HOW OPEN IS OUR TENT?

POLYAMOROUS RELATIONSHIPS IN THE JEWISH CONTEXT

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Summary

This thesis analyzes and discusses Biblical, Rabbinic, and early Modern texts relating to multi-partner relationships of the past in order to guide today's Jewish clergy as such relationships increase in number and visibility in this country. The discussions herein attempt to honor Jewish tradition, on the one hand, and individuals' truth, on the other. The thesis is divided into three chapters:

Chapter One: Multi-Partner Relationships in the Bible

Chapter Two: A Rabbinic Era of Unilateral Sexual Exclusivity

Chapter Three: Jacob Emden's *Pilegesh* Responsum as a Model for Multi-Partner Relationships

By examining a variety of texts across genre and time, this thesis shows how the terms of intimate relationships in general and marriage specifically have changed in the Jewish community depending on social context and communal needs. While polyamorous relationships are not widespread in American society, there are polyamorous Jews already looking to religious leaders for guidance, affirmation, and sanctification of their relationships. This thesis offers a blueprint for rabbis, cantors and educators seeking tangible ways in which Jewish tradition responds to polyamorous, as well as monogamous, relationships today.

Acknowledgments

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The HUC-JIR Rabbinic Class of 2018, a rigorously intellectual cohort, consistently pushed me to think deeply and creatively. I am particularly grateful to Dan Ross, who began thinking about these issues with me for a class project--his openness to new ideas and eagerness to learn were motivating.

I am privileged to come from a family that talks about love, relationships, and, yes, even sex. Throughout his life, my father, Bob Fischel, taught me the value of compassion and hearing people's stories, no matter how different they may be from my own. My mother, Shelley Fischel, taught me how to write, to ask big questions, and to not settle for easy answers, especially about gender inequality. My brother, Joe Fischel, taught me that thinking critically about sex and relationships can be an act of *tikkun olam*, repairing the world. His intellect and desire to see the world in new ways energized this thesis. Lastly, Elva Neyra is a provider of endless love and support.

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Introduction

Sexual and romantic relationships previously found on the fringes of American society are entering the mainstream. In 2015, *Obergefell v. Hodges*[1] held same-sex marriage as a constitutional right, opening the door for LGBT couples to have legal standing equal to that of heterosexual partners. The legal system was finally catching up to the social reality. Ellen Degeneres had already made her public declaration of sexual orientation fifteen years previously.[2] Numerous television series ranging from *Will and Grace*[3] to *Glee*[4] had already featured and normalized gay characters and relationships. Of course, there are those who objected, and loudly to sexual equality, but over the course of the past thirty years, no one doubts that LGBT individuals and relationships have shifted from the periphery to mainstream American society.

A new type of relationship is now catching the public eye: namely, polyamory--"consensual and emotionally intimate non-monogamous relationships in which both women and men can negotiate to have multiple partners."[5] While many might react with shock and disbelief, popular culture has been normalizing these relationships for at least the past five years. *House of Cards*,[6] *Transparent*,[7] *Orange is the New Black*,[8]

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[1] *Obergefell v. Hodges*, 576 U.S. ___ (2015).
[2] "The Puppy Episode". *Ellen*. American Broadcasting Company. Aired April 30, 1997.
[3] National Broadcasting Company, 1998-2006; 2017.
[4] Fox, 2009-2015.
[5] Elisabeth Sheff. *The Polyamorists Next Door: Inside Multiple Partner Relationships and Families.* (New York: Rowman & Littlefield Publishers, 2015), x.
[6] Netflix, 2013-Present.
[7] Amazon, 2014-Present.
[8] Netflix, 2013-Present.

and *Girls*[9] feature some form of polyamorous relationships. Lest we imagine that such relationships are designed purely for entertainment, note that Susan Dominus' "Is an Open Marriage a Happier Marriage?" appeared in *The New York Times Magazine* in May 2017. In this groundbreaking cover story, Dominus named the phenomenon and told the stories of an array of couples who are choosing this form of relationship. The response to her article was robust, including from the members of the polyamorous community, many of whom objected to Dominus' portrayal of such couples.[10] Are polyamorous relationships sweeping the nation? No. But, is this a population that will be strengthening its voice and influence over the next few years? I think so.

In 2015, Rabbi Lisa Grushcow gave a talk at Hebrew Union College-Jewish Institute of Religion, New York on *The Sacred Encounter: Jewish Perspectives on Sexuality*, the volume of dozens of articles which she edited. Speaking to soon-to-be clergy, Rabbi Grushcow posed questions of sexual ethics to the group, forcing us to think beyond the confines of the classroom and our comfort level. One question in particular ignited my interest in pursuing this thesis: "What would you do if you had a polyamorous family, consisting of four adults and three children, who wanted a blessing at the Torah?" Some raised the issue of *marit ayin,* the appearance of impropriety, the *halakhic* dictum that one should not participate in an activity if it even *looks* as though it contradicts *halakha*. Though the concern was valid, I kept wondering about the individuals who

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[9] Home Box Office, 2012-Present.

[10]Ruby Bouie Johnson. "The Times Piece About Open Marriage Doesn't Represent My Experience". *Huffington Post,* May 13, 2017. Retrieved on December 1, 2017 from https://www.huffingtonpost.com/entry/how-representation-worksor-doesnt_us_59179e37e4b00ccaae9ea39d.

make up this family. Seven people wanted to be blessed in front of our Torah. As liberal Jewish leaders, shouldn't our ethical responsibility be to honor and sanctify the lives of these individuals to the best of our ability? To the best of Jewish tradition?

Weeks later, with this question reverberating in my mind, I was confronted with a real life scenario of such an issue. Two married male friends were telling me about their open marriage. I realized they had been married by a rabbi years previously, so I asked, "What did you tell your rabbi about the openness of your relationship?"
"We lied," one of them replied, "We knew it would have been a deal breaker."
Congregants and wedding couples are not always going to be truthful with their clergy, but the frankness with which he answered my question upset me. Was it a deal breaker? Could this rabbi, at the very least, had the conversation with them? If this becomes a trend in modern relationships, do we as clergy prefer that polyamorous people resort to lying to us so that we will consent to officiate at their marriages? What about our deeply-held value of *emet,* truth, which encourages us to be truthful, but also to honor other people's truth?

These questions fuel this thesis.

This thesis is not a classical Jewish responsum (or referendum) on whether or not we should include or sanctify polyamorous relationships in Jewish communities. Rather, it provides a historical framework for asking the questions, raising the issues, and starting the conversations that relate to multi-partner relationships in a Jewish context. After all, polyamorous relationshionships are already part of Jewish communities, whether visible or not; and some folks are already consulting with clergy on questions of authenticity and

belonging. While aspects of these relationships are no doubt holy, they also challenge deeply-held Jewish values and ideals. As with all challenging contemporary issues, classical Jewish texts can help guide our understanding. This thesis analyzes and discusses Biblical, Rabbinic, and early Modern texts relating to multi-partner relationships to arm rabbis, cantors and educators with resources that will enable them to honor both our tradition as well as individuals' truth.

Chapter one explores Biblical narratives on multi-partner relationships. Most of the patriarchs, as well as later kings, participated in bigamous relationships. Their families, which can be understood as corporations of a sort, consisted of multiple wives and concubines whose existence demonstrated financial wherewithal and military might. The larger one's family, the greater one's power. Although these relationships served the needs of the patriarchy in which they were entrenched, aspects of these relationships have some applicability to polyamorous individuals today.

Chapter two explores texts from the Rabbinic era, during which Biblical monotheism became a metaphor for monogamy, which was thereby reified and sanctified into the norm for couples. To this end, *halakhists* prescribed sexual exclusivity on the part of wives (though not husbands) via the ceremony of *kiddushin* and the stipulations of the *ketubah.* I will bring the feminist critique of these institutions to bear and then suggest an adaption of Rachel Adler's Jewish union ceremony that could meet the needs of the polyamorous community.

Finally, chapter three charts how, through *takkanot* and legal codes of the Middle Ages, the ideal of unilateral sexual exclusivity transformed into mutual monogamy. We

will see that, while mutual monogamy became normative after the year 1000, an unlikely responsum on concubinage from the early modern period by Rabbi Jacob Emden challenged the viability of mutual monogamy. The majority of this chapter will dissect Emden's hermeneutics and structure to show where aspects of his critique might map onto the polyamorous landscape today.

Throughout this thesis, I seek to provide insight into *aspects* of the questions that polyamorous relationships pose to the Jewish community. Classical Jewish texts offer some answers to these questions alongside the truths of Jewish life that reside in synagogues, classrooms, and homes, including even the bedroom. In order to endure, Judaism must speak to people's *whole* lives, including among the most sacred of all human experience, sexual intimacy.

Chapter 1

Multi-Partner Relationships in the Bible

Introduction

All sorts of relationships between men and women are depicted in the Bible: They are lovers, partners, husband with a single wife, husband with more than one wife, husband with a wife and concubines, husband with more than one wife and concubines. Ancient Jewish society did not presume monogamy; and indeed there is a variety of multi-partner relationships that fill the holy book's pages. Given the legal standing between "full" wives and concubines in the Bible, it makes for the best comparison to modern multi-partner relationships.[11]

Of course, since patriarchy governs all Biblical relationships, multi-partner relationships always consist of one man and different combinations of women. Even with that caveat in mind, multi-partner relationships in the Bible *appear* similar to modern polyamorous relationships, but the purpose for such unions is radically different in each era. In the Biblical period, such relationships are generally a means for a husband to accrue power -- the more women, the more offspring. The more offspring, the larger his clan. The larger his clan, the greater his ability to expand economically and wield military might. In addition, sexual pleasure in these Biblical relationships is depicted as one-sided, or hierarchical at best. For the wives and concubines, the benefits of these relationships are varied, and tensions between the women can run high. Nevertheless, the multi-partner

[11] See Louis, M. Epstein. "The Institution of Concubinage among the Jews" *Proceedings of the American Academy for Jewish Research* 6, (1934): 153-188.

relationships embedded in the foundational narratives of the Bible could shed light on polyamorous relationships in the Jewish context today.

Differences Between a *Pilegesh* and an *Ishah*

Before diving into the nature and intricacies of multi-partner relationships in the Bible, it is necessary to define a few terms. The Bible uses both the words *pilegesh* and *ishah* to describe women who have unilaterally exclusive, sexual relationships with men. In *A Concise Hebrew and Aramaic Lexicon of the Old Testament*, William L. Holladay defines *ishah* as woman, harem, wife, stepmother, and, even, concubine.[12] In contrast, he provides onlys a single definition for *pilegesh*: concubine.[13] Deriving from *plag* and *ishah, pilegesh* could also be defined as a "half-wife".[14]

Although in some cases, concubines are clearly distinguished from wives, in many instances in the Bible, the terms are used interchangeably, showing that they share more in common than readers usually presume. Louis Epstein, a twentieth-century scholar of Jewish law, explains that while concubines may have neither a *mohar* (brideprice) nor recited a formulaic statement of marriage, they were still considered legally married to their husband. Concubines were considered a part of the husband's property and exclusively reserved for the husband.[15] At the same time, while the

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[12] William L. Holladay, *A Concise Hebrew and Aramaic Lexicon of the Old Testament* (Grand Rapids: William B. Eerdman's Publishing Company, 1971), 29.
[13] Ibid., 292.
[14] Jacob Emden "The Responsum of Rabbi Yaakov Emden" trans. Gershom Winkler, *Sacred Secrets: The Sanctity of Jewish Law and Lore* (Lanham: Rowman & Littlefield, 1998), 108.
[15] Epstein, 4

concubine was second in status to the wife or wives, she was still provided for as a wife. This legal equality may be surprising to modern readers as we understand the English word "concubine" to be demeaning and, perhaps, synonymous to prostitute or mistress. However, in the Biblical context, the word *pilgesh* or *ishah* is not associated with harlotry in any way.

Why Have Multiple Partners in the Bible?

Increased Number of Offspring

Biblical wives and concubines were equally suited for a particular purpose: procreation. The incentive for men to have multiple female partners is obvious from the repetition of verbs related to procreation found in the Biblical narratives. Of the 37 times that *pilegesh*, "concubine", appears in the Bible, ten occur with the verb, *yud-lamed-dalet*, "to give birth".[16] In every one of these instances, a similar pattern inheres: the concubine is named, the verb is used in the third person feminine form, and the concubine's offspring is named. In these verses, *yud-lamed-dalet* is the only verb that appears in feminine form. Thus, bearing children is *the* action that concubines do. And they do it a lot. Most of these noun-verb pairs occur in Chronicles in the so-called "begat" passages, in which the Biblical writers delineate long lines of descendants and to whom they were born. For instance, a list of David or Solomon's descendants can persist for multiple verses. We see this clearly in the statement about Rehoboam, one of the kings of Israel, and his household:

[16] Genesis 22:24; Genesis 36:12; Judges 8:31; 2 Samuel 5:13; 1 Chronicles 1:32; 2:46, 2:48, 7:14; 2 Chronicles 11:21.

וַיֶּאֱהַב רְחַבְעָם אֶת־מַעֲכָה בַת־אַבְשָׁלוֹם מִכָּל־נָשָׁיו וּפִילַגְשָׁיו כִּי נָשִׁים שְׁמוֹנֶה־עֶשְׂרֵה נָשָׂא וּפִילַגְשִׁים שִׁשִּׁים
וַיּוֹלֶד עֶשְׂרִים וּשְׁמוֹנָה בָּנִים וְשִׁשִּׁים בָּנוֹת:

Rehoboam loved Maacah daughter of Absalom more than his other wives and concubines—for he took eighteen wives and sixty concubines; he begat twenty-eight sons and sixty daughters.[17]

2 Chronicles 11:2

Rehoboam's multiple wives and concubines bore him a total of 88 children. He had clearly spread his seed and did not want for an inheritor and/or successor. So why so many wives and concubines? These women were a sign of success and wealth--a luxury possessed by a powerful man.

