husband’s property: “The woman is acquired in three ways . . .,” proves that the woman is perceived as an object. We have seen that the Hebrew language, which uses the term *ba’al* (master or owner), points to the husband’s ownership.

#### *Possible Solutions*

Liberal attempts to redress this inequality included the bride giving her husband a ring with verses such as: “My beloved is mine, and I am his” (Song of Songs 2:16), “Set me as a seal upon your heart” (Song of Songs 8:6), and “I shall call you *ishi* my husband, no longer *ba’ali* master”, which is adapted from Hosea 2:18. My problem

with these three verses is that the first text from the Song equates love and marriage with possession; the second text also from the Song seals or locks the partners into a marriage; and the third text from Hosea by using *Ishi* (my man), instead of *ba'ali*, (my master) is also in the possessive. Thus, in light of what I have been talking about up to now, it means that using any text from the Song or Hosea 2 in a double ring ceremony is very problematic!

Mary Joan Winn Leith would probably disagree for she argues that “the rejected form of address, Ba'al, implies not only a different deity, but also a different, more dominating relationship ... God's new title, 'husband' [*ishi*], signals a new beginning, a new betrothal, and a (re)new(ed) covenant, whose inauguration sounds strikingly like a (re)creation of the world.”<sup>28</sup>

But there is a terrible assumption here in Leith's argument. Israel [the woman] has to *suffer* in order to be entitled to this new betrothal. “She” has to be battered into submission in order to kiss and make up at the end. “She” has to agree to be on the receiving end of her husband's jealousy. The premise is that a woman has no other choice but to remain in such a marriage. True, God is very generous to Israel. He promises to espouse her forever with righteousness, justice, goodness, mercy and faithfulness. But despite the potential for a new model of a relationship between God and Israel, it is not a model of real reciprocity. It is based on suffering and the assumption that Israel will submit to God's will.<sup>29</sup>

Melanie Malka Landau points out that most thinkers do not “question the appropriateness of *kiddushin* as the model of marriage for contemporary Jews”.<sup>30</sup> She points to “the non-reciprocal nature of *kiddushin*... [that has] prompted many thinkers to, Orthodox and not, to conceptualize alternative forms of sanctifying long-term commitments within heterosexual relationships”.<sup>31</sup> The practical reason for doing this, is to avoid the problematics of Jewish divorce. Therefore Eliezer Berkovits has suggested a conditional marriage, which maintains the idea of *kinyan*, but retroactively annuls a marriage if the husband refuses to give his wife a bill of divorce (a *get*).<sup>32</sup>

Another marriage alternative which has a Jewish wedding ceremony without any trace of *kinyan* is the Orthodox rabbi Meir Simhah Ha-Cohen Feldblum's proposal that the groom uses the sentence “*Harei at meyuhedet li*” (Behold, you are unique to me), which is not “according to the law of Moses” but a “mode of marriage”, and is thus not *kinyan*, the purchase or acquisition of the woman. This is called *derekh kiddushin* and does not require divorce.<sup>33</sup>

Another suggestion is the one of Rachel Adler's, who uses the model of a business partnership, based on the halakha in which each partner contributes according to his or her means and in which their assets are divided equally should the partnership be dissolved.<sup>34</sup> Instead of the man giving the woman a ring, which is a symbol of *kinyan*, both the man and the woman put a valuable object into a joint purse. She calls this new commitment *b'rit ahuvim*, or lover's covenant.<sup>35</sup>

Ayelet S. Cohen, a rabbi, who is committed to inclusiveness, finds the idea of traditional Jewish weddings troubling, where “a man acquir[es] a silent woman whose price is based on her sexual history”.<sup>36</sup> She points out that “liberal Jews de-emphasize the halakhic ritual and use secular romantic images and translations that gloss over the literal meaning of the text”. She says these solutions may make us feel good, but they don't address the problem. She would like to “transform the Jewish wedding so that it is not a celebration of male dominance and heterosexual triumphalism.”<sup>37</sup> She used a blessing for her own marriage which celebrates monogamy and healthy sexuality and emphasizes the virtues of righteousness, justice, loving-kindness and compassion.<sup>38</sup>

### Jealousy and Possession

In English it is very easy to move from the idea of a possessive husband to a jealous husband. The very word “possessive” is defined as “jealous”. In Hebrew, one would think that it is even easier, since the words share a binary root of “K” “N”. Having an associative mind, I searched the Bar Ilan Data Base looking for several key words (נקמה, קנאה, קנה, קנין) and created a chart.

