

THE EVOLUTION OF *KETUBOT* FROM EGYPT TO ARTVOWS

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Abstract

Utilizing classical Jewish texts, secondary sources on archeology, and an internet survey, this three-part paper explores the evolution of *ketubot* from a historical, rabbinic, and contemporary lens. In the first chapter, I discuss the rabbinic understanding of marriage and of the *ketubah*'s origin, as well as archeological findings that both complement and contradict these rabbinic assumptions. In the second chapter, I analyze what has come to be referred to as the "traditional" *ketubah* text, while emphasizing how Jewish tradition has always reflected the surrounding culture to a certain degree and, consequently, never been monolithic. In the third chapter, I evaluate the results of a survey I conducted on contemporary Jewish couples' *ketubah* choices to determine the extent to which the values expressed in their *ketubot* reflect those of the traditional rabbinic marriage, i.e. *kiddushin*. Upon analyzing the results of this survey, I found that a likely majority of contemporary Jewish American couples opt for romantic *ketubot* that express vague aspirations for their relationships, rather than concrete promises like those in the traditional *ketubah*. In the conclusion of this paper, I discuss the practical and even religious losses resulting from the proliferation of these romantic *ketubah* texts and propose three simple methods of making up for these losses while still retaining the romantic language of contemporary *ketubot*.

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Introduction

A young couple looks with palpable wonder at a binder full of options. Each page contains another window into Jewish life. “Look at the detail on that one,” whispers one fiancé to another. “I love the colors on this one, the deep blue especially.” They nod in agreement, and grins sprout on both of their faces. “This is the one. We’ll take it!”

Another Jewish couple has just selected the *ketubah* for their wedding. This traditional document will set the terms for their marriage, but the two young Jews were initially more interested in the artwork than in the details of the text. A Judaica shop owner sits down with them to discuss the text options, showing them yet another binder full of options. “I’m feeling overwhelmed,” admits the bride-to-be. “It’s a lot of think about,” adds the future groom, “Where do we begin? I mean, what makes one text different from the next?”

Many Jewish couples find themselves in a similar situation shortly before their weddings. *Ketubot*, while constituting the most common, classical Jewish legal document found in Jewish homes, are still fairly mysterious to the majority of American Jews. In this paper, I intend to dispel the mystery and explain *ketubot* using three different lenses: rabbinic, historical, and contemporary. As not all couples will be interested in reading an academic paper on the subject of *ketubot*, especially as they worry about a myriad of other details for their nuptial day, this paper is primarily intended for rabbis, cantors, and other Jewish community leaders who will at some point sit down with couples to discuss *ketubah* options. The goal of this paper is to provide essential background on *ketubot* so that Jewish professionals are able to share an informed perspective on *ketubot*. Rabbinic guidance concerning *ketubah* choices is often greatly appreciated by and beneficial to couples. Talking

with a couple about the content of the *ketubah* may also serve as a way of getting them to discuss what kind of marriage they are committing themselves to and may, as a result, lead to improved communication and decreased conflict later in their marriage. Even couples who are already aware of all the *ketubah* choices available to them as consumers and who have opinions on what kind of marriage they intend to commit to, may not know what rabbinic tradition has meant by a *ketubah* or what the Jewish legal implications may be of having one kind or another. It is essential to clarify these issues with couples before they make decisions that can affect their lives in numerous ways down the road, whether by leaving the wife to deal with the excruciating experience of being an *agunah*, or by making it difficult for their future children to marry the spouse of their choice, should they choose to enter a more traditional Jewish community. For these reasons, I have included three chapters on the *ketubah*'s history, content, and legal significance in this work.

In the first chapter, I discuss the origins of the *ketubah*, because it is often helpful to share the cultural and religious context of a document before discussing the details of its contents. The *ketubah*'s origin can be explained from two sometimes conflicting, sometimes convergent standpoints. First, the classical rabbinic¹ explanation² is that the rabbinic *ketubah* is based upon the biblical concept of a *mohar* or brideprice, but reflects a few beneficial rabbinic modifications to this concept, which serve to maximize the number of Jewish marriages as well as their duration. Archeological evidence, however, suggests that the earliest *ketubot* were reflections of non-Jewish cultural practices that, over many centuries, came to resemble the rabbinic *ketubah*. The earlier *ketubah* texts in particular

¹ I.e. the views expressed by rabbis in the Babylonian Talmud.

² This explanation, as will be discussed in the first chapter, reveals a certain amount of tension in the rabbis' desire for the *ketubah* to be both biblical and rabbinic in origin.

exhibit understandings of marriage with which the Talmudic rabbis significantly disagree, including the marriage of Jews to those of other religio-cultural backgrounds (i.e. interfaith marriages). But later archeological findings reveal how rabbinic culture, particularly Babylonian rabbinic culture, ultimately triumphed and produced the traditional rabbinic *ketubah* that we know today.

In chapter two, I analyze the central elements of the traditional *ketubah* text and what each element reflects about the rabbinic understanding of marriage or about Jewish life in multiple geographical regions at various points in history. Before this analysis, however, I elaborate upon the establishment of the Babylonian rabbinic hegemony and the Palestinian rabbinic notions of marriage that were obscured by this significant cultural shift. Although this second chapter is devoted to the analysis of the purported “traditional” *ketubah* text,³ it also serves to demonstrate how Jewish tradition has never been entirely monolithic and thus lay the groundwork for the third chapter, which explores the diversity of contemporary *ketubah* options.

In the third chapter, I discuss how historical factors such as the publication of *The Jewish Catalog* and the growing influence of feminism on the American Jewish community ultimately produced the plethora of *ketubah* choices available today. I then examine how couples navigate these seemingly infinite choices by analyzing survey results on the marital values that couples strive to embody with their choice of *ketubah* text. It was my finding that the majority of survey respondents desired a less “traditional” text, which reflects the values

³ I.e. the one grounded in Babylonian rabbinic tradition.

of equality and partnership along with a number of personal aspirations for their marital relationship.