Concubines are not the only women in the Bible whose main purpose is to breed children. The famous, or infamous, Patriarchal narratives describe the multiple wives of the forefathers -- though the reason for offspring varies from man to man. The father of monotheism himself had many women in his life. Immediately after God makes a promise to Avram of countless descendants, we learn that he had no children, since

וְשָׂרַי אֵשֶׁת אַבְרָם לֹא יָלְדָה לוֹ וְלָהּ שִׁפְחָה מִצְרִית וּשְׁמָהּ הָגָר:
וַתֹּאמֶר שָׂרַי אֶל־אַבְרָם הִנֵּה־נָא עֲצָרַנִי יְהוָה מִלֶּדֶת בֹּא־נָא אֶל־שִׁפְחָתִי אוּלַי אִבָּנֶה מִמֶּנָּה וַיִּשְׁמַע אַבְרָם לְקוֹל שָׂרָי:
וַתִּקַּח שָׂרַי אֵשֶׁת־אַבְרָם אֶת־הָגָר הַמִּצְרִית שִׁפְחָתָהּ מִקֵּץ עֶשֶׂר שָׁנִים לְשֶׁבֶת אַבְרָם בְּאֶרֶץ כְּנָעַן וַתִּתֵּן אֹתָהּ לְאַבְרָם אִישָׁהּ לוֹ לְאִשָּׁה:

Sarai, Abram's wife, had borne him no children. She had an Egyptian maidservant whose name was Hagar.
And Sarai said to Abram, "Look, the Eternal has kept me from bearing. Consort with my maid; perhaps I shall have a son through her." And Abram heeded Sarai's request.
Sarai, Abram's wife, took her maid, Hagar the Egyptian—after Abram had dwelt in the land of Canaan ten years—and gave her to her husband Abram as concubine.[18]

Genesis 16:1-3

[17]All Biblical translations are adapted from JPS.
[18] An analysis of the interchangeable use of *pilegesh* and *ishah* in this passage appears below.

In this narrative, the same verb, *yud-lamed-dalet*, appears twice, but, in the second instance, its subject is God. God is stopping Sarai, *atzarani,* from bearing children, *miledet.* This verb form teaches something new about childbearing in the Biblical narrative: the ability or inability to bear children is God-given, or believed to be God-given. Having given up on the hope that God will renew her ability to have children, Sarah herself gives Hagar to Abram. The necessity of offspring is paramount.

Another multiple wife narrative centered around childbearing, or lack thereof, is that of Elkanah, Hannah, and Peninah. Unlike the Avram-Sarai-Hagar narrative, we are not told how Elkanah acquired Hannah and Peninah. Rather, they are simply introduced as though a unit:

וְלוֹ֙ שְׁתֵּ֣י נָשִׁ֔ים שֵׁ֥ם אַחַ֖ת חַנָּ֑ה וְשֵׁ֥ם הַשֵּׁנִ֖ית פְּנִנָּ֑ה וַיְהִ֥י לִפְנִנָּ֖ה יְלָדִ֔ים וּלְחַנָּ֖ה אֵ֥ין יְלָדִֽים׃
וְעָלָ֣ה הָאִ֗ישׁ הַהוּא֙ מֵעִירוֹ֙ מִיָּמִ֣ים ׀ יָמִ֔ימָה לְהִשְׁתַּחֲוֹת֙ וְלִזְבֹּ֣חַ לַיהוָ֔ה צְבָאוֹת֙ בְּשִׁלֹ֔ה וְשָׁ֣ם שְׁנֵֽי־בְנֵ֤י עֵלִי֙ חָפְנִ֣י וּפִנְחָ֔ס כֹּהֲנִ֖ים לַיהוָֽה׃
וַיְהִ֣י ׀ בַּיּ֣וֹם הַזֶּ֗ה וַיִּזְבַּ֙ח֙ אֶלְקָנָ֔ה וְנָתַ֛ן לִפְנִנָּ֥ה אִשְׁתּ֖וֹ וּלְכָל־בָּנֶ֣יהָ וּבְנוֹתֶ֑יהָ מָנוֹת׃
וּלְחַנָּ֞ה יִתֵּ֣ן מָנָ֗ה אַחַת֙ אַפַּ֔יִם כִּ֥י אֶת־חַנָּ֖ה אָהֵ֑ב וַיהוָ֖ה סָגַ֥ר רַחְמָֽהּ׃

He had two wives, one named Hannah and the other Peninnah; Peninnah had children, but Hannah was childless.
This man used to go up from his town every year to worship and to offer sacrifice to the Eternal of Hosts at Shiloh.—Hophni and Phinehas, the two sons of Eli, were priests of the Eternal there.
One such day, Elkanah offered a sacrifice. He used to give portions to his wife Peninnah and to all her sons and daughters;
but to Hannah he would give one portion only—though Hannah was his favorite—for the Eternal had closed her womb.

1 Samuel 1:2-5

Since the reader is not told the origins of this family, the status of these wives vis-a-vis each other is also unknown. We are not told why Elkanah has two wives in the first place. Nevertheless, the narrative highlights the necessity of offspring as understood by the

detail provided that though Elkanah had more affection for Hannah, he gave Peninah more food. A wife's sustenance is dependent on her fertility.

Increased Wealth

Multiple wives and concubines lead to increased wealth and military power for the male head of household. Unlike modern family units, Biblical families were something akin to a business. So, for instance, *pilegesh* and *ishah* often appear in lists of household holdings.[19] Solomon purportedly had 700 royal wives and 300 concubines (1 Kings 11:3). These hundreds of wives and concubines were signs of Solomon's tremendous wealth and power. As Louis Epstein explains:

> The family organization was a household corporation rather than a family unit. Husbandhood and wifehood indicated relation of sexes but not position in the family corporation. In fact, there were numerous couples within the household, holding various positions in it. The head of the family owned the corporation or was the corporation. He was the Baal or the lord.[20]

In nearly all cases, Biblical marriage was dictated by economic need rather than romantic desire. Men established such "corporations" in order to prove financial strength. Women, through their childbearing abilities, provided men with economic wherewithal. While the latter did not own property, the quid pro quo for loyalty and sexual access was room and board. The Elkanah-Hannah-Peninah marriage represents such an arrangement with Peninah allotted more sustenance than Hannah because of her fertility.

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[19] 2 Samuel 5:13; 1 Kings 11:3; 2 Chronicles 11:21.
[20] Epstein, 156.

Increased Military Might

The David narratives demonstrate how women could be instrumental in accumulating military power for their husband. Take, for instance, the case of David's first wife and Saul's daughter, Michal. In a plot meant to lead to David's death in battle, Saul offered Michal for the "bargain" *mohar,* "brideprice" of 100 Philistine foreskins. David not only obliged but brought double the dowry, thereby winning Michal (1 Samuel 18:25-27). In this case, David's right to marry was based solely on his demonstration of military might. Further, David engages in military action of sexual violence. Saul insists that he dismember his enemies (or part of them, depending on how one reads the narrative). In other words, David must emasculate men to prove to his future father-in-law that he is a strong warrior. Note as well that Saul's overarching goal was not to give his daughter in marriage to David but to force his death by setting up such a dangerously ambitious military challenge. The marriage is a means to a militaristic end.

In II Samuel, too, David's marriages are related to military might. He acquires no less than six wives, as we learn:

וַתְּהִי הַמִּלְחָמָה֙ אֲרֻכָּ֔ה בֵּ֖ין בֵּ֣ית שָׁא֑וּל וּבֵ֣ין בֵּ֔ית דָּוִ֖ד וְדָוִ֣ד הֹלֵ֣ךְ וְחָזֵ֔ק וּבֵ֥ית שָׁא֖וּל הֹלְכִ֥ים וְדַלִּֽים׃
וילדו [וַיִּוָּלְדוּ] לְדָוִ֖ד בָּנִ֑ים בְּחֶבְרֹ֗ון וַיְהִ֤י בְכֹורֹו֙ אַמְנֹ֣ון לַאֲחִינֹ֣עַם הַיִּזְרְעֵאלִ֔ית׃
וּמִשְׁנֵ֖הוּ כִּלְאָ֑ב לאביגל [לַאֲבִיגַ֣יִל] אֵ֣שֶׁת נָבָ֣ל הַכַּרְמְלִ֔י וְהַשְּׁלִשִׁ֖י אַבְשָׁלֹ֥ום בֶּן־מַעֲכָ֖ה בַּת־תַּלְמַ֥י מֶֽלֶךְ גְּשֽׁוּר׃
וְהָרְבִיעִ֖י אֲדֹנִיָּ֣ה בֶן־חַגִּ֑ית וְהַחֲמִישִׁ֖י שְׁפַטְיָ֥ה בֶן־אֲבִיטָֽל
וְהַשִּׁשִּׁ֖י יִתְרְעָ֑ם לְעֶגְלָ֣ה אֵ֔שֶׁת דָּוִ֖ד אֵ֥לֶּה יֻלְּדוּ֙ לְדָוִ֔ד בְּחֶבְרֹֽון׃

The war between the House of Saul and the House of David was long-drawn-out; but David kept growing stronger, while the House of Saul grew weaker.
Sons were born to David in Hebron: His first-born was Amnon, by Ahinoam of Jezreel;
his second was Chileab, by Abigail wife of Nabal the Carmelite; the third was Absalom son of Maacah, daughter of King Talmai of Geshur;
the fourth was Adonijah son of Haggith; the fifth was Shephatiah son of Abital;
and the sixth was Ithream, by David's wife Eglah. These were born to David in Hebron.
2 Samuel 3:1-5

At first glance, this looks like a standard Biblical genealogy. However, the opening verse foreshadows the centrality of military prowess in the narrative. The appearance of women and sons proves that David "kept growing stronger." This list, therefore, is as much a genealogy, as a list of military conquests. Interestingly, while most genealogies focus exclusively on the birth of sons, this "genealogy" provides information on their mothers. For example, the word *ishah*, "wife," appears once in this list but is not, as one would expect, in reference to David. Rather, "Abigail, wife of Nabal the Carmelite bore David sons." The point here is that David conquered Nabal and was, therefore, able to acquire Abigail. The list is not about David's offspring but rather about his militaristic might.

In the same vein, the most famous of David's marriages -- that to Batsheva -- results from a show of military might. In sum, David sees the alluring Batsheva, becomes infatuated with her, and has sexual intercourse with her. When Batsheva reveals she is pregnant, David sends for her husband Uriah to return from war and contrives a scenario in which he will have sex with his wife so that David cannot be accused of having had relations with her. When Uriah refuses to sleep with his wife and returns to war, David orders him to the front line so that he dies (2 Samuel 11). In this narrative, King David asserts his power to protect himself, as well as to acquire the woman who will eventually bear him a successor.

Increased Male Sexual Power and Pleasure

While bearing children--whether for posterity or a show of strength --is the most common action associated with wives and concubines, sexual pleasure and power also

factor into these relationships. The word "concubine" occurs multiple times alongside verbs associated with sex.[21] For example, Ahithophel, one of David's supporters, advises Absalom, David's son,

בֹּוא אֶל־פִּלַגְשֵׁי אָבִיךָ אֲשֶׁר הִנִּיחַ לִשְׁמֹור הַבָּיִת וְשָׁמַע כָּל־יִשְׂרָאֵל כִּי־נִבְאַשְׁתָּ אֶת־אָבִיךָ וְחָזְקוּ יְדֵי כָּל־אֲשֶׁר אִתָּךְ׃
וַיַּטּוּ לְאַבְשָׁלֹום הָאֹהֶל עַל־הַגָּג וַיָּבֹא אַבְשָׁלֹום אֶל־פִּלַגְשֵׁי אָבִיו לְעֵינֵי כָּל־יִשְׂרָאֵל׃

"Have intercourse with your father's concubines, whom he left to mind the palace; and when all Israel hears that you have dared the wrath of your father, all who support you will be encouraged."
So they pitched a tent for Absalom on the roof, and Absalom lay with his father's concubines with the full knowledge of all Israel.

2 Samuel 16:21-22

The verb, *bet-vav-aleph*, "to come," which appears twice here, is often used euphemistically to mean "to have intercourse." As in the narratives previously examined, sex here is a means to an end. Absalom wants to disempower David while increasing his own might. Yet, since Absalom is not the head of the household and there is, thus, no reason to acquire anything, he has nothing to offer the concubines in return for their sexual favors. Only Absalom, not the women, benefit from their relations.

It would seem as though Absalom inherits this trait from his father, as David, too, uses sex to flaunt power. The most notorious example is again the David-Batsheva narrative, which contains verbs of sex and power that seem to equate the two. After David sees Batsheva on the roof,

וַיִּשְׁלַח דָּוִד מַלְאָכִים וַיִּקָּחֶהָ וַתָּבֹוא אֵלָיו וַיִּשְׁכַּב עִמָּהּ וְהִיא מִתְקַדֶּשֶׁת מִטֻּמְאָתָהּ וַתָּשָׁב אֶל־בֵּיתָהּ׃

David sent messengers to fetch her; she came to him and he lay with her—she had just purified herself after her period—and she went back home.

2 Samuel 11:4

[21] Genesis 35:22; 2 Samuel 3:7; 2 Samuel 16:21-22; Ezekiel 23:20.

This short verse contains six verbs, the first four of which are important for our analysis. First, David *vayishalach*, "sends," for Batsheva -- an action denoting the power to have others serve him. His messengers then *vayikecheha, "*take her." Batsheva is at their mercy; she has no power in the situation. Batsheva then *vatavo*, "comes to" David. The same verb for sexual relations that occurred in the Absalom narrative is now employed in the feminine form. Batsheva is the subject of the verb. One could infer then, that Batsheva has agency in this narrative since she is the one "coming." However, the power dynamic inherent in the verbs that appear earlier in the story makes that a hard case to argue: after all, Batsheva was forced "to come" to David. Finally, David *vayishkav*, laid with, Batsheva. Again, lest we imagine that Batsheva's "coming" is an expression of female agency, this verb refutes that: David lies with Batsheva, not the other way around. At the same time, the alliteration between *shalach* and *shachav*, the two verbs associated with David in the verse, is not accidental. David's "sending" and "laying" are acts with the same intention -- namely, power.

While for Absalom and David, sex is equivalent to power, for Jacob it connotes sexual pleasure. While the Jacob-Rachel-Leah narrative is typically interpreted as a story of love and deception, a closer look at the semantics shows a story of male lust and gratification. Jacob sees Rachel at a well, falls in "love" with her, and agrees to serve her father, Laban, for Rachel. And so,

וַיַּעֲבֹד יַעֲקֹב בְּרָחֵל שֶׁבַע שָׁנִים וַיִּהְיוּ בְעֵינָיו כְּיָמִים אֲחָדִים בְּאַהֲבָתֹו אֹתָהּ׃
וַיֹּאמֶר יַעֲקֹב אֶל־לָבָן הָבָה אֶת־אִשְׁתִּי כִּי מָלְאוּ יָמָי וְאָבוֹאָה אֵלֶיהָ׃
Jacob served seven years for Rachel and they seemed to him but a few days because of his love for her.
Then Jacob said to Laban, "Give me my wife, for my time is fulfilled, that I may cohabit with her."