POSSESSION	קנאה KNA	PROPERTY	קנין KNH
<p><u>Genesis 26:12-16</u> Isaac sowed...[and] the LORD blessed him, [and he grew wealthy] <sup>14</sup>...so that the Philistines envied him. <sup>15</sup>And the Philistines stopped up all the wells... <sup>16</sup>And Abimelech said to Isaac, “Go away from us, for you have become far too big for us.”</p>	<p><u>בראשית פרק כו:</u> <u>יב</u> ויזרע יצחק ... ויברכהו ה': (יג) ויגדל האיש וילך הלוך וגדל עד כי גדל מאד: (יד) ... <u>ויקנאו אתו</u> פלשתים: (טו) וכל הבארת ... סתמום פלשתים וימלאום עפר: (טז) ויאמר</p>	<p><u>Genesis 4:1</u> Now the man knew his wife Eve, and she conceived and bore Cain, saying, “I have gained a male child with the help of the LORD.”</p>	<p><u>בראשית פרק ד:</u> <u>א</u> והאדם ידע את חוה אשתו ותהר ותלד את קין ותאמר קניתי איש את ה':</p>



	אבימלך אל יצחק לך מעמנו כי עצמת ממנו מאד:		
<u>Exodus 20:5</u> You shall not bow down to them or serve them. For I the LORD your God am an impassioned God, visiting the guilt of the parents upon the children, upon the third and upon the fourth generations of those who reject Me	<u>שמות פרק כ</u> ד לא תשתחוה להם ולא תעבדם כי אנכי ה' אלהיך אל קנא פקד עון אבת על בנים על שלשים ועל רבעים לשנאי:	<u>Genesis 14:19</u> [King Melchizedek of Salem] blessed him, saying, "Blessed be Abram of God Most High, Creator of heaven and earth.	<u>בראשית פרק יד:יט</u> ויברכהו ויאמר ברוך אברם לאל עליון קנה שמים וארץ:
<u>Numbers 5: 14</u> but a fit of jealousy comes over him and he is wrought up about the wife who has defiled herself; or if a fit of jealousy comes over one and he is wrought up about his wife although she has not defiled herself	<u>במדבר פרק ה</u> יד ועבר עליו רוח קנאה וקנא את אשתו והוא נטמאה או עבר עליו רוח קנאה וקנא את אשתו והיא לא נטמאה:	<u>Exodus 15:16</u> Terror and dread descend upon them; Through the might of Your arm they are still as stone— Till Your people cross over, O LORD, Till Your people cross whom You have ransomed.	<u>שמות פרק טו</u> טז תפל עליהם אימתה ופחד בגדל זרועך ידמו כאבן עד יעבר עמך ה' עד יעבר עם זו קניית:
<u>Zechariah 1:14</u> Then the angel who talked with me said to me: "Proclaim! Thus said the LORD of Hosts: I am very jealous for Jerusalem—for Zion	<u>זכריה פרק א:יז</u> ויאמר אלי המלאך הדבר בי קרא לאמר כה אמר ה' צבאות קנאתי לירושלם ולציון קנאה גדולה:	<u>Deuteronomy 32:6</u> Do you thus requite the LORD, O dull and witless people? Is not He the Father who created you, Fashioned you and made you endure!	<u>דברים פרק לב</u> (ו) ה לה' תגמלו זאת עם נבל ולא חכם הלוא הוא אביך קנך הוא עשך ויכנך
<u>Nahum 1:2-3</u> The Lord is a passionate, avenging God; The Lord is vengeful and fierce in wrath. The Lord takes vengeance on His enemies, He rages against His foes. 3The Lord is slow to anger and of great forbearance; But the Lord does not remit all	<u>נחום פרק א</u> (ב) אל קנא ונקם ה' נקם ה' ובעל חמה נקם ה' לצריו ונוטר הוא לאיביו: (ג) ה' ארך אפים וגדול וגדל כח, ונקמה לא ינקה ...	<u>Psalms 104:24</u> How many are the things You have made, O Lord; You have made them all with wisdom; the earth is full of Your creations.	<u>תהלים פרק קד</u> (כד) מה רבו מעשיך ה' כלם בחכמה עשית מלאה הארץ קנייך:

punishment.			
<p>From Cradle to Grave</p> <p>nest→nursing→cattle→ purchase(possesion)→ jealousy vengeance→cleansing → lament→emendation <sup>39</sup></p>	<p>קן ← הנקה ← מקנ ה ← קנין ← קנאה ← נקמה ← נקיון קינה ← תקנה</p>	<p><u>Ruth 4:10-13</u> I am also acquiring Ruth the Moabite, the wife of Mahlon, as my wife/ <sup>13</sup>So Boaz married Ruth; she became his wife, and he cohabited with her. The LORD let her conceive, and she bore a son.</p>	<p><u>רות פרק ד:י</u> וגם את רות המאביה אשת <u>מחלון קניתי לי</u> <u>לאשה</u> להקים שם המת על נחלתו ולא יכרת שם המת מעם אחיו ומשער מקומו עדים אתם היום: יג) <u>ויקח</u> בעז את רות ותהי לו לאשה ויבא אליה ויתן ה' לה הריון ותלד בן:</p>

This is *not* a scientific study – just free association, using biblical and midrashic type texts. The message that I would like to take from this is that *kinyan* is more than just a metaphor and we should be re-thinking its use in the *ketuba*. For example, the metaphor connected with *kinyan*, goes all the way back to Eve, who when she gave birth to Cain, said: “I created (made, gained) a man with the help of God, קניתי איש אֵת ה.” Before this, when Adam “gave birth” to Eve, it was said of her, from man, this thing was taken תָּאָת מֵאִישׁ לְקָחָהּ זָאת. Clearly the playing ground has potential to change for Eve empowers herself by making herself a partner with God and not agreeing to be a “thing” which is “taken”. On the other hand, by naming the first son Cain, the root of which is the same as *kinyan* and jealousy, we gain insight into how the first murder came about.

I do not have solutions; only observations. I can only state that at this point in my life, I am not sure that that the traditional Jewish ceremony should be encouraged and I am not sure that using texts from the Song of Songs or Hosea as antidotes to the patriarchal texts solves anything.

In a paper given in Helsinki, a week after I gave mine in Tartu, James A. Diamond wrote in the abstract of the paper he presented: “The Song of Song’s concluding meditation on love, with its analogies of death, *sheol*, *reshef* fire and jealousy convey the danger posed by love so passionate as to surrender one’s individual personhood in uniting with the beloved.”<sup>40</sup> It would seem that I am not the only one to perceive the dangers of the Song of Songs.

I started this paper with a look at the *ketuva*, the marriage contract, which refers to the wife as a *kinyan*. I ended this paper by looking at the dangers of jealousy (*kinah*), which shares the same root. Although there are those who would guard a possession and treat it with care and love, there are those who would argue that it is “mine” to do with as I please. Allowing the word of *kinyan* to be in a marriage contract is a bad start to any relationship and has the potential for abuse. Melanie Landau argues in her forthcoming book that because marriage implies male rights to women’s sexuality it can also allow a man to force her to engage in intercourse with him, i.e. to rape his wife. Her argument is that because of the potential connection between *kinyan* and rape in marriage, *kinyan* is an inappropriate basis for marriage. She writes: “This inappropriateness is pronounced if marriage is to function as the foundation of the kind of mutual relationship that many heterosexual Jews may want to create in the twenty-first century and beyond.”<sup>41</sup> Following James Diamond, I too would argue that sometimes we have to be protected from the “dire consequences of love”.<sup>42</sup> We can learn from the seal on the lover's heart from the Song of Songs 8:6, which is a binding, form of authority, such as that of the marriage contract, that marriage should not be the obliteration of one's identity, a merger of two persons into one. I have argued that the only way to avoid this is to stop using the terminology of *kinyan*.