From an academic standpoint, one can also view this paper as an exploration of how authority is cyclically established and challenged. This theme first appears in my discussion of the rabbinic succession to biblical authority in the first chapter, as the rabbis work to find a balance between the former sources of authority and their own newer source of authority. This theme also appears in the second chapter's discussion of the various works meant to standardize the *ketubah* text. The mere existence of these guides demonstrates a perceived necessity to re-standardize the foundation of marriage in light of shifting cultural norms. And finally, in the third chapter, *The Jewish Catalog* represents a significant challenge to the established hegemony of its day—institutional American Judaism. Feminism and the once-again popular “do-it-yourself” movement online represent a continuation of the 1960's countercultural movement which produced *The Jewish Catalog*. These social forces have continued to challenge traditional authority and enable Jews to express their values and unique identities in many forms, including in the influential *ketubah* document, which represents the foundation of Jewish families and ultimately the greater Jewish communal life.

Chapter 1: The Origins of the *Ketubah*

Rabbinic Perspectives on the Origin of *Ketubot*

The precise origin of the *ketubah* may be impossible to pinpoint, as rabbinic tradition and archeological findings offer hints but little clarity regarding its origination. Rabbinic tradition itself contains conflicting accounts of when *ketubot* first appeared in the Jewish world. Although the word *ketubah* never appears in the Bible, a number of significant rabbinic figures read the *ketubah* into biblical history anachronistically. For instance, the eleventh century French Rabbi, Shlomo Yitzchaki, more commonly known as Rashi, suggests the earliest origin of the *ketubah* in his commentary on Genesis 25:6.⁴ In this commentary, Rashi relies upon a Talmudic discussion about the difference between wives and concubines.⁵ This discussion in Sanhedrin 21a already reads the anachronistic, rabbinic notion of *ketubot* into biblical history by suggesting that *ketubot* were what distinguished King David's wives from his concubines. Rashi extends this rabbinic notion even further into biblical history by relating it to the family of Abraham, the founding patriarch of Judaism, who predated King David by roughly one thousand years.

Sanhedrin 21a attributes this *ketubah*-based distinction between wives and concubines to the prominent third century Babylonian amora⁶ Rav Abba Arika, known more commonly as Rav. Over the eight hundred year period between Rav and Rashi, we may be

⁴ One might have thought that the rabbis would attribute the *ketubah* to the very first couple in the Bible, Adam and Eve, since the rabbis describe how God made a chuppah for Adam and Eve and how the angels served as witnesses for their wedding. But Rashi's commentary links the first *ketubah* to the first Jews, Abraham and Sarah, rather than the first human beings, which suggests that *ketubot* are uniquely Jewish rather than universal in nature.

⁵ Sanhedrin 21a: "And David took his concubines and wives out of Jerusalem... What are 'wives?' and what are 'concubines?' Rav Yehudah said in Rav's name, 'Wives have a *ketubah* and kiddushin; concubines have neither.'"

⁶ An amora, or expounder of the tannaitic teachings, could have been a Palestinian or Babylonian teacher living between the third and the fifth centuries C.E. See footnote explaining "tanna" below.

tempted to infer a growing rabbinic desire to read *ketubot* increasingly earlier into Jewish history. However, this inference does not take into account the complexities of rabbinic perspectives. A number of other significant rabbinic figures, indeed the majority, claim that the *ketubah* is of rabbinic rather than biblical origin. The twelfth century rabbi Moses ben Maimon, known more commonly as Rambam or Maimonides, attributes the establishment of *ketubot* to the Great Sanhedrin.⁷ The Talmud repeatedly links *ketubot* to the first century C.E. scholar and president of the Sanhedrin, Shim'on ben Shetach,⁸ but suggests that rabbinic sages long before ben Shetach instituted the *ketubah*.⁹ Rav Yehudah notes that while ben Shetach did not institute the practice of writing *ketubot*, he did institute one of the *ketubah*'s distinguishing factors, namely a lien on all of a man's property to secure the *ketubah* payment owed to a wife in the case of their marriage's dissolution. Rabban Shim'on ben Gamaliel, a tanna¹⁰ predating ben Shetach, attributes a specific type of *ketubah*¹¹ to the Soferim, a group of proto-rabbinic scribes who succeeded the biblical priest and scribe Ezra as leaders of the Jewish people for two hundred years.¹² In the time between ben Gamaliel and ben Shetach, one may thus infer a decrease in the rabbinic desire to establish the *ketubah* as a feature of early Jewish life. This observed decrease completely contradicts the observed increase noted above; and together these "patterns" demonstrate the difficulty of establishing a cohesive rabbinic perspective on the origin of *ketubot*.

⁷ Mishneh Torah, Isshut 16:9.

⁸ Shabbat 14b and 16b, "Simeon b. Shetah instituted a woman's marriage settlement."

⁹ *Ketubot* 10a and 82b.

¹⁰ Tanna, meaning "rehearser," was the title given to Palestinian teachers in the first two centuries C.E. Opinions of the tannaim (plural for tanna) appear in the Mishnah and other rabbinic literature from this period.

¹¹ That of widows.

¹² *Ketubot* 10a, See Soncino footnote 18 on this *daf*. *The Soncino Talmud*. Brooklyn, NY: Judaica Press, 1973.