Genesis 29:20-21

The Biblical narrative uses the verb *aleph-hei-bet*, usually translated as "to love", to describe Jacob's feelings for Rachel. However, Jacob's own words tell a different story. Jacob uses the verb, *bet-vav-aleph*, the same verb that means "to come" in the Absalom and David narratives, with regard to his need for Rachel. Jacob states, "*havah*, bring her to me...so that *v'avo-ah,* I may have sex with her." This repetition of the root makes Jacob's meaning clear: he wishes to have sex with Rachel; marriage seems an afterthought, or at least a lower priority. Medieval commentators, Rashi and Sforno, explain Jacob's urgency for sex as a strong desire to start a family so as to create the twelve tribes of Israel.[22] The Biblical narrative contains no such connotation. Jacob wants to have sex with Rachel, and when he is duped into having sex with Leah (Genesis 29:23-25), it is not his feelings of love that are thwarted but his masculine ego that is bruised.

Additional Reasons for Multiple Partners

Thus far, we have seen how Biblical men acquire multiple female partners to increase their economic power--whether through procreation or acquisition of women as property, to show their military might, or for sexual satisfaction. As we know from our own lives, relationships are complicated. Often, Biblical men had multiple partners for a combination of these reasons, as seen in the narrative about Lamech, a descendant of Cain who had two wives, Adah and Zillah (Genesis 4:19). Rashi explains that having two wives

[22] Rashi on Genesis 29:21; Sforno on Genesis 29:21.

כָּךְ הָיָה דַּרְכָּן שֶׁל דּוֹר הַמַּבּוּל אַחַת לִפְרִיָּה וּרְבִיָּה וְאַחַת לְתַשְׁמִישׁ זוֹ שֶׁהִיא לְתַשְׁמִישׁ מַשְׁקֶה כּוֹס שֶׁל עִקָּרִין כְּדֵי שֶׁתֵּעָקֵר וּמְקֻשֶּׁטֶת כְּכַלָּה וּמַאֲכִילָהּ מַעֲדַנִּים, וְחֲבֶרְתָּהּ נְזוּפָה וַאֲבֵלָה כְּאַלְמָנָה

was the custom of the generation that lived before the time of the Flood. They had two wives, one for childbearing, the other for frivolous companionship and charm; the latter was given a cup of some drug to drink in order that she might become barren, and was dressed up like a bride and fed with the best food, whilst her fellow-wife was left without her husband's companionship and ever mourned like a widow…[23]

Here, Rashi delineates separate purposes for each wife as he distinguishes between, male sexual pleasure and childbearing. Although his comments may seem simply descriptive, judgment is implied as well. He opens by noting that this was the custom "before the Flood," which Biblical readers understand as a period of lawlessness (Genesis 6:11). So when men like Lamech acquired more than one wife it would seem that, according to Rashi, their wrongdoing was on account of their using each wife for a particular function rather than the act of polygamy itself. To Rashi, demanding only a single function of a woman deprived her and was therefore immoral. While women may have been treated as property and "pawns in the patriarchy game," they were still acknowledged as human and, therefore, multi-dimensional creatures, according to Rashi. That meant that each Biblical woman should have been given the opportunity to bear children, if "God allowed it," and to have intimate relations with the head of the household. In exchange, the head of the household was obligated to provide for each partner. Although the partnership was far from equal, basic needs had to be met.

[23] Rashi on Genesis 4:19.

The Hierarchical Nature of Biblical Multiple-Partner Households

Multi-partner relationships, or family corporations, enabled Biblical society to flourish. They signified who was in power, who had wealth, and who belonged to which tribe. In order for these relationships to function within the family structure, a patriarchal hierarchy existed in which the male head owned the women and their children. The consequence of such a relationships meant a competitive atmosphere for the women involved, leading to family dysfunction, even if some rare instances of friendship between women were evident.

Multiple-Partner Relationships as Ownership

Simply put, the male owned the females in his household. This is evident in the verb *lamed-kuf-chaf*, "to take", used to connote Biblical marriage. Only the man has agency in the transaction: he takes what is his and the two are married. The Jacob-Rachel-Leah narrative (Genesis 29:20-30) is the primary example for such an arrangement. The verbs used in the episode of Jacob acquiring Rachel and Leah from Laban are *bet-vav-aleph*, "to come/bring", as per above, *nun-tav-nun*, "to give", and *lamed-kuf-chaf*, "to take". Laban *takes* Leah, his daughter, and *brings* her to Jacob. He then *gives* Zilpah and Bilhah to his daughters after they have already *come* to Jacob. Thus, Jacob receives Zilpah and Bilhah as well. The verbs show how marriage in the Biblical narrative is a transfer of property from one household, that of the father, to another household, that of the husband.

Interchangeable Function of Wives and Concubines

While the words "concubine" and "wife" are distinguishable to the modern reader, in the Biblical context they are at times used interchangeably. For example, while Jewish tradition generally understands Abraham's wife as Sarah and his concubine as Hagar, a closer look at the text and midrash, shows that Abraham was actually married to Hagar. Since Sarah was barren,

וַתִּקַּ֗ח שָׂרַ֤י אֵֽשֶׁת־אַבְרָם֙ אֶת־הָגָ֣ר הַמִּצְרִ֔ית שִׁפְחָתָ֕הּ מִקֵּ֖ץ עֶ֣שֶׂר שָׁנִ֑ים לְשֶׁ֙בֶת֙ אַבְרָ֣ם בְּאֶֽרֶץ־כְּנָ֔עַן וַתִּתֵּ֥ן אֹתָ֖הּ לְאַבְרָ֥ם אִישָׁ֖הּ לֹ֥ו לְאִשָּֽׁה׃

Sarai, Abram's wife, took her maid, Hagar the Egyptian—after Abram had dwelt in the land of Canaan ten years—and gave her to her husband Abram as concubine.

Genesis 16:3

Although the JPS editors translate *ishah* as "concubine," the same word is used to describe Sarai earlier in the verse (*eshet-Avraham*). In fact, *ishah* is the word typically used to describe a wife. Midrash Pirke d'Rabbi Eliezer (PRE) picks up on the repetition of the word *ishah* and expands on the story of Hagar-as-wife when Sarah later casts out Hagar:

אמרה שרה לאברהם כתוב גט גרושין לאמה ושלח את האמה הזאת מעלי ומעל יצחק בני מן העולם הזה ומן העולם הבא

Sarah said to Abraham, write a writ of divorce to the handmaid and send this handmaid from me and from Isaac my son, from this world, and from the world to come.[24]

Remarkably, the author of PRE so fully accepted the idea of Hagar as Abraham's wife that he describes their divorce. Even more remarkably, the author gives Sarah agency to initiate the divorce. Of course, like many midrashim, this one, too, is anachronistic; *gittim* were not established in Biblical times. Nevertheless, this does show that there was some

[24] PRE 69B.

understanding that Hagar was a wife, not a concubine. It should be noted that Rabbi David Luria, the main commentator on PRE, adamantly rejects this notion and counters that Hagar was indeed a *pilegesh*. Yet even his ready retort demonstrates his discomfort with labeling Hagar as a wife.

In the story of Abraham and Keturah, as well, the words *ishah* and *pilegesh* are used interchangeably. After Sarah dies, Abraham "takes" a new wife, Keturah (Genesis 25:1). While the text explicitly calls her *ishah* when she is introduced, the word concubine appears a few verses later:

וְלִבְנֵי הַפִּילַגְשִׁים אֲשֶׁר לְאַבְרָהָם נָתַן אַבְרָהָם מַתָּנֹת וַיְשַׁלְּחֵם מֵעַל יִצְחָק בְּנוֹ בְּעוֹדֶנּוּ חַי קֵדְמָה אֶל־אֶרֶץ קֶדֶם׃

To Abraham's sons by concubines, Abraham gave gifts while he was still living, and he sent them away from his son Isaac eastward, to the land of the East.

Genesis 25:6

The use of "concubines" here confused the medieval commentators. Who, they asked, were concubines if Sarah, Hagar, and Keturah were all wives? Rashi explains that Keturah was actually Hagar, with whom, according to the midrash, Abraham reunited after Sarah died.[25] In contrast, Ibn Ezra claims that Keturah is not Hagar but one of the concubines, which explains why she is mentioned five verses before the "sons of concubines."[26] Such examples demonstrate the ambiguity behind the terms wife and concubine. While we know Sarah had a higher status than Abraham's other partners, what that status actually denoted and entailed is unclear.

[25] Rashi on Genesis 25:6.
[26] Ibn Ezra on Genesis 25:6.

Relationships Between Wives and Concubines

While Biblical families functioned in a multi-partner structure, they did not function very well. As mentioned above, Sarah banishes Hagar, leaving her and her son Ishmael to starve in the desert. Rachel and Leah, Jacob's wives, fight over barrenness and childbirth. Elkanah's two wives, Peninah and Hannah have a vicious rivalry. When Hannah is barren, Peninah ostracizes her:

וְכִעַסַּתָּהּ צָרָתָהּ גַּם־כַּעַס בַּעֲבוּר הַרְּעִמָהּ כִּי־סָגַר יְהוָה בְּעַד רַחְמָהּ׃

her rival, would make her miserable, would taunt her that the Eternal had closed her womb.

1 Samuel 1:6

The verb *caf-ayin-samech,* "to annoy or anger," appears twice, emphasizing the type of torment Peninah would cause Hannah. Further, Peninah is described here not as an *ishah* but as a *tzarah*, a rival. Michael J. Broyde, a law and Bible scholar, picks up on and explains

> The biblical Hebrew word used to denote a co-wife in a polygamous relationship means "trouble" (*tzarah*) a stinging indictment of the family dynamics in polygamous relationships. Indeed, there is no case of non-monarchical polygamy in the biblical tradition other than in cases of infertility or fraud in creation.[27]

The fraud to which Broyde is referring is that of the Jacob-Rachel-Leah narrative. Broyde's comments could be applied to most, if not all, the women involved in these relationships. They hardly interact with one another, and when they do the interactions are full of strife and malice.

[27] Michael J. Broyde. " Jewish Law and the Abandonment of Marriage: Diverse Models of Sexuality and Reproduction in the Jewish View, and the Return to Monogamy in the Modern Era" *Marriage Sex, and Family in Judaism* (2005): 89.

But note the one exception to this rule. While Leah taunts Rachel for her lack of ability to conceive, midrash tells a different story concerning their first interactions with Jacob. After Laban deceives Jacob, giving him Leah instead of Rachel, the text states that

וַיְהִי בַבֹּקֶר וְהִנֵּה־הִוא לֵאָה

When morning came, there was Leah!

Genesis 29:25

This phrasing confused the rabbis, since Jacob spent the night with Leah and, perhaps, should have known it was Leah all along. Rashi explains this phenomenon by stating,

אַבָל בַּלַּיְלָה לֹא הָיְתָה לֵאָה; לְפִי שֶׁמָּסַר יַעֲקֹב סִימָנִים לְרָחֵל; וּכְשֶׁרָאֲתָה רָחֵל שֶׁמַּכְנִיסִין לוֹ לֵאָה אָמְרָה: עַכְשָׁיו תִּפָּלֵם אֲחוֹתִי, עָמְדָה וּמָסְרָה לָהּ אוֹתָן סִימָנִים

> In the evening it did not seem as though it was Leah. This is because Jacob had given a secret code to Rachel (so that they could identify one another). However, when Rachel saw that Leah was preparing to enter into marriage with Jacob, Rachel realized her sister could be shamed by this process and so she told Leah the secret code.[28]

By quoting this story from the Talmud (BT Megillah 13A), Rashi highlights a rare instance of female agency and woman-to-woman compassion. Rachel takes control of her future family by providing helpful information to Leah. By doing so, Rachel thinks not of herself and her own future children but rather puts Leah's honor before her own -- an act of selflessness seldom associated with either male or female characters in the Bible.

Relationships Between Concubines and Other Family Members

While there are many Biblical stories depicting the wife-concubine internal relationship and that between the husband and "his" women, there are fewer portrayals of wives and/or concubines relating to other family members. When they do exist, they

[28] Rashi on Genesis 29:25.

often are meant to show male power and subterfuge. For example, Absalom has sex with David's concubines before all Israel in an attempt to overthrow David (2 Samuel 16:21). This example conforms with the role concubines play in Biblical society: male sexual pleasure and power.

However, there is one glaring exception. In the military story of David and the Gibeonites, a concubine interacts with someone other than her husband, which thrusts her into a positive light and casts her as an ethical model for (even) male characters. During David's reign, there was a famine in the land. Heeding God's advice, David asked the Gibeonites for help. They respond that David needs to hand over seven of Saul's sons so that the Gibeonites could kill them in retribution for Saul's previous conquest against them. David does as they demand, handing over seven of Saul's sons, two of whom were borne by his concubine Rizpah. Then

וַתִּקַּח רִצְפָּה בַת־אַיָּה אֶת־הַשַּׂק וַתַּטֵּהוּ לָהּ אֶל־הַצּוּר מִתְּחִלַּת קְצִיר עַד נִתַּךְ־מַיִם עֲלֵיהֶם מִן־הַשָּׁמָיִם וְלֹא־נָתְנָה עוֹף הַשָּׁמַיִם לָנוּחַ עֲלֵיהֶם יוֹמָם וְאֶת־חַיַּת הַשָּׂדֶה לָיְלָה׃
וַיֻּגַּד לְדָוִד אֵת אֲשֶׁר־עָשְׂתָה רִצְפָּה בַת־אַיָּה פִּלֶגֶשׁ שָׁאוּל׃
וַיֵּלֶךְ דָּוִד וַיִּקַּח אֶת־עַצְמוֹת שָׁאוּל וְאֶת־עַצְמוֹת יְהוֹנָתָן בְּנוֹ מֵאֵת בַּעֲלֵי יָבֵישׁ גִּלְעָד אֲשֶׁר גָּנְבוּ אֹתָם מֵרְחַב בֵּית־שַׁ֫ן אֲשֶׁר תלום [תְּלָאוּם] שם הפלשתים [שָׁמָּה] [פְּלִשְׁתִּים] בְּיוֹם הַכּוֹת פְּלִשְׁתִּים אֶת־שָׁאוּל בַּגִּלְבֹּעַ׃
וַיַּעַל מִשָּׁם אֶת־עַצְמוֹת שָׁאוּל וְאֶת־עַצְמוֹת יְהוֹנָתָן בְּנוֹ וַיַּאַסְפוּ אֶת־עַצְמוֹת הַמּוּקָעִים׃
וַיִּקְבְּרוּ אֶת־עַצְמוֹת־שָׁאוּל וִיהוֹנָתָן־בְּנוֹ בְּאֶרֶץ בִּנְיָמִן בְּצֶלָע בְּקֶבֶר קִישׁ אָבִיו וַיַּעֲשׂוּ כֹּל אֲשֶׁר־צִוָּה הַמֶּלֶךְ וַיֵּעָתֶר אֱלֹהִים לָאָרֶץ אַחֲרֵי־כֵן׃

Rizpah daughter of Aiah took sackcloth and spread it on a rock for herself, and she stayed there from the beginning of the harvest until rain from the sky fell on the bodies; she did not let the birds of the sky settle on them by day or the wild beasts [approach] by night.
David was told what Saul's concubine Rizpah daughter of Aiah had done.
And David went and took the bones of Saul and of his son Jonathan from the citizens of Jabesh-gilead, who had made off with them from the public square of Beth-shan, where the Philistines had hung them up on the day the Philistines killed Saul at Gilboa.
He brought up the bones of Saul and of his son Jonathan from there; and he gathered the bones of those who had been impaled.
And they buried the bones of Saul and of his son Jonathan in Zela, in the territory of Benjamin, in the tomb of his father Kish. And when all that the king had commanded was done, God responded to the plea of the land thereafter.