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<sup>1</sup> [http://www.modernketubah.com/ketubah\\_translation.php](http://www.modernketubah.com/ketubah_translation.php).

<sup>2</sup> All of the commentary in brackets and small print is from <http://www.hasoferet.com/weddings/stamtext.shtml>.

<sup>3</sup> Rosalind Gill, “Relativism, Reflexivity and Politics: Interrogating Discourse Analysis from a Feminist Perspective,” in *Feminism and Discourse: Psychological Perspectives*, edited by Sue Wilkinson and Celia Kitzinger (London, Thousand Oaks, New Delhi: SAGE Publications, 1995), p. 166.

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<sup>4</sup> Mary Daly, *Beyond God the Father* (Boston: Beacon Press, 1973), p. 13, as quoted in Judith Plaskow in *Standing Again at Sinai* (San Francisco: Harper and Row, 1990), p. 126.

<sup>5</sup> Gail Labovitz, “Follow the Money: Bride Price, Dowry, and the Rabbinic *Ketubbah*,” talk given at AJS December 17th, 2006.

<sup>6</sup> Gail Labovitz, “A Woman is Acquired”: Slavery and Jewish Sexual Ethics,” *Shma*, October 2008.

<sup>7</sup> Leonard Gordon, “Marriage and Family,” review of Labovitz’s book, *Marriage and Metaphor. S’hma* (June 2010), p. 16.

<sup>8</sup> Gail Labovitz, *Marriage and Metaphor: Constructions of Gender in Rabbinic Literature* (Lanham, MD: Lexington Books, 2009).

<sup>9</sup> Tirzah Meacham (leBeit Yoreh) “Legal-Religious Status of the Married Woman,” <http://jwa.org/encyclopedia/author/meacham-tirzah>.

<sup>10</sup> Judith Hauptman, *Rereading the Rabbis: A Woman’s Voice* (Boulder, CL: Westview Press, 1998), p. 69.

<sup>11</sup> Hauptman, pp. 4-5.

<sup>12</sup> Judith Romney Wegner, *Chattel or Person? The Status of Women in the Mishnah* (New York: Oxford University Press, 1988), pp. 14-15.

<sup>13</sup> Wegner, p. 44.

<sup>14</sup> For further information on the subject of the imagery of marriage to describe the relationship between God and Israel see Gerlinde Baumann, *Love and Violence. The Imagery of Marriage for YHWH and Israel in the Prophetic Books* (Collegeville, MN: Liturgical Press, 2003).

<sup>15</sup> Ilana Pardes, *Countertraditions in the Bible* (Cambridge, MA: Harvard University Press, 1992), p. 127.

<sup>16</sup> Rachel Adler, *Engendering Judaism: An Inclusive Theology and Ethics* (Philadelphia: Jewish Publication Society, 1998), p. 135.

<sup>17</sup> Naomi Graetz, *Silence is Deadly: Judaism Confronts Wifebeating* (Northvale, NJ: Jason Aronson, 1998), p. 42.

<sup>18</sup> Fokkelien Van Dijk-Hemmes, “The Imagination of Power and the Power of Imagination: An Intertextual Analysis of Two Biblical Love Songs: The Song of Songs and Hosea 2,” *Journal for the Study of the Old Testament* 44 (1990), p. 86. See also Gerson Cohen, “The Song of Songs and the Jewish Religious Mentality,” *Studies in the Variety of Rabbinic Cultures* (Philadelphia: Jewish Publication Society, 1991), p. 6.