Within the rabbinic tradition, appreciable tension exists between a desire for the *ketubah* to be biblical in origin and a desire for it to be rabbinic. The rabbis' authority was heavily invested in both possibilities. Regarding the first possibility, that of the *ketubah's* biblical origin, the rabbis needed rabbinic tradition to appear continuous with biblical tradition in order to create a smooth and successful transfer of Jewish authority into their own hands, especially following the destruction of the Second Temple in 70 C.E. Innovation, though prized today, was not well-received in the Talmudic era. Continuity with trusted sources and respected leaders was far more important, as demonstrated by the numerous rabbinic texts that emphasize the transmission chain of religious authority. One of the clearest attempts to link biblical and rabbinic authority appears at the beginning of Pirkei Avot: "Moses received the Torah from Sinai and transmitted it to Joshua. Joshua transmitted it to the Elders, the Elders to the Prophets, and the Prophets transmitted it to the Men of the Great Assembly."¹³ Those listed before the Men of the Great Assembly are biblical authority figures with age, wisdom, and remarkable connections to God that render them trustworthy, whereas the Men of the Great Assembly are leaders in an ambiguous "pre-Rabbinic but post-biblical" phase of Jewish history.¹⁴ Some may question whether the Great Assembly existed as an historical institution, or if it was merely a fabrication to promote rabbinic authority. Ultimately, it does not matter whether the Great Assembly truly existed, because the rabbis were successful in grounding their legal rulings in biblical passages and concepts, which effectively established rabbinic authority.

¹³ Pirkei Avot 1:1, משה קיבל תורה מסיני ומסרה ליהושע, ויהושע לזקנים, וזקנים לנביאים, ונביאים מסרה לאנשי כנסת הגדולה. *The Soncino Talmud*. Brooklyn, NY: Judaica Press, 1973.

¹⁴ Louis Jacobs, "Men of the Great Synagogue" in *The Jewish Religion: A Companion* (Oxford: Oxford University Press, 1995), 201.

With regard to *ketubot*, the rabbis link the *ketubah* payment, which later came to be known as the *ikkar ketubah* or essence of the *ketubah*,¹⁵ to the biblical concept of *mohar*,¹⁶ or bride price. Exodus 22:15 mentions the *mohar* as an amount that a man must pay if he seduces a virgin, who was not betrothed to another man, in order to acquire her as a wife.¹⁷ The next verse, Exodus 22:16, notes that should the father refuse to give his daughter in marriage to the seducer, the seducer must still pay the *mohar* due to virgins, presumably because the father can no longer receive the *mohar* amount for a virgin daughter once she is no longer a virgin.¹⁸ Based on these verses, Leoni Archer understands the *mohar* to be “the price of the girl’s virginity, or a compensation payment for the loss of her virginity.”¹⁹ Ephraim Neufeld, however, believes the *mohar* to be a compensation to her father for the loss of her labor and for guarding her virginity.²⁰ Either way, the *mohar* is linked strongly to female virginity.

The only other mention of the *mohar* in the Torah appears in Genesis 34:12, when the Canaanite²¹ prince Shechem offers a *mohar* to Dinah’s father and brothers, after abducting and sleeping with the presumed virgin Dinah. Dinah’s male relatives respond by requesting that Prince Shechem, his father King Hamor, and all of the men of their city circumcise

¹⁵ The term *ketubah* originally referred to the *ketubah* payment, but later came to refer to the document in which this payment was specified. Thus, the term *ikkar ketubah* had to be created in order to refer to the *ketubah* payment specifically.

¹⁶ According to T.M. Lemos, the term *mohar* appears only in the biblical passages dated to the pre-exilic period. See Lemos, T. M. *Marriage Gifts and Social Change in Ancient Palestine: 1200 BCE to 200 CE*. Cambridge: Cambridge University Press (2010), 41-50.

¹⁷ Exodus 22:15, “And if a man seduces a virgin who is not engaged, and he lies with her, he shall surely pay him [the father] the *mohar* amount for a wife.”

¹⁸ If her father utterly refuses to give her to him, he shall still pay money according to the *mohar* of virgins.

¹⁹ Leoni Archer, *Her Price is Beyond Rubies: The Jewish Woman in Greco-Roman Palestine* (Sheffield: Sheffield Academic Press, 1990), 164-165.

²⁰ According to Ephraim Neufeld, the *mohar* is a form of compensation to her father for the loss of her labor and for guarding her virginity. See Ephraim Neufeld, *Ancient Hebrew Marriage Laws* (Long: Longmans, Green and Co., 1944), 98-99.

²¹ Specifically Hivite.

themselves. In effect, the *mohar* they are requesting is a significant number of foreskins. This link between *mohar* and foreskins appears again later in the Tanakh, in 1 Samuel 18:25, where Saul requests that David bring him one hundred Philistine foreskins as a *mohar* for Michal. Thus, in these two biblical narratives, the *mohar* creates a parallel between the loss of a man's foreskin and the loss of a woman's hymen. However, the links between the *mohar* and the removal of non-Jews' foreskins may appear only for entertainment purposes. Perhaps the narrator intended the biblical audience to take amusement and delight in the extreme lengths that Shechem and David would go to in order to marry particular women. But due to its extreme nature, one can surmise that the foreskin *mohar* was not standard. Indeed, the Torah describes what Gail Labovitz observes as alternative forms of the *mohar*, namely gifts and labor.²² In Genesis 24:22, Abraham's servant gives a gift of a golden ring and two golden bracelets to Rebekah in order to acquire her as a wife for Abraham's son, Isaac. In Genesis 29:18, Abraham's grandson, Jacob lacks the financial means to offer gifts of golden jewelry, and instead offers his labor as a *mohar*-substitute in order to marry Rachel.