2 Samuel 21:10-14

Note first that the verbs associated with Rizpah in this narrative are unlike those typically associated with Biblical concubines. In this instance, Rizpah is *vatikach,* taking a sackcloth, *v'tatahu,* spreading the cloth over the rock, *mithalat*, staying in the area, and, finally, *lo nat'nah,* not letting birds fly near the boys' bodies. These are not verbs associated with childbearing or sex. Rather, they are verbs of power--giving and taking--and verbs of protection--spreading and staying. While David and Rizpah never interact, it is evident from the story that David models his behavior after Rizpah's. David learns to mourn by following her example.

The Medieval commentators recognize Rizpah's elevated status. Ibn Ezra goes so far as to call Rizpah an "*Eshet Chayil*,", a famous apposition from Proverbs 31, which means "woman or wife of valor."[29] He also calls her a wife. The lowly concubine is valorized for her actions and understood as a role model.

Conclusion: Multi-Partner Relationships of the Bible and Today

Multi-partner relationships between a single male and multiple female "partners" depicted in Biblical narrative were founded on a patriarchal social structure where women were used by men to accrue power. Regarded as vessels for childbearing and/or male sexual pleasure, women were subordinate to men in nearly every instance of male-female partnership. Therefore, the primary difference between polyamorous relationships of today and multi-partner relationships of the Bible is one of gender dynamics. As Epstein explained, the Biblical family was one of corporation in which the

[29] Ibn Ezra on 2 Samuel 21:10.

man was owner and leader.[30] In contrast, since the nineteenth century, polyamorous communities have championed gender equality, often exemplified by female leadership. Elisabeth Sheff, an educational consultant and expert on polyamorous communities, explains how "polyamory only flourishes where women can be the social equal of the men around them."[31] Further, "…women have historically dominated leadership positions in both poly communities and in academic circles that study these groups."[32] This female position of leadership took hold as early as the nineteenth century when feminist and activist, Frances Wright founded Nashoba, a polyamorous commune in Tennessee,[33] leading the way for the female leaders of these communities today.

Not only do the women of polyamorous communities have much more agency and power than those of the Bible, but the men in these communities also approach relationships and society differently. As Sheff explains, multi-partner relationships that consist of one man and multiple women continue a patriarchal system of relationships. However, "the men who select polyamory as an alternative to monogamy or polygyny must be willing to step outside of an ownership model."[34] As displayed in the Bible, marriage and family dynamics are a microcosm of larger society. Thus, Biblical men had to assume power through the family in order to display power outwards towards the society. Interestingly, when Sheff speaks of "an ownership model" she is speaking of modern conventional relationships, not of the Biblical corporation. Therefore, in the case

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[30] Epstein, 4.
[31] Sheff, 1-2.
[32] Ibid., 28.
[33] Gail Bederman. "Revisiting Nashoba: Slavery, Utopia, and Frances Wright in America, 1818-1826." *American Literary History, 17,* no. 3 (2005): 438-459.
[34] Sheff, 29-30.

of polyamorous communities today, many participating men see conventional modern relationships as continuing this patriarchal need for power. They forego this power to be part of these relationships--a counter cultural move.

Along with gender power dynamics, Biblical and modern multi-partner relationships differ in purpose. I have already shown how Biblical multi-partner relationships are established to bolster male economic, militaristic, and political power. Of course, male sexual experience is also a large consideration. In contrast, Sheff details six reasons why individuals or those in existing relationships will choose to become polyamorous, or act on their polyamorous tendencies. These reasons, as Sheff defines them, are: getting more needs met; receiving more love; experiencing sexual variety; expanding one's family; acting on an innate tendency towards multiple partners; and wanting to live counter to today's society.[35] While some of the needs mentioned here seem similar to Biblical relationships, i.e. family expansion, the needs mentioned here apply to all genders, not solely those of men. In that way, they are definitionally opposed to the reasons for Biblical multi-partner relationships stated earlier.

At the same time, the fact that multi-partner relationships figure so prominently in the foundational stories of Jewish tradition warrants our attention. After all, one cannot read the Bible and declare that Mosaic tradition is monogamous. As Ryan, a polyamorous practitioner explains it: "'The Bible is all about polyamory, what else do they mean by 'love your neighbors'?'[36] Despite his flippancy, and with an understanding that the origins and nature of Biblical multi-partner relationship are radically different from those

[35] Ibid., 38.
[36] As quoted in Sheff, 4-5.

of polyamorous relationships today, similarities do persist--like that of the contractual nature of the relationship and hierarchical language.

Like Biblical relationships, polyamorous relationships are negotiated so that each party receives what he or she needs. Susan Dominus, writing for *The New York Times Magazine*, explains this process of negotiation as she differentiates between polyamory and monogamy:

> Monogamy is an approach to relationships built on one bright-line rule: no sex with anyone else. Open relationships may sound like the more unfettered choice, but the first thing non-monogamous couples often do is draw up a list of guidelines: rules about protection, about the number of days a week set aside for dates, about how much information to share. Some spouses do not want to know any details about the other spouse's extramarital sex, while for others, those stories are a thrilling side benefit of the arrangement.[37]

Successful polyamorous relationships have a negotiation period in which each party states how he or she wants the relationship to be handled. Biblical society also had a negotiation period in which the male head of one house, the woman's father, would negotiate terms for an arrangement with the prospective husband. This is seen most clearly in Laban and Jacob's narrative. Although the Biblical negotiations occurred between the two most powerful men in the families, this aspect of negotiation is similar to polyamorous relationships today, and often contrasts with modern monogamy. Although Jewish couples technically have a *ketubah* which states the terms of a marriage (in the case of death of the husband or divorce), most monogamous couples have already assumed the nature of their relationship before signing such a contract, namely, sexual

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[37] Susan Dominus. "Is an Open Marriage A Happier Marriage?" *The New York Times Magazine*, May 11, 2017. Retrieved on 12 October 2017. www.nytimes.com/2017/05/11/magazine/is-an-open-marriage-a-happier-marriage.html?_r=0.

exclusivity. Polyamorous relationships make this negotiation more apparent and transparent.

Another similarity between multi-partner relationships in the Bible and polyamorous relationships of today is their shared use of hierarchical language. While some polyamorous individuals shy away from, or actively preach against, hierarchical language, many use the terms primary, secondary, and even tertiary to distinguish their partners from one another. In this structure, a primary relationship is usually long-term and defined by "joint finances, cohabit, mutually make major life decisions, and some have children."[38] This is markedly different from a secondary relationship in which partners "share an emotional connection but tend to keep their lives more separate than primary partners."[39] Lastly, a tertiary relationship is usually fleeting and may have little impact on other parts of the individuals' lives. This hierarchical setup shares characteristics with that of wife and concubine, in that a wife's son would inherit the family estate and become the leader of the tribe, while a concubine's son would simply be cared for financially by the tribe (Genesis 25:6). However, as discussed above, the lines between these relationships were often blurry. While this caused conflict in most of the Biblical narratives, the tension increases dramatically in modern polyamorous relationships since all parties have agency to petition for their needs. This may explain why a practitioner of polyamory would choose to use strong hierarchical and clearly-defined language.

[38] Sheff, 17.
[39] Ibid.

Such aspects of Biblical relationships could be used to support polyamorous communities of today. For example, highlighting and celebrating the transparent contracting of relationships could benefit both polyamorous relationships, as well as monogamous ones. All practitioners of love and sex could benefit from more open ideas of the ways in which love, sex, and intimacy relate to financial and ethical responsibility. Also, as families and relationships continue to expand in boundaries and identities, the outlier relationships, that of the midrashic Rachel and Leah who helped one another, and that of Rizpah and David--an unlikely mentorship, could be used as a guide for moral intimate and familial behavior. Our ancient texts can, and should, be used to develop a sexual ethic for all relationships.

Chapter 2

A Rabbinic Era of Unilateral Sexual Exclusivity

Introduction

In the post-Biblical era, the Jewish patriarchy shifted its focus to the sexuality of women within the confines of marriage. Drawing on the Biblical model of monotheism portrayed by the covenant between the one God and the unique people Israel, husbands (God) would similarly protect and provide for their wives (Israelites) in exchange for the latter's fealty. The Rabbis reified and ritualized this relationship by introducing the ceremony of *kiddushin* (sanctification of marriage as represented by a change in status from daughter to wife) and *ketubah* (a contractual document that provides for a wife in the event of divorce or widowhood). Both *kiddushin* and *ketubah* mandate female sexual exclusivity but place minimal to no restrictions on the male partner. The Rabbinic emphasis on sexual exclusivity poses a hurdle -- perhaps insurmountable -- to the acceptance of modern multi-partner relationships within the Jewish context. However, as will be discussed below, scholars have already begun to question such Rabbinic innovations (that have become traditional and remain in vogue for Jews to this day) in light of the changing landscape of contemporary sexual ethics informed by feminism and queer theory.

Monogamy in the Bible

The Biblical authors initiated and institutionalized monogamy. The classic and renowned Anchor Bible commentary describes "marriage in OT (Old Testament) society" as "a monogamous one, one man for one woman, one woman for one man."[40] This ideal originates with the creation narrative (Genesis 2:18) and is crystallized in the giving of Torah at Mt. Sinai with the ban against adultery. The law appears in both versions of the ten commandments and is axiomatic enough to require no explanation:

לֹא תִּנְאָף

"You may not commit adultery"

Exodus 20:18

But even its simplicity confounded medieval commentators. Rashi for instance, elaborated on the Biblical text, explicating:

אֵין נִיאוּף אֶלָּא בְּאֵשֶׁת אִישׁ

This term *niuf* (adultery) can only apply to [having sex with] a[nother] man's wife.[41]

By narrowing the law to a prohibition against a man having sex with another "man's wife," Rashi is in effect sanctioning the possibility of Israelite sexual relations between men, married or not, and non-married women. The marital status of the man seems of no consequence to Rashi. Thus the eighth commandment, "Do not commit adultery," pertains to men but has implications for the "sanctity" of women's sexuality. In other words, *wife* must remain sexually exclusive to her husband, but the same condition does not apply to the husband.

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[40] Victor P. Hamilton. "Marriage, (OT and ANE)." *The Anchor Bible Dictionary, 4*. Freedman, David Noel, ed. (New York: Doubleday, 1992.), 559.
[41] Rashi on Exodus 20:18.

The Biblical authors defended marital sexual fidelity by employing the theological metaphor of God's relation to the Israelites. As the Israelites were expected to worship the one and only Eternal as their God, so, too, a wife should save her sexuality exclusively for her husband. In fact, this very image appears immediately before the injunction against adultery is given (Exodus 20:2-6). The "marriage" between God and Israel is then fleshed out in any number of Prophetic books, as when the Israelites stray from God in Hosea:

רִ֣יבוּ בְאִמְּכֶ֔ם רִ֖יבוּ כִּי־הִ֣יא לֹֽא־אִשְׁתִּ֑י וְאָנֹכִ֖י לֹא־אִישָׁ֑הּ וְתָסַ֤ר זְנוּנֶ֙יהָ֙ מִפָּנֶ֔יהָ וְנַאֲפוּפֶ֖יהָ מִבֵּ֥ין שָׁדֶֽיהָ׃

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.

Hosea 2:4

In this verse, as well as many others, God condemns the Israelites' worship of other gods as harlotry and adultery. As the Israelites are instructed to remain faithfully "monogamous" to their God, so, too, a wife to her husband (and even future husband, as will be described below in the section on *ketubah*).

While the Prophets generally focus on unilateral exclusivity between God and the Israelites (i.e. Israel remaining exclusively God's), there are other Biblical passages that portray mutual monogamy between the Divine and the Israelites, as in the prelude to the ten plagues in Egypt:

וְלָקַחְתִּ֥י אֶתְכֶ֛ם לִ֖י לְעָ֑ם וְהָיִ֤יתִי לָכֶם֙ לֵֽאלֹהִ֔ים וִֽידַעְתֶּ֕ם כִּ֚י אֲנִ֣י יְהוָ֔ה אֱלֹֽהֵיכֶ֖ם הַמּוֹצִ֣יא אֶתְכֶ֑ם מִתַּ֖חַת סִבְלֹ֥ות מִצְרָֽיִם׃

And I will take you to be My people, and I will be your God. And you shall know that I, the Eternal, am your God who freed you from the labors of the Egyptians.

Exodus 6:7

This pronouncement of relationship is reciprocal: the Israelites will be known as God's people and God will be known as the Israelites' God. Note that while the partners in Biblical monotheism may "possess" the other in equal measure, the power dynamic is not equal. God is the subject and the people, Israel, is the object. God "takes" and "frees" the Israelites whereas the Israelites "know" and "are". In sum, God has the power in the relationship, not the Israelites.

Song of Songs provides the strongest example of divine mutual monogamy in the Bible. In this poem, God and the Israelites are depicted as lovers. The possessive form infuses the most famous verse in the book and expresses the symbiotic nature of the relationship:

אֲנִי לְדוֹדִי וְדוֹדִי לִי הָרֹעֶה בַּשּׁוֹשַׁנִּים׃

I am my beloved's And my beloved is mine; He browses among the lilies.