- <sup>19</sup> Karen Miller Jackson, “Reshut Hakallah: The Symbolism of the Chuppah,” *Sh’ma.com* (June 2010), p. 4.
- <sup>20</sup> *Pesikta deRav Kahane*, Chapter 1 as translated by Karen Miller Jackson.
- <sup>21</sup> *Op. cit.*, p. 5.
- <sup>22</sup> See Naomi Graetz, “The Haftarah Tradition and the Metaphoric Battering of Hosea's Wife,” *Conservative Judaism* (Fall, 1992), p. 29-42; “God is to Israel as Husband is to Wife,” in Athalya Brenner (editor), *A Feminist Companion to the Latter Prophets*, (Sheffield: Sheffield Academic Press, 1995), p. 126-145; and revised for Naomi Graetz, *Unlocking the Garden: A Feminist Jewish Look at the Bible, Midrash and God* (Piscataway, NJ: Gorgias Press, 2004).
- <sup>23</sup> There are many more texts that make the same point which emphasize the problematics of using the Song of Song as a solution for parity between the sexes. I have highlighted those texts which have negative metaphors.
- <sup>24</sup> Benjamin Scolnic, “Bible Battering,” *Conservative Judaism*, XLV: 2 (1992), p. 48.
- <sup>25</sup> My paraphrase of the legend on Bereshit (Buber Version), Chapter 8:3.
- <sup>26</sup> מדרש תהלים (בובר) מזמור עג ד"ה [ד] שתו בשמים" אמר ר' שמואל בר נחמני לפי שבעולם הזה הזכר מסבב את הנקבה, אבל לעתיד הנקבה תסבב את הזכר, שנאמר נקבה תסובב גבר
- <sup>27</sup> Midrash Tanhuma (Warsaw), Parashat saw 14.1 (Hebrew).
- <sup>28</sup> Mary Joan Winn Leith, “Verse and Reverse: The Transformation of the Woman, Israel, in Hosea 1-3,” in Peggy L. Day (ed.), *Gender and Difference in Ancient Israel*, (Minneapolis: Fortress Press, 1989), p. 101.
- <sup>29</sup> Leith, “Verse and Reverse”, p. 103.
- <sup>30</sup> Melanie Malka Landau, “Sanctifying Endings,” in *S’hma* (June 2010), pp. 11-12.
- <sup>31</sup> *Ibid.* pp. 11-12.
- <sup>32</sup> Eliezer Berkovits, *Tenai be’Nissuin uve’Get* (in Hebrew). Jerusalem: Mossad HaRav Kook, 1966.
- <sup>33</sup> This is mentioned in Landau's article. For full text, see Meir S. Feldblum, “The problem of *agunot* and *mamzerim* — A suggested overall and general solution” (in Hebrew) *Dinei Israel* 19, pp. 203-216.
- <sup>34</sup> BT *Ketubbot* 93a; Maimonides, *Laws of Emissaries and Partnership* 4:1–3, 10:5.
- <sup>35</sup> Rachel Adler, p. 170 and continues in Chapter 5, “*B’rit Ahuvim: A Marriage Between Subjects*”.
- <sup>36</sup> Ayelet S. Cohen, “*Birkat Eirusin: A Blessing for Holy Sexuality*,” *S’hma* (June 2010), p. 14.
- <sup>37</sup> *Ibid.*

<sup>38</sup> Ibid: this is adapted from a blessing by Tamara Ruth Cohen (the author's sister) and her partner Gwynn Kessler.

<sup>39</sup> The handout appears in "Is Kinyan Only a Metaphor? Metaphor and Halakha: The Metaphor of Kinyan," in Brad Horowitz (ed.), *Proceedings of the Rabbinical Assembly, 98th Annual Convention* Volume LX (New York: Rabbinical Assembly, 2000), pp. 175-186.

<sup>40</sup> "Bliss of Biblical Love", paper presented at the ISOT in Helsinki, August, 2010. This paper now appears as James A. Diamond, "Love's Human Bondage: A Biblical Warning", in *Azure* (Spring, 2011), pp. 41-60.

<sup>41</sup> Third chapter entitled "Rebellious Women and Husband Owned sexuality" of her forthcoming book.

<sup>42</sup> Diamond, p. 50.

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