The rabbinic *ketubah*, which some claim to be based upon the biblical *mohar*, would allow a man to pay through golden jewelry, but not labor as in the story of Jacob.²³ This discrepancy between what the *ketubah* and Bible allow calls into question whether the *ketubah* is truly biblical in origin. Rabbi Yishmael in the Jerusalem Talmud 27d ignores this discrepancy in his interpretation of the *mohar* in Exodus 22:15-16. He declares, "The rabbinic *ketubah* payment is the exact equivalent of the biblical *mohar*."²⁴

²² Gail Labovitz, "Go to Your *Ketubah*" in *Marriage and Metaphor: Constructions of Gender in Rabbinic Literature* (Lanham, MD: Lexington Books, 2009), 207.

²³ Deborah Greniman, "The Origins on the *Ketubah*" in *Nashim: A Journal of Jewish Women's Studies and Gender* 4 (2001), 100.

²⁴ ואין מוהר אלא כתובה

In the more common Babylonian Talmud, Rabban Simeon ben Gamaliel adds, “The [custom of] a woman’s *ketubah* comes from the Torah,” but professes later in the same passage that the “*ketubah* of a widow does not come from the words of the Torah, but rather from the words of the Soferim,”²⁵ who resemble the Men of the Great Assembly by bridging the gap between biblical and rabbinic authority.

Although presenting the *ketubah* as continuous with biblical tradition lends authority to the rabbis, it may also restrict their ability to make what they consider necessary legal modifications. The Bible’s authority ultimately traces back to God, which makes it difficult to contradict without jeopardizing one’s own authority. Thus, it would be easier to retain control of something like the *ketubah*, if it were understood as a post-biblical, but still essential and beneficial practice. That may explain why multiple Talmudic passages emphasize the role of Shim’on ben Shetach and other, earlier sages in instituting the *ketubah*: If the *ketubah* is a rabbinic enactment, then the rabbis can have full control over the *ketubah* and by extension, contemporary Jewish marriages.

The Rabbinic Understanding of Marriage

The rabbis needed substantial control of *ketubot* in order to manifest their vision of Jewish marriage and Jewish communal life. First and foremost, the rabbis sought to establish marriage as a Jewish social norm. They maintained that both men and women need marriage. The rabbis believed that like Adam, every man requires a helpmate.²⁶ They also taught that a man “finds not only his happiness and blessing in the marital state, but his completeness

²⁵ *Ketubot* 10a.

²⁶ Genesis 2:18, “And God said, ‘It is not good that the man should be alone; I will make him a help mate for him.’”

as well.”²⁷ The rabbis derive this concept of a single man’s incompleteness from the biblical verse which says “male and female created He them, and He called *their* name *adam*.” The male alone did not constitute *adam*; he needed to be joined with a female to be considered complete. Similarly, a woman was regarded as incomplete without a husband. The rabbis suggested that a woman occupies the lowly state of a golem, or shapeless lump, until she “concludes a covenant [of marriage] only with him who transforms her into a [finished, useful] vessel.”²⁸ They base this teaching upon the biblical verse “For your Maker [God] is your husband,”²⁹ which, in rabbinic logic, equates the role of a husband to the role of a “maker” or completer.

In the process of establishing marriage as a social norm, the rabbis not only praised marriage as a state of blessing and completeness, but also stigmatized the unmarried state. Consequently, marriage became “the positively marked term in rabbinic culture, while [celibacy was] marked as negative.”³⁰ Every Jew³¹ was expected to marry, have sex, and produce children. Those “who refused to do so were hyperbolically stigmatized as murderers and blasphemers.”³² For example, the rabbis proclaim in Yevamot 63b, “He who does not engage in procreation is as if he committed murder.” They equate the failure to procreate with not only murder, but also a conscious diminishing of God’s image on earth. Because the rabbis believe God’s image dwells in people, they conclude that there would be

²⁷ Yevamot 63a.

²⁸ Sanhedrin 22b.

²⁹ Isaiah 54:5.

³⁰ Daniel Boyarin, *Carnal Israel: Reading Sex in Talmudic Culture* (Berkeley, California: University of California Press 1993), 46.

³¹ That is every male Jew, with no exceptions even for *mamzerim*. There were and continue to be extensive efforts to wed *mamzerim* to each other because *mamzerim* are legally disqualified from marrying non-*mamzerim*. For more information, see Deuteronomy 23:3, as well as *Yevamot* 49a-b, 69a, 78b, 87b, *Kiddushin* 67b and 73a.

³² Yevamot 63b.

less space in which God's image could dwell on earth if procreation did not occur. "If there are no 'descendants after you,'" the rabbis ask, "upon whom will the Divine Presence rest? Upon sticks and stones?"³³

Daniel Boyarin argues that the "necessity for such hyperbole attests to the attractions of celibacy for Semitic-speaking Jews."³⁴ Relatively integrated, Hellenized Jews, for example, may have derived a number of socio-economic benefits from celibacy, which they observed among their non-Jewish Greco-Roman counterparts. Rabbinic teachings in Palestine, as opposed to Babylonia, occasionally reflected these Greco-Roman practices, particularly in "the Hellenistic Judaisms of Philo and Paul."³⁵ According to Calvin Roetzel, Philo "blends the Stoic and Jewish emphases on propagation," but simultaneously reveres Moses the celibate who, after his prophetic call, renounced sex forever."³⁶ Other Jewish groups of that era, such as the Essenes and the Therapeutae, however, ignored "the emphasis of Judaism on the divine mandate to procreate and to secure marriage and the household as the divinely sanctioned social order."³⁷ They readily transgressed "these well-defined boundaries."³⁸ Like some Christian communities of the same era, these minority non-rabbinic Jewish groups were influenced by gnostic currents and strived to "keep themselves in perpetual readiness for divine-human intercourse"³⁹ by refusing to participate in the more common human-human intercourse.

³³ Yevamot 64a.

³⁴ Boyarin, *Carnal Israel*, 35.

³⁵ Boyarin, *Carnal Israel*, 47.