Song of Songs 6:3

Both Israel and God are *dodi*. There are no power differentials here. They are equally named, equally in love, and equally owned by one another. This type of relationship between God and Israel is rare in the Bible, but does provide a meaningful resource for Jews in the modern era.

What is *Kiddushin* and *Ketubah*?

Biblical unilateral sexual exclusivity takes on new meaning in the Rabbinic era, as introduced in the concepts of *kiddushin* and *ketubah* in the Mishnah and elaborated upon in the Talmud. *Kiddushin* is based on property law and change of status. In *Engendering Judaism,* Rachel Adler, the feminist theologian explains,

> By the time of the Mishnah...a wedding has become a religious event of cosmic significance. Taking a woman to wife is categorized as a unique kind of acquisition, blending characteristics of both purchase and the religious act of setting goods aside for sacred donation, *hekdesh*. The ceremony of taking acquires a new rabbinic name reflecting its sanctification: *kiddushin*.[42]

The first reference to acquiring a woman for marriage appears in Mishnah Ketubot 1:1 and focuses solely on the the economics of the acquisition. The mishnah states,

הָאִשָּׁה נִקְנֵית בִּשְׁלֹשׁ דְּרָכִים, וְקוֹנָה אֶת עַצְמָהּ בִּשְׁתֵּי דְרָכִים. נִקְנֵית בְּכֶסֶף, בִּשְׁטָר, וּבְבִיאָה
A woman is acquired in three ways, and she can acquire herself in two ways. She can be required through money, document, or sexual intercourse.

Mishnah Ketubot 1:1

The mishnah explains the benefits of acquiring the woman through money, but does not elaborate further on the document or sexual intercourse means of acquisition. In fact, the chapter concerns itself with additional items acquired through money: fields and animals. This emphasis implies that the Rabbis are privileging acquisition through money. This seems to be *the* way to acquire a woman, among other property.

Mishnah 2:1 introduces the language of *kiddushin*, which connotes a sacred separation. This mishnah states,

הָאִישׁ מְקַדֵּשׁ בּוֹ וּבִשְׁלוּחוֹ. הָאִשָּׁה מִתְקַדֶּשֶׁת בָּהּ וּבִשְׁלוּחָהּ. הָאִישׁ מְקַדֵּשׁ אֶת בִּתּוֹ כְּשֶׁהִיא נַעֲרָה, בּוֹ וּבִשְׁלוּחוֹ
A man may betroth on his own or through an agent. A woman may become betrothed on her own or through an agent.

This mishnah introduces the verb *kuf-dalet-shin* into the conversation about marriage. The verb is used in the active form, *m'kadesh,* for the man--this is an action he does to another. The verb is used in the passive form, *mitkadeshet*, for the woman--this is an action that is done to her. As Adler explains, this language originates from "the religious

[42] Rachel Adler. *Engendering Judaism.* (Philadelphia: The Jewish Publication Society, 1998), 172.

act of setting goods aside for sacred donation, *hekdesh."*[43] This setting aside applies solely to the woman and has sexual connotations. The woman is set aside sexually for the man who is acquiring her. He is not similarly set aside for her. Such language finds its way into the religious marriage ceremony itself. Under the *chuppah*, the man says to the woman:

הרי את מקודשת לי בטבעת זו כדת משה וישראל

You are sanctified to me with this ring by the tradition of Moses and Israel.

This statement is still in use today, thereby perpetuating -- wittingly or not -- the unilateral sexual exclusivity upon which *kiddushin* was founded.

As if the unilateral nature of *kiddushin* were not strong enough to enforce the notion that a wife remain sexually exclusive to her husband, the Rabbis of the Mishnah also introduced the *ketubah*, a marital contract that values female unilateral sexual exclusivity. In general, "The *ketubah* was instituted for the purpose of protecting the woman, 'so that he shall not regard it as easy to divorce her' (Ket. 11A, Yev. 89a)".[44] The contractual language of the *ketubah* is evidence of the transactional nature of traditional Jewish marriage. A *ketubah* explicitly stipulates how much a man must pay his wife, so that she can remain financially secure if the marriage dissolves. On the surface, this document values the individuals in a relationship and protects them accordingly.

However, a *ketubah* privileges *certain* categories of women over others, showing how much the Mishnaic Jewish community esteemed unilateral sexual exclusivity. Tractate Ketubot, which delineates how these documents should be written and enforced,

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[43] Ibid.

[44] *Encyclopedia Judaica, Second Edition, 12.* (New York City: Macmillan Reference USA, 2006), 93.

differentiates between virgins (with their sexuality presumably intact, so to speak) and widows (who have obviously been sexually active already) in this way:

בְּתוּלָה נִשֵּׂאת לַיּוֹם הָרְבִיעִי, וְאַלְמָנָה לַיּוֹם הַחֲמִישִׁי. שֶׁפְּעָמַיִם בַּשַּׁבָּת בָּתֵּי דִינִין יוֹשְׁבִין בָּעֲיָרוֹת, בַּיּוֹם הַשֵּׁנִי וּבַיּוֹם הַחֲמִישִׁי, שֶׁאִם הָיָה לוֹ טַעֲנַת בְּתוּלִים, הָיָה מַשְׁכִּים לְבֵית דִּין:

A virgin should get married on a Wednesday, and a widow on a Thursday. For the courts convene twice per week in the cities, on Monday and on Thursday, and if he has a claim about [her lack of] virginity, he can come to the court [as] early [as possible].

Ketubot 1:1

This is all to say that a betrothed woman's sexual history is at stake here. On the one hand, if a man is marrying a widow, he knows unquestionably that she has had sex previously. If, on the other, he is marrying a virgin, he may need to bring the question of her sexuality to the court. Here, the mishnah is concerned about sexual experience, which will have a bearing on the brideprice, as seen below.

Tractate Ketubot not only categorizes women by sexual experience but establishes a hierarchy of value for each group:

בְּתוּלָה, כְּתֻבָּתָהּ מָאתַיִם. וְאַלְמָנָה, מָנֶה. בְּתוּלָה אַלְמָנָה, גְּרוּשָׁה, וַחֲלוּצָה, מִן הָאֵרוּסִין, כְּתֻבָּתָן מָאתַיִם, וְיֵשׁ לָהֶן טַעֲנַת בְּתוּלִים. הַגִּיּוֹרֶת, וְהַשְּׁבוּיָה, וְהַשִּׁפְחָה שֶׁנִּפְדּוּ וְשֶׁנִּתְגַּיְּרוּ, וְשֶׁנִּשְׁתַּחְרְרוּ, פְּחוּתוֹת מִבֶּן שָׁלֹשׁ שָׁנִים וְיוֹם אֶחָד, כְּתֻבָּתָן מָאתַיִם, וְיֵשׁ לָהֶן טַעֲנַת בְּתוּלִים:

[With regard to] a virgin [who is entering into marriage], her *ketubah* [monetary settlement payable to a woman upon divorce or the death of her husband] is 200 *dinar* [a specific unit of money]; And [for] a widow, it is a maneh [100 *dinar*]. A virgin [who is] a widow, or divorced, or has had *chalitza* [the ceremony performed to release a widow of a childless man from the obligation of levirite marriage] performed, after betrothal [the first stage of marriage, when the woman is considered a married woman but the couple may not yet live together], her *ketubah* is two hundred dinar, and they are subject to the claim of [her lack of] virginity. A proselyte, a captive, and a maidservant, who have been ransomed, converted, or freed at [an age of] less than three years and one day, their *ketubah* is two hundred dinar, and they are subject to the claim of [her lack of] virginity.

Ketubot 1:2

Thus, while a *ketubah* financially protects all women in the event of a divorce, women who are initially virgins when they enter into marriage are protected twice as much. This

100 *dinar* is the literal price tag on female sexual exclusivity. The Jewish community values a woman's sexual exclusivity to her husband at double the rate of a non-sexually exclusive woman. Lest we mistake this price tag for more than it is: both women, through *kiddushin*, are promising to be sexually exclusive in the *future*. Therefore, this doubling of price solely refers to a woman's history. Not only are wives mandated to be sexually exclusive to their husbands once married, with no promise of reciprocity, but she is also expected to have been sexually exclusive to her husband before she is married to him.

Expanding Sexual Exclusivity in the name of Egalitarianism

In the modern era, Jews have adapted both *ketubot* and *kiddushin* to meet changing expectations around egalitarianism in marriage; such modifications have had varying effects on sexual exclusivity. *Ketubot* that retain the traditional language of property law (whether or not an egalitarian clause has been inserted, as in many Conservative movement *ketubot*), perpetuate the idea of "pricing women" and, therefore, continue to reify, at least implicitly, female sexual exclusivity. Most *ketubot* used today in the Reform movement contain creative language that turns on mutual obligation and love and jettisons the traditional *ketubah* altogether.[45] Nearly all of them appear in modern Hebrew (as opposed to the traditional halakhic Aramaic) and include a literal translation into English.[46] Their contents are thus completely transparent to the signatories, regardless of Hebrew literacy. In contrast, Conservative *ketubot* include the

[45] "Choosing Your Ketubah Text," *Ketubah.com,* last modified 2018, https://www.ketubah.com/find-your-ketubah-text/.
[46] Ibid.

traditional language of property law in Aramaic, as well as the so-called "Lieberman clause" that prevents a husband from having unilateral power over divorce.[47] While this clause protects would-be divorcees from the status of *agunah*, it does not remove the "woman price" found in the traditional *ketubah* even as it does away with "bargain pricing" for non-virgins. Notably, since the property law clauses in Aramaic are generally not translated into English "translations," signers of Conservative *ketubot* may be unaware of what they are signing.

While efforts by progressive Jews to modernize *ketubot* has had little to no influence on the sexual ethics of modern-day Jewish marriage, attempts to make *kiddushin* more egalitarian have resulted in an expanding sense of sexual exclusivity on the part of both partners in the relationship (from formerly only wives to husbands and wives). The most common adaptation is the mutual exchange of rings and "*hekdesh* statements," which commit both members of the couple to sanctifying themselves and thereby pledging sexual exclusivity to each other. Some feminist scholars have taken issue with this adaptation to *kiddushin*. In her article on equitable divorce and marriage, Gail Labovitz, professor of Rabbinics at the Ziegler School of Rabbinic Studies, refutes the idea that a mutual exchange of rings and *hekdesh* statements signify an equitable form of marriage. Her reasoning is based on Moshe Feinstein's responsum on the subject, where he explains that since the bride has already been betrothed by the time she "reciprocates" by uttering a promise of *hekdesh*, her words are rendered empty and

[47]Benjamin Steiner. "The Lieberman Clause Revisited." *American Jewish Archives, 69, no. 1* (2017): 42.

foolish.[48] In essence, the groom has already secured her and her sexual exclusivity by the time she makes her "equivalent" statement. After all, the power dynamic has already been established and aggregated to the groom. She has already come into his possession and so does not have the privilege of mandating his sexual exclusivity in the way he did of hers. Thus, though it may look as though the bride has agency in this "egalitarian arrangement," it is a facade placed atop a fundamentally patriarchal ritual.

Other egalitarian options have been proposed, but they require looking outside the framework of *kiddushin*. One persuasive option originates from an anonymous scholar who champions self-obligation, or *kinyan hithayevut*, a means for setting oneself apart for another individual, no matter one's gender identity. As Labovitz summarizes the position:

> Kiddushin...is at its heart about rights over and restrictions of female sexual availability, and thus its primary meaning is that the woman becomes obligated to sexual exclusivity to her husband…However, could there be an alternative, legally compelling means by which the man could be bound or bind himself to a similar if not entirely identical obligation of sexual monogamy?[49]

Self-obligation enables a couple to commit themselves to identical rules and boundaries. While certainly egalitarian, self-obligation also serves to expands the parameters of *kiddushin* by obligating the groom, as well as the bride, to monogamy.

Rabbi Julia Andelman and Dr. Eitan Fishbane introduced another technique to express their promise of mutual monogamy. Labovitz explains their use of vows, *nedarim*, and oaths, *shevu'ot* to dedicate themselves publicly and exclusively to one another during their nuptials:

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[48] Gail Labovitz. "'With Righteousness and With Justice' To Create Equitable Jewish Divorce, Create Equitable Jewish Marriage." *Nashim 31,* (2017): 93.
[49] Ibid., 95.

> ...the use of vows or oaths as a form of marital commitment is quite straightforward: Each party articulates a vow and/or oath of commitment to the other, encompassing at least sexual (and emotional) exclusivity, and most likely other obligations and responsibilities that we typically associate with marriage, such as sharing financial resources and obligations, participating in domestic tasks such as child-rearing, keeping Jewish practices in the home, and showing each other various forms of respect, support and love.[50]

Such an approach gives agency to each member of the couple and allows each to establish personal boundaries for the relationship. Note that the single, mandated vow in this "new" ceremony is sexual exclusivity, thereby reinforcing the traditional notion of *kiddushin*, even if expanded in both directions.

Another Legal Route for Polyamorous Relationships

While *ketubot* could be adapted for multi-partner relationships by simply removing a promise of monogamy, sexual exclusivity is part and parcel of *kiddushin*. Even egalitarian changes to this ritual preserve this essence of the original institution. Therefore, partners who wish to be open to sexual and emotional encounters with others outside the marriage must seek additional alternatives.

Mishnah Ketubot may offer one such route. Chapter 10 centers on spousal inheritance and discusses, remarkably, what happens in the specific event of three wives surviving one husband. The chapter opens with a discussion of the typical case of one surviving wife and, as we would expect, defers to the *ketubah* in matters of the estate. But then questions are raised about more than one surviving wife:

מִי שֶׁהָיָה נָשׂוּי שָׁלֹשׁ נָשִׁים וּמֵת, כְּתֻבָּתָהּ שֶׁל זוֹ מָנֶה וְשֶׁל זוֹ מָאתַיִם וְשֶׁל זוֹ שְׁלֹשׁ מֵאוֹת וְאֵין שָׁם אֶלָּא מָנֶה, חוֹלְקוֹת בְּשָׁוֶה. הָיוּ שָׁם מָאתַיִם, שֶׁל מָנֶה נוֹטֶלֶת חֲמִשִּׁים, שֶׁל מָאתַיִם וְשֶׁל שְׁלֹשׁ מֵאוֹת, שְׁלִשָּׁה שְׁלִשָּׁה שֶׁל

[50] Ibid., 108-109.

זָהָב. הָיוּ שָׁם שְׁלֹשׁ מֵאוֹת, שֶׁל מָנֶה נוֹטֶלֶת חֲמִשִּׁים, וְשֶׁל מָאתַיִם, מָנֶה, וְשֶׁל שְׁלֹשׁ מֵאוֹת, שִׁשָּׁה שֶׁל זָהָב. וְכֵן שְׁלֹשָׁה שֶׁהִטִּילוּ לְכִיס, פָּחֲתוּ אוֹ הוֹתִירוּ, כָּךְ הֵן חוֹלְקִין

[With regard to] one who was married to three wives and he died, [and] the *ketubah* of this one was a *maneh* [one hundred *dinar*], of this one was two hundred, and of this one was three hundred, and there is only one hundred, they divide it equally. If there is two hundred, the one who had a ketubah of a *maneh* receives fifty, while the one who had a ketubah of two hundred and the one who had a ketubah of three hundred each receive three gold [coins worth twenty-five *dinar* each]. If there is three hundred *dinar*, the one who had a ketubah of a *maneh* receives fifty, the one who had a ketubah of two hundred receives a *maneh*, and she of three hundred receives six gold coins. And similarly, three businessmen who cast their money into one pot [i.e., form a partnership, albeit with differing amounts of monetary interest], whether they diminished or increased [their capital], this is how they [too] divide [the funds].

In this scenario, each woman's initial worth (think virginity from above) dictates the amount of property she receives from her deceased spouse. As an aside, this mishnah explicitly demonstrates how a woman's initial sexual exclusivity remains important throughout her life.

While the mishnah grabs our attention because of its explicit reference to multi-partner marriage in the post-Biblical period, it is the innovation recorded in the last line that warrants a second look. Here, the surviving three wives are regarded as equals in a contractual relationship with one another, like three business partners. The Talmudic commentator Rabbeinu Hananel of the eleventh century explains that the similarity between the wives and the business partners lies in the fact that, in each case, an individual receives in the end an amount in proportion to what that individual initially put into the partnership. So the wives are valued by their pre-marital sexual status in the same way that business partners are valued by their initial investment (regardless of earnings or losses since the partnership formed). If one focuses more on the business partners in this example, one can see how the mishnah and Rabbeinu Hananel provide a basis for a

modern understanding of sexual relationships: each individual brings their assets, their history, into the relationship.

In 1998, when Rachel Adler published her groundbreaking feminist critique of *kiddushin* in *Engendering Judaism*, she posited that the model of partnership in Mishnah Ketubot could be used as the backbone for a Jewish union ceremony of equality. She suggested then that progressive Jews focus on "partnership law rather than property law."[51] To this end, she crafted a *Brit Ahuvim*, a lovers' covenant, which re-envisions the Mishnaic ritual of business partners pooling their assets into a joint purse.[52] Adler's *Brit Ahuvim* contains the following stipulations, which can be adjusted by mutual agreement:

> 1) a pledge of sexual exclusivity;
> 2) a commitment to the rights and duties of familial relationship;
> 3) an assumption of joint responsibility for children
> 4) a pledge to live a holy life as a Jewish family;
> 5) a pledge to fulfill communal responsibilities;
> 6) a pledge that either spouse will protect the dignity and comfort of the other in his or her dying.[53]

In sum, this establishes a partnership rather than a financial transaction. For Adler, the *Brit Ahuvim* is

> ...a partnership reflect[ing] the undeniable fact that marriage is not only a social but an economic institution. But unlike the ketubah, which presumes that most economic power and resources belong to the male, the brit ahuvim presumes communal resources and requires joint decisions about their distribution.[54]

While she does not deny the economic nature of marriage, for Adler, the power dynamics in the *Brit Ahuvim* are fundamentally different. Therefore, Adler successfully makes a

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[51] Adler, 169-170.
[52] Ibid., 196.
[53] Ibid., 194.
[54] Ibid., 192.

halakhic case for *Brit Ahuvim* and makes no compromise on touchstones of liberal Judaism like egalitarianism and equality.

What would Adler's *Brit Ahuvim* look like for multi-partner relationships? As in the Mishnaic text, marriage (like business partnerships) need not be limited to a couple. In other words, more than two people could legally (as based on this mishnah) form a union, in Jewish terms.[55] After all, unlike *kiddushin*, *Brit Ahuvim* consists of mutually-agreed upon stipulations so those entering the contract could forego sexual exclusivity so long as all are in agreement. As for the ceremony, three individuals, or more, could put their rings into a pouch and lift it, creating a binding partnership. They could draft a document, as many of them do already, which stipulates the parameters of their relationship, both sexual and non-sexual.[56] They could then be blessed with the *sheva brachot* used in all ceremonies that do not speak of exclusivity, but rather celebrate creation and relationship.[57] The "groom" and "bride" language can be substituted, similarly to the *sheva brachot* for same-sex couples.

By basing the open marriage or polyamorous relationship on partnership law, the individuals entering the covenant commit themselves to emotional, as well as economic sustenance. If the relationship were to be dissolved, the individuals would separate according to Rabbeinu Hananel's model: each leaves with what one entered.

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[55] This union could only be recognized religiously, since civil law forbids marrying more than one person.
[56] Susan Dominus. "Is an Open Marriage A Happier Marriage?" *The New York Times Magazine*, (2017): www.nytimes.com/2017/05/11/magazine/is-an-open-marriage-a-happier-marriage.html?_r=0.
[57] Adler, 181-189.

Chapter 3

Jacob Emden's *Pilegesh* Responsum as a Model for Multi-Partner Relationships

During the Middle Ages, mutual monogamy became the norm among Jewish couples, especially in the Ashkenic lands. As of 1000 CE, the famous *takkanah* of Rabbenu Gershom forbade polygamy, and, within 200 years, Maimonides would reinforce that judgment by banning concubinage for the common Jew (1180 CE). Given the towering status of Rabbeinu Gershom and Maimonides, it seems nearly impossible to imagine that future Jewish legalists would contravene their decisions. Yet, Rabbi Jacob Emden (1697-1776) of Hamburg issued a responsum that not only argued against his forebears but may offer a path forward for clergy today seeking support for polyamorous relationships in a Jewish context.

Rabbi Jacob Emden, also known as Ye'avetz, is regarded as one of the outstanding scholars of early modernity.[58] Interested in secular works (he knew German, Dutch and Latin), he staged an attack against Shabbatai Tzvi's movement and subsequently *The Zohar* as well. In a remarkable reversal from his peers, Emden ruled against mutual monogamy and championed *pilegesh* relationships, concubinage, as both ethical and within Jewish boundaries.[59] After exploring how mutual monogamy came to be Jewish law in the Middle Ages, I will turn to Emden's responsum and how it provides a structural and hermeneutic framework for allowing multi-partner relationships today.

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[58] MJL Staff. "Jacob Emden: Scholar Quarreled with Almost All of His Contemporaries," *My Jewish Learning,* Accessed on 23 January 2018, https://www.myjewishlearning.com/article/jacob-emden/.
[59] Jacob Emden, *She'alot Ye'avetz, 2, no. 15.* 1759.

Mutual Monogamy Becomes Law

The turn to mutual monogamy among Jews originated in the Middle Ages with the enactment of prohibitions against (1) bigamy and (2) relationships with a *pilegesh.*[60] Rabbeinu Gershom (960-1040) of Mainz issued a *takkanah*, a decree with the *halakhic* force of law, that forbade bigamy. While the original text is not extant, it is summarized in the Shulchan Aruch, a sixteenth-century legal code whose strong influence persists to this day:

> Rabbeinu Gershom has a herem on one who marries [in addition to] his wife. However, if she is a *yevamah* [a childless widow who is obligated to marry her brother-in-law to create offspring in her dead husband's name; Deut. 25:5] then they're not excommunicated. This is also true in the case of a betrothed woman. This *takkanah* did not spread to all countries. It only applied for five millenia.
>
> Even HaEzer 1:10

As is the case for *takkanot* in general, this ruling provides no explanation. However, some scholars argue that Rabbeinu Gershom established it in response to increased Jewish travel that could lead to men marrying women in various locations and being unable to provide for all of them.[61] While the *takkanah* did not spread across the entire globe, it reached further than, perhaps, was anticipated. The Jews of every Germanic land upheld mutual monogamy, and Sephardic authorities, despite their leniency toward bigamy, did not popularize the latter practice.[62] Moreover, though most *takkanot* were in

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[60] *Pilegesh* is usually defined as a concubine. However, that translation holds a negative connotation for today's reader. Therefore, I will continue to use the word *pilegesh*, meaning a female sexual partner for a male with a social and legal standing similar to that of a recognized wife (*ishah*), often for the purpose of producing offspring.

[61] Avraham Grossman. "Halakhic Decisions on Family Matters in Medieval Jewish Society," *Jewish Women's Archive.* Accessed on 23 January, 2018. https://jwa.org/encyclopedia/article/halakhic-decisions-on-family-matters-in-medieval-jewish-society.

[62] Ibid.

effect for only a prescribed period of time, Jews became so highly accustomed to mutually-monogamous partnerships that such marriages remained the norm far into the future.

It would take another century-and-a-half for *pilagshut* to be formally abolished. The great *halakhist* Moses Maimonides (1135-1204) virtually prohibited *pilegesh* relationships, as well as casual sexual intimacy. In his code, the *Mishneh Torah*, he states,

> (A king) can take, from anywhere in Israel, wives and concubines; wives being those with a *ketubah* (marriage contract) and *kiddushin* (being sanctified), while concubines are those without a *ketubah* and *kiddushin*. He need only sequester himself with her in private to make her a concubine. She is then permitted to him. However, an ordinary man is forbidden to have a concubine, but may have a Hebrew maidservant, but only after she was so designated. The king makes those concubines who were brought to his palace into cooks and bakers and perfumers, as it says, "*and your daughters he shall take for perfumers and cooks and bakers*" (I Samuel 8:13).
>
> MT Kings 4:4

While it's true that Maimonides does not explicitly prohibit *pilegesh* relationships here, he did so in effect since there were obviously no Jewish kings when he wrote the code. Unlike Rabbeinu Gershom, Maimonides provides a rationale for this new prohibition, as well as introduces the concept of distinguishing between different strata of society (kings and commoners). The final line suggests Maimonides' concern with women's upkeep. Perhaps he understood that a king would be able to provide for multiple women, while a common man could not. Either way, by the thirteenth century, *pilegesh* relationships were forbidden for the average Jewish man.

Maimonides not only prohibited *pilegesh* relationships but also sexual intimacy of a casual sort/outside of marriage. He states,

> Before the Torah was given, when a man would meet a woman in the marketplace, and he and she desired, he could give her payment, engage in

> relations with her wherever they desired, and then depart. Such a woman is referred to as a harlot. When the Torah was given, [relations with] a harlot became forbidden, as (Deuteronomy 23:18) states: "There shall not be a harlot among the children of Israel." Therefore, a person who has relations with a woman for the sake of lust, without *kiddushin*, receives lashes as prescribed by the Torah, because he had relations with a harlot.[63]
>
> MT Ishut 1:4

Maimonides here broadens the typical understanding of Deuteronomic law. The Biblical law forbids Jewish women from becoming harlots but does not explicitly forbid men from having sexual intercourse with harlots. Maimonides seems to pile on further restrictions that ensure Jewish men remain sexually exclusive to their wives. Finally, it is worth noting that Maimonides lived among Sephardim, where laws against bigamy were looser. Maimonides' ban on *pilagshut* and casual sexual intimacy thus points to a larger trend towards mutual monogamy.

A Summary of Jacob Emden's Responsum on *Pilegesh* Relationships

From 1739-1759, Jacob Emden wrote, compiled, and published over 300 responsa in his book *She'alot Ye'avetz,* "Questions of Ye'avetz."[64] Included in this compilation is a lengthy defense of *pilegesh* relationships. In 1998, Gershon Winkler, a Danish, non-denominational rabbi, published a translation of this responsum in his book *Sacred Secrets: The Sanctity of Sex in Jewish Law and Lore.*[65] I will use this translation to

[63] Maimonides assumes here that all marital and sexual relations in which Jewish men engaged were with Jewish women. It is unclear what, if any, the punishment would be if a Jewish man had sexual relations with a non-Jewish harlot.
[64] Emden.
[65] Gershon Winkler. *Sacred Secrets: The Sanctity of Sex in Jewish Law and Lore* (Northvale, NJ: Jason Aronson, Inc., 1998), 105-142.

summarize the responsum and then show how this responsum could be used as a resource for clergy wishing to condone multi-partner relationships.

> Emden begins the responsum by summarizing the question posed to him,
>
> "You ask about the issue of *pilegesh*...to which I alluded in an earlier responsum--to clarify for you if this is a definite prohibition, as it is considered by (Maimonides) ...And you requested also to know more clearly exactly how and what is a *pilegesh*."[66]

Emden establishes, from the beginning, that Maimonides is the one who banned *pilegesh* relationships and, therefore, the responsum will focus on the legality of his ruling. In order to do this, Emden begins by defining the different roles women could play in Jewish society: wife, *pilegesh*, prostitute, or virgin. He then demonstrates how/if each role violates the Biblical prohibitions against *yichud*, unchaperoned time with an unmarried woman, and/or prostitution. Emden finds that *pilegesh* relationships, because of their unilaterally exclusive nature--the *pilegesh* had to remain sexually exclusive to the man but he had no such restrictions--do not violate either prohibition. Emden then provides reasons why rabbis should allow such relationships--to prevent men from acting licentiously and to give women another option to marriage, to name a few. He then demonstrates how *pilegesh* relationships do not violate Rabbinic laws, such as Rabbeinu Gershom's ban. In the end, Emden rules the following:

> Therefore, in my opinion, it is a great mitzvah to publicize that [*pilagshut*] is permitted. Especially if this so in our generation, when the 'Canaanites' dwell in the land who so love sexual licentiousness--in particular, the spreading among our people of the immoral cult of Shabbatai Tz'vi, prince of the adulterers, which seeks the destruction of souls together with their bodies by their belief that they will bring the Messiah through the impure rites of random, indiscriminatory sex.[67]

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[66] Ibid., 105.
[67] Ibid., 139.

Not only does Emden permit *pilegesh* relationships, but he believes publicizing the institution would be beneficial for the Jewish community as a whole. Emden is known for his polemics against the Sabbatean movement--a seventeenth century messianic sect of Judaism which used sex in worship.[68] In this responsum, Emden positions the institution of *pilagshut* as a response and viable answer to this growing phenomenon. Thus, *pilegesh* relationships are not only beneficial for the Jewish community of *his* time, but, according to Emden, they are beneficial for the future of Judaism as a whole.