³⁶ Calvin J. Roetzel, "Sex and the Single God: Celibacy as Social Deviancy in the Roman Period." In *Text and Artifact in the Religions of Mediterranean Antiquity: Essays in Honour of Peter Richardson*, edited by Michel Robert Desjardins and Stephen G. Wilson, 231-248 (New York: Wilfrid Laurier UP, 2000), 239.

³⁷ Roetzel, "Sex and the Single God," 246.

³⁸ Ibid.

³⁹ Roetzel, "Sex and the Single God," 240. This statement is in reference the Qumran community in particular, but it can apply to other non-rabbinic Jewish sects as well.

Partially in response to these celibate currents, the rabbis maintained the importance of marriage and continually justified its practice on two accounts: procreation and companionship. Procreation constituted “the core of the legal imperative”⁴⁰ to marry and served a rather practical purpose. Concerned about declines in the Jewish population, the rabbis had to address an important question: “If the Jewish people were to die out, what would happen to God's promises of a future redemption?”⁴¹ This concern was especially poignant in light of religio-political persecution under figures such as Hadrian,⁴² who had “imposed oppressive restrictions, whereby children could not be initiated into the Covenant of Abraham nor ever taught Torah.”⁴³ One could also argue that it was even more dangerous for Jews than for other religious minorities, such as Christians, to forgo procreation, because the future of Judaism depended on ethnic reproduction rather than proselytistic success. Consequently, David Feldman asserts that “in the face of a precarious future, [procreation] was essentially an act of faith”⁴⁴ for Jews.

In addition to the practical reasons for procreation, the rabbis derived three distinct religious obligations to procreate. They derived one biblically⁴⁵ and two others rabbinically.⁴⁶ The biblically-derived and consequently most important of these obligations is that of *פריה ורביה* or “fruitfulness and multiplication.” This commandment is derived from

⁴⁰ David M. Feldman, *Birth Control in Jewish Law* (Northvale, New Jersey: Jason Aronson Inc., 1998), 27.

⁴¹ Koltun-Fromm, Naomi. “Sexuality and Holiness: Semitic Christian and Jewish Conceptualizations of Sexual Behavior.” *Vigiliae Christianae* 54, no. 4 (2000), 393.

⁴² The restrictions were introduced primarily out of a desire to bring unity to the Empire, but they had an oppressive effect on Jewish life.

⁴³ Feldman, *Birth Control in Jewish Law*, 51. Forbidden to circumcise their sons, the Jews were unable to physically distinguish their offspring from that of the general population as they had done for centuries. The illegality of Torah study, however, constituted a more powerful blow, because the death of Torah signified the death of Judaism, following the destruction of the second Temple.

⁴⁴ Feldman, *Birth Control in Jewish Law*, 52.

⁴⁵ A law that is derived biblically is derived from the Pentateuch.

⁴⁶ A law derived “rabbinically” is still derived from a verse or set of verses in the Tanakh.

multiple places in the Torah. Although the expression “be fruitful and multiply” appears first in the context of Adam and Eve, Feldman argues that it was intended as a blessing and not as a commandment in this context.⁴⁷ In two verses from Genesis chapter 9, however, God *obligates* Noah and his sons to not only “be fruitful and multiply, and replenish the earth,” but also “swarm in the earth, and multiply therein”⁴⁸ following the great flood. Similarly, in Genesis 35:11 God compels the patriarch Jacob to “be fruitful and multiply,” so that “a nation and a company of nations shall come from you, and kings shall go out from your loins.” This obligation from the Torah alone would have been legally sufficient to ensure procreation, but the rabbis interpreted two more verses from the other two sections of the *Tanakh* as additional mandates for procreation.

From Ecclesiastes 11:6, the rabbis derived a rabbinical obligation to procreate which they refer to as לערב]*la-erev*[. This verse reads, “In the morning, sow your seed, and in the evening (*la-erev*) do not withhold your hand [from continuing to sow], for you know not which will succeed...”⁴⁹ The rabbis interpret this verse as a mandate for continuous procreation because one never knows if one’s children will survive and thus if one has truly fulfilled the obligation of *priyah urviyah*, which is traditionally defined as having at least two children.⁵⁰ From Isaiah 45:18, the rabbis derive the third⁵¹ obligation to procreate, which

⁴⁷ Feldman, *Birth Control in Jewish Law*, 46. In Yevamot 65b, the rabbis discuss procreation as an exclusively male *mitzvah*. Thus, they must derive this commandment from Genesis 9, where it is said to a man only, rather than from Genesis 1, where it is said to a man and woman jointly.

⁴⁸ Genesis 9:1 and 9:7.

⁴⁹ Translation from Feldman, *Birth Control in Jewish Law*, 48.

⁵⁰ The School of Shammai argued that in order to fulfill the obligation of *priyah urviyah*, one needs to have two sons, following the example of Moses. The School of Hillel maintains that one needs to have a son and a daughter in order to fulfill this obligation, which is to say that the commandment is fulfilled “when the couple replaces itself.” (See Feldman, *Birth Control in Jewish Law*, 48). The argument over whether one has fulfilled the obligation or not does not end with one’s children, but even extends to one’s grandchildren. If one’s children are sterile, then one is considered as not having fulfilled this obligation. (See Yevamot 62b.)

⁵¹ This is considered the second “rabbinical” obligation to procreate and the third obligation to procreate among the biblical and other rabbinical obligation.

they refer to as לִשְׁבֹּת [*lashevet*], meaning “habitation” or “peopling of the earth.” This verse proclaims, “Not for void did He [God] create the world, but for habitation (*la-shevet*) did He form it.” Based on this principle, the rabbis argue that if two children are born, but do not survive to procreate themselves, then the habitation of the earth is not accomplished and one has not fulfilled the obligation to procreate.⁵² Although the rabbis specify *priyah urviyah*, *la-erev*, and *la-shevet* as three distinct obligations to procreate, no real distinction was made later in history between the duty to fulfill the biblical or the rabbinical aspect of this *mitzvah*.⁵³

It is important to note that the rabbis did not view men and women as equally obligated by these calls for procreation. The Mishnah teaches in Yevamot 6:3 that a “man is commanded concerning the duty of propagation, but not a woman.” Thus, women are not technically obligated by any of the three procreative mitzvot mentioned above. One explanation for their exemption is that childbirth could easily prove fatal for women, and God would not require women to endanger their lives in order to fulfill this commandment.⁵⁴ One might also explain this exemption as simply a reflection of a common trend in *halachah*, which is to ordain elaborate and continual obligations for men, while requiring comparatively little of women, who are assumed to be preoccupied with domestic concerns such as food-preparation and child-care.⁵⁵

⁵² Feldman, *Birth Control in Jewish Law*, 48.

⁵³ Feldman, *Birth Control in Jewish Law*, 50.

⁵⁴ According to Sanhedrin 74a, there are only three commandments that require one to endanger one’s life, and procreation is not one of them. One need only seriously endanger one’s life in order to avoid the prohibitions of murdering an innocent person, having illicit sexual relations, or engaging in idolatry.

⁵⁵ It is ironic then that procreation is not required of someone who is exempt from other commandments based on the assumption that she will be occupied with child-rearing.

However, if women are exempt from the commandment to procreate, one must wonder how men are expected to fulfill this commandment on their own. The Talmud explores this matter in Yevamot 65b and ultimately promotes the view that while women are not technically obligated to procreate, they fare better in life when they have children to take care of them in their old age. With this addendum to their teachings on procreation, the rabbis are able to promote their particular view of marriage among both Jewish men and Jewish women, and ultimately advance their greater vision for Jewish communal life.

While procreation serves an important role in marriage and the growth of the Jewish community, the rabbis do not consider procreation the only essential component of marriage. The rabbis view companionship as equally imperative, due to the multiplicity of biblical verses emphasizing its importance. Ecclesiastes, for example, declares that “two are better than one”⁵⁶ and advises one to “enjoy life with the woman you love.”⁵⁷ These verses from Ecclesiastes⁵⁸ have a certain level of import when it comes to Jewish law, but they are not nearly as significant as Genesis 2:18, which proclaims that “it is not good for man to be alone”⁵⁹ or Genesis 2:24, which teaches that a man should “leave his father and mother and cleave to his wife and they shall become as one flesh.”⁶⁰ These verses from Genesis could be understood as etiological, i.e. explaining why men tended to leave their natal families in order to establish their own families, or as a prescriptive instruction to marry, as the rabbis understand them. Based upon the “not good for man to be alone” verse, Rav Nahman declares

⁵⁶ Ecclesiastes 4:9.

⁵⁷ Ecclesiastes 9:9.

⁵⁸ Ecclesiastes is a book in the biblical canon, but not in first five books of the Bible, from which the most fundamental legal principles are derived.

⁵⁹ Genesis 2:18.

⁶⁰ Genesis 2:24. Of course, the commandment to become one flesh is interpreted by many to mean that they should engage in sexual intercourse, which could lead to procreation.

that “even if a man has many children, he is not allowed to remain unmarried,”⁶¹ which suggests that marriage is intended to promote not only procreation, but also companionship. Thus it may be said that the Tanakh⁶² and the rabbis of the Talmud advocate marriage even without regard to procreation, due to the inherent spiritual value of companionship.

As part of this companionship value, the rabbis recognize the necessity of emotional intimacy. Rabbi Tanhum ben Hanilai taught that whoever “is not married abides without joy, without blessing, [and] without good.”⁶³ Given these significant detriments, which result from a lack of companionship and emotional intimacy, the rabbis offer a great deal of advice on how to strengthen emotional intimacy between married couples. The rabbis even derive the supreme legal principle of *שלום בית*, the ideal of domestic peace, from this concern for spouses’ emotional well-being. This principle of domestic peace, according to Yevamot 65b, is to be exalted above all others, including truth. Rabbi Ishmael explained that even God “deviated” from strict truth in the interests of peace. As proof, he cites the discrepancy between what Sarah had said, “Can I, then, give birth, seeing that *my husband* is old?”⁶⁴ and what God said when reporting this statement to her husband Abraham, “How can I give birth, seeing that *I [Sarah]* am old?”⁶⁵ The rabbis teach that emotional intimacy is achieved primarily through the accommodation of one’s spouse and that one should always adjust

⁶¹ Yevamot 61b.

⁶² For example, in the story of Hannah, her husband, Elkanah, emphasizes the joy of companionship in marriage, suggesting that its worth is ten times greater than procreation. 1 Samuel 1:8, “Am I not better to you than ten sons?”

⁶³ Yevamot 62b. Rabbi Tanhum’s statement derives from a number of biblical verses: “Without joy” comes from (Deut. 14:26) “And you shall rejoice, you and your household”; “Without blessing” from (Ezek. 44:30) “To cause blessing to rest in your house”; and “Without good” from Genesis 2:18, “It is not good that man be alone.” Due to the wife’s association with the home, the terms wife, house, and household are understood synonymously.

⁶⁴ Genesis 18:12.