Emden's Critique of Mandated Mutual Monogamy

Having summarized Emden's responsum as a whole, I will explicate the structure and hermeneutics of his argument and how he refutes such long-standing Jewish prohibitions. Emden breaks down the prohibitions against bigamy and *pilegesh* relationships on four levels: (1) Biblical legal standing, (2) false impressions of protection, (3) a misconception of a need to adapt to social contexts, and (4) a flawed understanding of how to encourage people to act ethically.

Legal Issues with the Bans

Along with critiquing the temporal and spatial contingencies of any law, Emden argues that Rabbeinu Gershom's ban in particular also exceeds a rabbi's power to establish laws that run counter to the Torah. The Shulchan Aruch had already pointed out the limits established for Rabbeinu Gershom's decree (up to the year 5,000 and only in

[68] Ada Rapoport Adler. "Sabbateanism," *Jewish Women's Archive.* Accessed on 23 January 2018. https://jwa.org/encyclopedia/article/sabbateanism.

Germanic lands), and Emden follows suit.[69] While this may be the case, Emden admits that since people have maintained the practice of mutual monogamy and the ban has spread to other lands, the point is moot. Thus, Emden must find other means to question Rabbeinu Gershom and admits that the ban:

> must not be in violation of the commandment 'You shall not add [to the laws of the Torah]' (Deut. 4:2 and 13:1), and a new decree leaves nothing to interpretation but what the text specifies…only that it is forbidden for a man to engage a second wife while still married to the first. Thus, the ban was not considered applicable…to a situation of yivum.[70]

Thus, Rabbeinu Gershom allows one Biblical norm but forbids another, weakening his claim for prohibition against bigamy. To strengthen his point, Emden quotes from the Jerusalem Talmud, "'Is it not enough what the Torah has forbidden, that we need to add further prohibitions?'" (Nedarim 9:1). The Torah mandates enough laws--613 to be exact. Emden wants to protect the Written Law from rabbinic innovation and protect the Jewish people from an excess of Rabbinic/Oral Law.

Similarly, Emden dismisses Maimonides' ban on *pilegesh* relationships because Torah law gives no basis for, nor supports, the ban. Emden finds particular issue with Maimonides' statement that a king can have *pilagshim*, but a commoner cannot. He states,

> this ruling, which (Maimonides) introduced anew from his own mind...must have come to him through some kind of prophecy, it seems, because if it is indeed as he says, where do we find anything like it, that something that was generally prohibited was, however, permitted to a king?"[71]

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[69] Winkler, 133.
[70] Ibid., 133-134.
[71] Ibid., 113.

One cannot help but smile at Emden's jab at Maimonides' scholarship, if not ego, but the critique is a valid one. *Pilagshim* existed in the Bible for both commoners and kings. So how does Maimonides get away with making any distinction, let alone forbidding concubinage in general? Not only, according to Emden, is the ban unsupported by Mosaic legislation, but it goes so far as to contradict it. Emden reminds his reader that Biblical kings faced *more* restrictions vis-a-vis marriage than commoners: They could marry up to eighteen wives, whereas other men had no limit (Deuteronomy 17:17). Given their function as rulers, kings could not be distracted by such trivial concerns as multiple wives. A commoner's concerns were of little consequence. Thus, Emden argued that the Torah does not support restricting a commoner more than a king, neither in the matter of how many women he can acquire nor in terms of *pilagshim*.

Pilegesh Relationships and Protection for Women

Emden interprets Maimonides' ban on *pilegesh* relationships as a way to create a fence around Biblical laws, which protects women from acting licentiously, on the one hand, and being raped, on the other. To Emden, *allowing pilegesh* relationships would actually protect women more. Maimonides stated outright that his ruling aimed to protect the law, "There shall not be prostitutes amongst the daughters of Israel" (Deuteronomy 23:18). Through his conflation of *pilegesh* relationships and prostitution, Maimonides seems to be saying that they are one in the same. As a woman who is not technically married to the man with whom she is having sexual intercourse, a *pilegesh* is acting like,

and therefore *is*, a prostitute. Thus, in Maimonides' mind his ban on *pilegesh* relationships is simply broadening the ban on prostitution.

In contrast, Emden sees a *pilegesh* as something entirely different than a prostitute and, therefore, argues that *pilegesh* relationships do not violate this law. Emden states that,

> ...although a *pilegesh* constitutes a non-marital status in religious law, as she is without marriage, she is nonetheless forbidden to be with another man as long as she is in a private relationship with this one because of the prohibition against prostitution, which is biblical.[72]

Emden has a more nuanced understanding of the differences between a *pilegesh* and a prostitute. According to Emden, since a *pilegesh* is mandated to remain sexually exclusive for the duration of the relationship then the act does not violate the Biblical prohibition of prostitution. Therefore, women do not need to be protected from violating this particular law.

Following the same logic of exclusivity, Emden refutes any claim that *pilegesh* relationships could lead women into more unsafe sexual situations. From the beginning of the responsum, Emden seems preoccupied with the Biblical prohibition of *yichud*, unchaperoned visits with an unmarried woman.[73] The Bible establishes this law after Amnon rapes his half-sister Tamar (2 Samuel 13:1-14) and so is regarded as a law protecting women from rape. While Emden upholds this law, he once more understands a *pilegesh* relationship as an interaction that stands outside this prohibition. He explains,

> For, besides the fact that we find in Scriptures [mention of *pilegesh* relationships] even after the incident concerning Tamar, how kings and great men took concubines for themselves...we [also] find in the Talmud...on account of a sage

[72] Ibid., 106.
[73] Ibid.

> would [upon reaching a village during his sojourns] would declare [to the local single women]: 'Who, amongst you, wishes to be with me for the day?' And the Talmud comments there that 'he would look for someone to be with him privately.'[74]

Here, Emden refutes that *pilegesh* relationships violate the prohibition against *yichud*, and, although he contradicts himself later in the responsum, he seems here to support even casual sex. Since the Bible contains narrative examples of *pilegesh* relationships after the *yichud* prohibition was enacted, Emden sees no issue with the law of *yichud* and the institution of *pilagshut* coexisting.

Emden not only refutes the ways in which *pilegesh* relationships could hurt women, but he actually champions *pilegesh* relationships as a way to provide women with more freedom and greater security. After all, he argues, for a woman to independently leave a marriage was impossible: a woman enters a marriage with a document and must leave with a document.[75] This document can be hard to come by, especially if the man does not want to furnish said document. A *pilegesh* relationship is different:

> As she entered the relationship by living with him, so does she end the relationship by not living with him and by removing the exclusive nature of the relationship at the end of whatever time period that was mutually agreed upon by both parties, or because she wishes to leave him, or because she had sex with another man while still living with the first, or if he abused her or did not uphold whatever they agreed between each other. In such circumstances she simply leaves him; as she came in by word, she leaves by word.[76]

Here, Emden underscores the female agency built into concubinage. The fact that anything could be "mutually agreed upon" by a man and woman flies in the face of

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[74] Ibid.
[75] Ibid., 124.
[76] Ibid., 124-125.

Jewish marriage, which is defined and enforced by patriarchy. In contrast, the power and freedom ascribed to a female in a *pilegesh* relationship is of the highest level imaginable, whether in the Biblical period, Emden's or, for that matter, our own.

Not only, according to Emden, does a *pilegesh* relationship provide power -- a form of protection -- to women but it extends to her the privilege of choice. Consequently, he adds, some object to *pilegesh* relationships because it will deter people from marriage. Emden responds, "…that marriage is one thing and *pilagshut* is another, and both are options."[77] He goes on to explain these options in proto-feminist terms that even today's #MeToo adherents would advocate:

> And if a couple preferred to be in a *pilagshut* form of relationship because it suited them better, perhaps because the man already has a wife but needs someone who would help out with the family and be his lover as well because his wife is not always able to be with him sexually, such as during her period or when he is traveling, or perhaps because he is not married and does not wish to be bound by the weighty responsibilities of marriage; and the woman, too, prefers this form of relationship to marriage so that if the man mistreats her, she can simply leave the relationship instantly, without the hassles of acquiring a *get* from him in accordance with all the intricate details this involves, and by simply leaving him she is free of him in so light a manner; or perhaps they do not wish to be barred from each other's close relations after they have separated—in any event, both parties might then prefer the *pilegesh* relationship to a marital one.[78]

Emden's radical words extend the same privilege to women as men where marriage, and even sexual intimacy, is concerned. He recognizes that both men and women have sexual, economic, and physical needs and sees *pilagshut* as a way to address these needs. *Pilegesh* relationships provide individuals with options. Both women and man can make

[77] Ibid., 125.
[78] Ibid., 126.

choices that suit their needs. To Emden, an early modernist, individual choice might provide a higher level of protection than pre-imposed laws.

Pilegesh Relationships and the Social Context

Unlike Maimonides' ban on *pilegesh* relationships, Rabbeinu Gershom's ban on bigamy, according to Emden, was not meant to protect women but rather to protect all Jews from their surrounding Christian milieu. Emden suggests that Rabbeinu Gershom's ban was largely based on a need for Jews to conform to the behavior of the Christians among whom they lived and thus end polygamy once and for all. As he put it:

> ...perhaps Rabbeinu Gershom felt compelled to instate his ban, even though it was counter to Torah law…because it had become life-threatening for Jews who lived among the uncircumcised…to be married to more than one woman.[79]

As we know from chapter one, the Torah provides multiple examples of bigamy in the patriarchal narratives of Genesis and elsewhere. Baffled by Rabbeinu Gershom's *takkanah* that contradicts these narratives, Emden explains that it is owing to the changed social context. Rabbeinu Gershom, as we know, instituted his ban in the Germanic lands under Christian rule that advocated mutual monogamy. Emden presumes Rabbeinu Gershom's *takkanah* followed the all-prevailing Rabbinic dictum of *dina de'malkhuta dina*, "the law of the land is the law" (Nedarim 28A; Gittin 10B; Bava Kamma 113A; Bava Batra 54B and 55A). To Emden, this was the only reason one could justify establishing a law that ran counter to the Torah.

[79] Ibid., 136-137.

While Emden can understand why Rabbeinu Gershom felt compelled to institute his ban on bigamy, Emden refutes that Gershom, nor Maimonides, established their bans through Jewish legal means. Emden quotes and explains a teaching from the Jerusalem Talmud:

> …the principle of 'Matters that are permissible but the local custom is to consider them forbidden, you do not have the right to treat as permissible in front of them' (Pesachim 4) applies only…to a practice of a prohibition around a matter that is nonetheless known to all as permissible but is observed as a prohibition only as a safeguard around something else that indeed is forbidden by the Torah. But neither qualification relates to the issue of *pilegesh*, for it has already been explained that the *pilegesh* relationship was never forbidden at all by any majority rule, nor was it ever known to have been accepted as a proscription.[80]

According to Emden, Jews cannot simply adopt a local custom as their own when there is no legal basis found for such in the Torah. As previously stated, multiple wives and *pilagshim* are depicted throughout the Torah. Thus, prohibiting the practice of bigamy or *pilagshut* because they does not conform to the social milieu is simply unacceptable and unjustified.

Pilegesh Relationships and the Transgression of Commandments

For Emden, the most compelling justification for laws stipulating mutual monogamous marriages relates to protecting average Jews from transgressing commandments. For example, Emden summarizes a responsum by David ben Solomon ibn Abi Zimra (Radbaz, fifteenth century), in which he posits why Maimonides issued a ban against *pilegesh* relationships, as discussed above: Maimonides' "restriction of *pilegesh* for a king only is because the sages ordained it so, lest she would be too

[80] Ibid., 134.

embarrassed to immerse herself ritually… for a commoner, whereas she would not be embarrassed to do so for a king or leader."[81] Radbaz assumes that Maimonides and subsequent generations of rabbis did not trust women with the responsibility of *niddah*, ritual immersion. A woman, who may be embarrassed about having sexual relations outside of marriage, may value her pride over the commandment. This embarrassment, presumably, would not occur if the woman was exclusively in relation with a king. Therefore, they had to enact more laws surrounding sexual intimacy and relationships for commoners to prevent women from inadvertently transgressing the commandment.

Emden refutes Radbaz' *niddah* position by championing Biblical narrative and law. As Emden states,

> ...according to the simple meaning of the Torah law regarding these matters, the *pilegesh* has no more a reason to be embarrassed about immersing in the public *mikveh* (ritual pool) than the married woman. And we have no right to issue some new decree that it is embarrassing for a non-married woman to immerse in the public *mikveh*.[82]

Ritual immersion is not predicated on marriage but rather on sexual interaction (Leviticus 18:19). Therefore, as long as *pilegesh* relationships are allowed, which the Torah does, then women should not feel embarrassed to immerse. Further, instituting such a rationale for a ban on *pilegesh* relationships could, unwittingly, cause a woman to imagine that she should be embarrassed to immerse. Therefore, Radbaz' reasoning for upholding Maimonides' law could actually have the reverse effect of what he intended.

Even if ritual purity was not of concern, some rabbis ruled against *pilagshim* because they feared it would lead to unsanctioned sexual contact initiated by men.

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[81] Ibid., 116.
[82] Ibid., 118.

Radbaz, again, points to this concern as he contradicts the decision of Ramban (thirteenth century, Spain): "'And know that even Ramban, who permits *pilegesh* relationships, if he were to live in our times, he would forbid it because of the sexual licentiousness that prevails now.'"[83] Clearly, men living in Radbaz' time were violating sexual promiscuity laws. They were looking outside the confines of their marriage for sexual satisfaction. Radbaz, supporting Maimonides' ban, advocates for imposing more laws on Jewish men (i.e. banning *pilegesh* relationships) as a way to provide a fence for the Biblical prohibitions that should not be transgressed.

According to Emden, bans on bigamy and *pilagshut* targeted male sexual promiscuity. Emden agrees that a change in laws could help men transgress fewer commandments. However, rather than banning *pilegesh* relationships, so as to limit the possibility of men having sex with more than one woman, Emden believes

> …it would be appropriate to permit it because of the much greater evil that would result from withholding such permission…As the Radbaz himself admits, people are trespassing boundaries in sexual morality, and this is certainly so also in our time and in all places because the door of permissibility has been shut in front of their faces…It therefore seems to me that we ought to be teaching in public that a person is allowed to be in a *pilegesh* relationship, in order to rescue them from serious violations that are occurring daily.[84]

Emden understands that, especially when it comes to sex, people are going to act the way they want to act. More laws will simply make more of their behaviors illicit. If the Jewish community reinstituted *pilagshut*, then men would have an outlet for these seemingly uncontrollable urges.