⁶⁵ Yevamot 65b.

one's speech so that it pleases one's spouse. Rabbi Papa reinforced this teaching with the following advice, "If your wife is short, bend down to whisper in her ear."⁶⁶

In addition to advising ways to create emotional intimacy, the rabbis offer advice that distinguishes physical intimacy from the mere obligation to procreate. This advice is not meant to be taken lightly; it merits the status of Jewish law. The first law related to physical intimacy is that of *עונה*, the wife's conjugal rights. The term *onah* comes from Exodus 21:10, which obligates a husband to provide his wife with "her food, clothing, and sexual rights [*onah*]."⁶⁷ Although a woman may forego her rights to food and clothing in a prenuptial agreement, she may not similarly forgo her sexual rights.⁶⁸

The commandment of *onah* is considered a separate commandment from *priyah urviyah* which "is concerned with the woman's other-than-procreative needs."⁶⁹ *Onah* is seen as a remedy for the curse of Eve, who was afflicted with "desire unto [her] husband."⁷⁰ Sometimes it is described as "*simhat onah*," the joy of *onah*, which references the biblical exemption from military obligation granted to a newly married man, who is told to stay home and "rejoice [with] his wife."⁷¹ As part of the *onah* law, the rabbis detail how often a man must give his wife sex, based on his profession. Men who spend more time away from home

⁶⁶ Bava Metzia 59a.

⁶⁷ Feldman, *Birth Control in Jewish Law*, 60. Translation of Exodus 21:10, "If he takes himself another wife, he shall not diminish her food, her raiment, and her conjugal rights."

⁶⁸ *Ketubot* 56a and *Kiddushin* 19b.

⁶⁹ Feldman, *Birth Control in Jewish Law*, 65.

⁷⁰ Genesis 3:16. Translated by Feldman, *Birth Control in Jewish Law*, 62.

⁷¹ Deuteronomy 24:5. The rabbis connect *onah* and the rejoicing of the newly married man, who is not obligated to join the war effort until he has been married for a full year, because they are both instructions given in reference to one's wife. Regarding this connection, David Feldman notes that the "obligation of marital sex is qualified by the content of *simhah* [joy] which must characterize it." See Feldman, *Birth Control in Jewish Law*, 71.

because of their professions are not expected to give their wives sex as often.⁷² Overall, the rabbis viewed sex as important to the marital relationship, not only for procreative purposes, but also in terms of the emotional intimacy and happiness it generates. The rabbis understood that a lack of physical and emotional intimacy in a marriage could lead to conflict and ultimately divorce.

The rabbis understand divorce to be a permissible course of action based upon the biblical precedent found in Deuteronomy 24:1, “If a man marries a woman who becomes displeasing to him because he finds something obscene about her, he writes her a certificate of divorce, gives it to her and sends her from his house.” This verse describes a particular divorce scenario, wherein a man rather than a woman initiates the divorce and a man writes the woman a certificate of divorce. There may have been other, possibly female-initiated instances of divorce in biblical times,⁷³ but the Tanakh includes only examples of men divorcing women, such as the verse above, upon which the rabbis based their system of divorce laws.

Although the rabbis permit divorce on this biblical precedent, they still consider it undesirable and try to discourage men from arbitrarily divorcing their wives. The *ketubah*, as noted in *Ketubot* 12b, was said to have been instituted in order to make it more difficult for men to divorce their wives. The rabbis considered divorce to be a cause of true lament, not only for the once married couple, but also for other Jews and even God. In fact, the very

⁷² *Ketubot* 61b prescribes the frequency with which a Jewish husband must provide his wife with sexual gratification: “For men of leisure, every day. For laborers, twice a week, for ass-drivers once a week; for camel-drivers, once in thirty days; for sailors, once in six months.”

⁷³ It is interesting to note that the Christian bible includes a description of a woman who divorces a man. It is unclear if this verse in Mark 10:12 refers to a case wherein the woman was the one to initiate the divorce.

last teaching on divorce in the Talmudic tractate devoted to the subject of divorce, is Rabbi Elazar's statement that "if a man divorces his first wife, even the altar [i.e. God] sheds tears."⁷⁴

The rabbis further develop a concept called the pity of divorce in their commentary on King David and in midrashim about couples living in the Talmudic era. They actually derive the pity of divorce principle from the story of Abishag the Shunnamite in I Kings 1. Abishag "became a companion to the king [i.e. David] and ministered unto him"⁷⁵ after he had already reached the maximum number of wives a king was permitted to have. She and David never married, the rabbis argue, because David could not in good conscience divorce one of his current wives in order to marry Abishag and stay within the limit of wives permitted to a king. The rabbis understand David's example as a demonstration that divorce is to be avoided, unless it is absolutely necessary.

A rabbinic midrash extends this pity of divorce principle even further, by pushing the limits of what is considered absolutely necessary. This midrash essentially calls into question the law of mandatory divorce for a man who has not yet fulfilled the *mitzvah* of p'ru urvu after ten years of infertility with his wife. This rabbinic tale, which emphasizes the beauty and importance of marital companionship, reads as follows:

There was a case of a woman in Sidon, who remained ten years with her husband and did not give birth. They came before Rabbi Shimon the son of Yohai; they wanted to get divorced one from the other. He said to them, 'On your lives—just as you got married with feasting and drinking, so shall you separate in feasting and drinking.' They followed his suggestion, and they made for themselves a festival and a banquet, and she got him too drunk. When his sensibility returned to him, he said, 'My daughter, choose any precious object of mine that is in the house, and take it with you when you go to your father's house.' What did she do? When he was asleep, she told her manservants and maidservants and said to them, 'Pick him up in the bed, and take him to Father's house.' At midnight he woke up. When his wine had worn off, he said to her, 'My daughter, where am I?' She said, 'in Father's house.' He said, 'What am I

⁷⁴ Gittin 90b. Here Rabbi Elazar is quoting Malachi 2:13-14 in which this image occurs.