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[83] Ibid., 118.
[84] Ibid., 120.

Emden is not, however, suggesting a free-for-all. Because the institution of *pilagshut* would be sanctioned, it would have a structure with rules and boundaries to allow for ethical participation. Extrapolating from an earlier responsum by Rabbeinu Asher ben Yehiel (the Rosh) of the fourteenth century, Emden says:

> ...regarding a woman who was hired to tend to the house of a man who then engaged her in sexual relations. There, the Rosh ruled that the rabbinic court may compel him to dismiss her from his home because it is known that she will be embarrassed to immerse. And Radbaz comments on this: 'If *pilegesh* is permitted, why do we compel him to dismiss her from his home?' But the Rosh is correct in his ruling because she is not in a relationship with this man but is in his hire for the expressed purpose of tending to his house, and he is taking sexual liberties with her.[85]

A man who hires a woman as a servant is engaging in a purely economic relationship that has few similarities to that of *pilagshut*. A sexual relationship is not presumed in such a contractual relationship. Therefore, any secual encounters that occur are not sanctioned. Not only does this example show the limits of *pilagshut*, but it also demonstrates how power dynamics can influence the ethics of sex. The woman was an employee and, thus, unavailable to the man for sexual intercourse. Thus, permitting *pilagshut*, according to Emden, does not give license to any and all sexual behaviors.

The Next Frontier: Multi-Partner Relationships in the Jewish Context

Writing in the eighteenth century, Jacob Emden was able to see how two scholars changed the definitions and boundaries of Jewish marriage and sexual relationships. Whether or not one agrees with Emden's opinion that mandating mutual monogamy was Jewishly illegal and led to more problems of sexuality and intimacy than the bans solved,

[85] Ibid., 121.

one cannot help but laud him for his ability to observe and explain how relationships and intimacy change and shift over time.

Like Emden in the eighteenth century, Reform rabbis of the twenty-first century will need to negotiate between the past and the present to find ways to respond to multi-partner relationships in today's Jewish context. Any attempt to shift from mutual monogamy in our time would seem to counter a thousand years of Jewishly-sanctioned mutual sexual exclusivity. However, as Rabbeinu Gershom's *takkanah*, Maimonides' code, and, Emden's responsum demonstrate, Jewish leaders have frequently shifted the parameters of marriage and relationships in order to react to the needs of their people. In this light, despite Emden's presumption of unilateral sexual exclusivity advocated while critiquing Rabbeinu Gershom and Maimonides' bans, the structure and hermeneutics of his argument provide a useful framework for a fuller and more nuanced understanding of multi-partner relationships in the Jewish community.

Emden's Presumption of Female Sexual Exclusivity No Longer Valid

It is clear in our own day that Emden's rationales for female sexual exclusivity in the context of pilegesh relationships -- namely, prostitution and offspring -- would not be valid today. As previously stated, Emden goes to great lengths to explain the fundamental differences between a *pilegesh* relationship and marriage. However,

> ...although a *pilegesh* constitutes a non marital status in religious law, as she is without marriage, she is nonetheless forbidden to be with another man as long as she is in a private relationship with this one because of the prohibition against prostitution, which is biblical.[86]

[86] Ibid., 106.

The prohibition against prostitution derives from Leviticus 19:29, ""Do not degrade your daughter and make her a harlot, lest the land fall into harlotry and the land be filled with depravity." While most scholars interpret this law like Emden, arguing that women cannot have multiple sexual partners, the Biblical narrative refutes this interpretation. For example, Abraham gives Sarah to Pharaoh for the latter's sexual pleasure and to protect himself (Genesis 12:10-20).[87] Further, Tamar is lauded for disguising herself as a prostitute and seducing her father-in-law (Genesis 38: 12-23). In these ways and others, the Bible allows prostitution so long as men benefit from the act -- reasons that for sure contradict our own modern sensibilities.

Of course, in our own time prostitution is no longer defined in Biblical terms. It is defined as sex-for-payment, whether performed by a man or a woman and is strictly illegal. Further, a majority of women, as well as men, have multiple sexual partners over the course of their lives.[88] For most, domesticity is not a requirement for sexual relations and requiring sexual exclusivity for one partner and not the other is regarded as unethical.

Emden also argued for female sexual exclusivity as an aid in determining the parentage of offspring. Thus, a *pilegesh* was required to wait three months after leaving a first man before marrying or living exclusively with a second.[89] In no uncertain terms, Emden's ruling limits a woman's sexuality to the man under whose roof she sleeps, and

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[87]Naomi Graetz. "Judaism on Prostitution," *My Jewish Learning.* Accessed on 23 January, 2018. https://www.myjewishlearning.com/article/judaism-on-prostitution/.
[88] Leah Groth. "This is the Average Number of Sexual Partners People Have, State By State," *Livestrong.com,* 8 November 2017. https://www.livestrong.com/article/13559373-this-is-the-average-number-of-sexual-partners-people-have-state-by-state/.
[89] Winkler, 106-107.

extends that limit in the event of her departure. Of course in Emden's era, before the advent of DNA testing and the like, such a rationale for female sexual exclusivity may have been warranted. In our own day, this is not the case.

Emden was a product of his time whose decisions derived from his particular context, but nevertheless his reasons for permitting *pilegesh* relationships has applicability for considering multi-partner relationships for twenty-first century Jews.

Protection of Women

Emden showed how freedom of choice in relationships provides women with more protection in a patriarchal society. The same might be said for women involved in multi-partner relationships today. Women generally initiate multi-partner relationships, which allows for greater agency and power for women, and a safer environment.[90] For example, while most liberal Jewish women no longer find themselves beholden to their husband through a *gett*, many women in abusive and unhealthy relationships feel mandated to stay through emotional and economic manipulation.[91] Multi-partner relationships move away from the traditional patriarchal paradigm of monogamous relationships. Men, for the most part, who opt into these relationships know they are giving up this socially mandated power for a more equal way of living.[92] When members of a relationship espouse equality, it is harder for one member to emotionally manipulate

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[90] Elisabeth Sheff. *The Polyamorists Next Door: Inside Multiple Partner Relationships and Families.* (New York: Rowman & Littlefield Publishers, 2015), 28.
[91] Eliana Dockterman. "Why Women Stay: The Paradox of Abusive Relationships," *Time.com,* 9 September, 2014. http://time.com/3309687/why-women-stay-in-abusive-relationships/.
[92] Sheff, p. 29-30.

the other. This type of emotional freedom, as well as the necessary accompanied open communication, could provide more protection for individuals in the relationship.

From an economic perspective, people who engage in multi-partner relationships tend to be financially stable and so there is likely little concern of women feeling beholden to their partners, as in monogamous relationships traditionally. While no overarching study has yet been undertaken, it appears that most people who engage in multi-partner relationships are upper-middle class, white, and highly educated.[93] Even if this financial profile does not hold, the fact that multiple people are involved in these types of relationships makes it less likely that one person would hold *all* the economic power over the others. In other words, there is more opportunity for "economic democracy" than an "economic dictatorship." Such freedom allows relationships to form and dissolve on their own terms, ostensibly giving more power to each individual within the relationship.

Social Context

Emden critiqued Rabbeinu Gershom for his permissive approach to acculturation. Despite the fact that liberal Judaism heralds adaptation to one's environment, because American law does not recognize multiple-partner relationships in terms equal to married couples, rabbis who sanction such partnerships would not be authorized to carry out civil ceremonies for them. Yet on the basis of Emden's critique of Rabbeinu Gershom's ban, that Jews may only adopt a ban on behaviors if the ban creates a fence around Biblical

[93] Ibid., 23.

law-- multi-partner relationships could be allowed by today's modern Jews. Laws mandating mutual monogamy do not create this fence since mutual monogamy was not presumed in the Bible.

However, since 1885, when they adopted the Pittsburgh Platform, American Reform Jews have championed living a Jewish and ethical life within the surrounding culture.[94] As of now, Americans live in a predominantly monogamous society. Even as hook-up culture spreads through college campuses and multi-partner relationships receive more airtime on popular television, the ideal of a one wife-one husband couple still pervades the American mindset. So even if multi-partner relationships could be considered *halakhic*, this may not be a particularly attractive option for the majority of Reform Jews who lead a mainstream existence.

Lastly, there is the question of *dinah d'malchuta dinah*-- or the Rabbinic principle that Jews must always follow the law of the land (Nedarim 28A, Gittin 10B, Bava Kamma 113A, Bava Batra 54B-55A). Since multi-partner relationships are not legally sanctioned in this country, no rabbi would be able to civilly marry such partners. America originally outlawed bigamy in 1862 with the Morrill Anti-Bigamy Act.[95] While this law was originally aimed at the Mormon church, the law, although in different variations, still applies to all Americans today. While plural marriage is illegal in this country, open relationships and non-marital unions are given latitude in more than half of the states in our union. In 21 states, however, married couples in an open relationship could be in

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[94] "Reform Judaism: The Pittsburgh Platform." *Jewish Virtual Library.* Accessed on 23 January 2018. http://www.jewishvirtuallibrary.org/the-pittsburgh-platform.
[95] 37th United States Congress, Sess. 2., ch. 126, 12 Stat. 501.

violation of the law on account of so-called "adultery laws."[96] However, a majority of Americans do not believe adultery should be illegal, nor do they even know such laws exist.[97] So long as the extra-marital relationships are not in violation of those laws and are agreed upon by the married couple, Jewish law could not prevent such a civil union. It is important to note that were a couple or individuals in a multi-partner relationship choose not to marry, an increasingly popular option, then Jewish law would have nothing to say about the legality of such relationships.

Living Ethically by Mandating Fewer Restrictions

Emden promoted *pilegesh* relationships as a means of sexual fulfillment for men outside of marriage. Similarly, it could be argued, multi-partner relationships provide an option for Americans who are violating their marital promises. Divorce rates in the United States are at an all-time high: 40-50 percent of American marriages end in divorce.[98] Further, 21 percent of American men and 19 percent of American women admit to cheating on their partners.[99] These statistics alone demonstrate the failure of mutual monogamy for a large portion of American society. Separation and deception hardly seem the best solutions to keep monogamy alive. An open, well-communicated,

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[96] Deborah L. Rhode. "Why is Adultery Still a Crime?" *LA Times.* 2 May 2016. http://www.latimes.com/opinion/op-ed/la-oe-rhode-decriminalize-adultery-20160429-story.html.
[97] Ibid.
[98] "Marriage and Divorce." *American Psychological Association.* Accessed on 23 January 2018. http://www.apa.org/topics/divorce/.
[99] Mona Chalabi, interview by Rachel Martin, *NPR,* 26 July 2015. https://www.npr.org/2015/07/26/426434619/sorting-through-the-numbers-on-infidelity.

multi-partner relationship could be a healthier and more honest option for such individuals.

As for Emden's allowance of *pilegesh* relationships, an allowance of multi-partner relationships calls for an ethics of sexuality. In 2001, the Central Conference of American Rabbis Ad Hoc Committee on Human Sexuality published ten "Reform Jewish Sexual Values" which can help guide twenty-first century Jews in issues of love and sex. One of these values, *kedushah*, explicitly champions sexual exclusivity by declaring that sexual partners should set themselves apart from others. A practitioner of multi-partner relationships could adapt the value to fit their needs--defining and sanctifying their separateness in a different way. In general, however, the document can be used to create more ethical relationships, whether they be monogamous or multi-partner. The emphasis being on the *quality* of a relationship, not on the parameters put upon the relationship from an outside party.[100]

Conclusion

Rabbi Jacob Emden thought creatively about the needs of his community and how Jewish institutions could be adapted to fit those needs. His support of *pilegesh* relationships no longer applies to the needs of today's Jewish society. However, if the prevalence of multi-partner relationships increases in the Reform Jewish community, it

[100] Selig Salkowitz. "Reform Jewish Sexual Values: Central Conference of American Rabbis Ad Hoc Committee on Human Sexuality." *Sacred Encounters,* ed. Lisa Grushcow. (New York: CCAR Press, 2014), 669-684, iBook edition.

will be necessary for leaders to look to models like Emden, who responded to the needs of his constituents with empathy and an understanding of the human condition.

Conclusion

Marriage and relationships in the Biblical, Rabbinic, and even early Modern periods look markedly different from those of today. The typical Biblical family, which includes a patriarch acting as head of household with potentially multiple wives and *pilagshim*, is completely alien to a modern Jew. During the Rabbinic period, a more intimate family structure emerged, which was grounded in *kiddushin*, an acquisition requiring that only the wife be sexually exclusive --- a practice different from today's presumption of mutual monogamy among married couples. The Middle Ages also saw the ban against polygamy by Rabbeinu Gershom, which made marriage more egalitarian in terms of sexual exclusivity, but did little to challenge the patriarchal hegemony that governed marriage, not to mention society as a whole. Rabbi Jacob Emden's responsum of the early modern period on *pilgashim* -- of all things -- makes manifest how even uncommon relationships could be considered legal, as long as men remained in power.

Yet as alien as marital/family structure and sexuality of earlier eras might be to Jews today, classical Jewish texts that prescribe or describe intimate relationships can teach us important lessons for our own time. Biblical multi-partner relationships demonstrate how relationships were, and are, established for any number of reasons. Rabbinic halakhic statements show how romantic relationships always have sexual and economic characteristics that should be defined from the beginning. Finally, Emden's responsum exemplifies how relationships should honor the needs of each individual within the relationship.

The question of polyamory falls into the broader context of feminist and queer scholars challenging a patriarchal and heteronormative society. In so doing, they and we can reimagine what sex and relationships could look like in an era of justice and equality. While I looked specifically at polyamory, I raised questions that should be explored by all types of people in all types of relationships:

- Why does a person enter into a relationship? Who has power in the relationship?
- Whose needs are being met and whose are not?
- What is the status of each individual within the relationship?
- How can we, as individuals, determine what we want to bring to a relationship?
- How can we, as individuals, determine what we want from a relationship?

For Jews, specifically, we might ask:

- How does Judaism influence our sexual and romantic lives?
- How *could* Judaism influence our sexual and romantic lives?
- How can we act Jewishly in all of our interactions with others, sexual or not?

This thesis aimed to answer the question: how open is our tent? Our tent is as open as we want it to be. As this thesis has shown, we can find ways of responding to even the most unlikely questions of our day in the texts and traditions that have come down to us. For Judaism to continue to be a source of meaning and a force for change, it must speak to *all* aspects of an individual's life. I pray that this work will invigorate and inspire us to delve deeper into our past as we find meaning for today.

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