⁷⁵ Sanhedrin 22a.

doing in your father's house?' She said to him, 'Did you not say to me this very evening, 'Any precious object which you have in your house, take and go to your father's house'? There is no object in the world which is more precious to me than you!' They went to Rabbi Shimon the son of Yohai. He stood and prayed for them, and they were remembered [she became pregnant].⁷⁶

Commenting on this midrash, Boyarin observes, "This legend may encode a moment of tension between a voice for which procreation was perceived as the sole or overridingly important *telos* of marriage and one for which companionship was coming increasingly important."⁷⁷ This apparent shift in the perception of marriage's purpose may mirror developments in the Roman world, where the wife's role changed from a mere "accessory to the work of the citizen and paterfamilias" to that of a friend and "life's companion."⁷⁸ It is also interesting to note that at the end of the midrash, the woman's efforts to preserve the marriage despite their longtime infertility were eventually rewarded with a pregnancy. This ending may have been added later to demonstrate that the overriding objective in the midrash: "that of preserving the existing marital relationship for its own sake"⁷⁹ did not ultimately conflict with the obligation to procreate.

The rabbis' desire to leave marriages intact even in cases of infertility also demonstrates that they consider marriage to be not entirely based upon procreation. It was socially acceptable not only for people who were post-nuptially discovered to be sterile to remain married, but also for those known to be sterile pre-nuptially to marry.⁸⁰ While the rabbis valued procreation highly, they also considered both marriage and marital relations

⁷⁶ Shir Hashirim Rabbah I:31.

⁷⁷ Boyarin, *Carnal Israel*, 55.

⁷⁸ Paul Veyne, "The Roman Empire," in *A History of Private Life: From Pagan Rome to Byzantium*. Cambridge: Belknap Press of Harvard University Press (1987), 176.

⁷⁹ Feldman, *Birth Control in Jewish Law*, 45.

⁸⁰ Feldman, *Birth Control in Jewish Law*, 66-67. This would usually involve a divorcee who had proven to be infertile and desired to remarry someone who was similarly infertile or who had already fulfilled his obligation to procreate.

to be “independent of procreation, achieving the many desiderata spoken of in talmudic, responsa, and mystic literatures.”⁸¹

In summary, the rabbis saw in marriage many benefits. The chief benefit was procreation, which ultimately provided a larger Jewish community to carry out the rabbinic agenda of serving God. But companionship was also considered an essential benefit of marriage that occasionally surpassed procreation in importance and also helped to reinforce Jewish societal bonds. One might reasonably expect to see these two fundamental elements of Jewish marriage reflected in the traditional Jewish marriage contract, so in the next chapter, I will examine the extent to which procreation, companionship, and other rabbinic marital values are reflected in the traditional *ketubah* text.

But first I must explain a third, fundamental aspect of the Talmudic understanding of marriage, which is its unilateral nature. The rabbinic-talmudic concept of marriage is called *kiddushin*; and it represents a way for men to “acquire”⁸² women, which is to say, assume control over women’s sexuality and lives in general. The rabbis derived this practice of “acquiring” women from biblical texts such as Deuteronomy 22:13,⁸³ which describes a man “taking” a woman as one would take property. To reinforce this interpretation, the rabbis drew a parallel between this verse and Genesis 23:13, wherein Abraham purchases the field of Ephron, using the same verb of לקח. Although not originally called *kiddushin*, this method of espousal acquired a new name by the time of the Mishnah. By then, “taking a woman to wife” was categorized as a “unique kind of acquisition, blending characteristics of both

⁸¹ Feldman, *Birth Control in Jewish Law*, 68-69.

⁸² In *Kiddushin* 1:1, we read that a woman may be acquired in three ways (האשה נקנית בשלש דרכים). The verb *acquired* is also used in relation to slaves, animals, and property in this chapter, revealing that women are regarded in some ways as chattel.

⁸³ “כִּי־יִקַּח אִישׁ אִשָּׁה”

purchase and the religious act of setting goods aside for sacred donation, *hekdesh*.”⁸⁴ As a result of its sanctification, the marriage came to be called *kiddushin*.⁸⁵

Due to their legal interpretations of the aforementioned biblical texts, the rabbis rejected women’s ability to initiate divorce, even though it was recognized in contemporary Greco-Roman law.⁸⁶ Even before Greco-Roman law, a number of societies legally empowered women to initiate divorce. Apologists often praise the rabbis of the Talmud for being “progressive for their time,” but the rabbis’ views on marriage might, in this case, be considered regressive in terms of gender equality, given the level of gender equality exhibited in pre-rabbinic Jewish marriage contracts, which I will discuss in the very next section of this chapter.

Archeological Perspectives on the Origin of *Ketubot*

Based on rabbinic tradition, one might get the impression that *ketubot* were uniquely Jewish documents stemming predominantly from the biblical tradition. But the field of archeology offers another perspective on the origin of *ketubot*, which were likely influenced by the marital contracts of surrounding cultures, as well as by Jewish cultural traditions.

The earliest known *ketubot* come from fifth century B.C.E. Elephantine, an island in the Nile River located just west of the modern Egyptian city of Aswan. Elephantine was home to a community of Jewish soldiers who protected Egypt’s southern border and surveyed Egyptian-Nubian trade during Persia’s occupation of Egypt.⁸⁷ Many legal documents, including *ketubot*, were preserved for over two millennia as a result of a communal custom

⁸⁴ Adler, Rachel. “*B’rit ahuvim*: A Marriage Between Subjects.” *Engendering Judaism: an Inclusive Theology and Ethics*. Boston: Beacon (1999), 172.

⁸⁵ *Kiddushin* comes from root of קדש, meaning *holy*.

⁸⁶ Deborah Greniman. “The Origins on the *Ketubah*.” *Nashim*. Number 4, Fall 5762/2001, 109-110.

⁸⁷ Claudia Nahson, *Ketubbot: Marriage Contracts from The Jewish Museum*, Pomegranate Publishers (1998), 8.

to bury important documents in jars or vessels under the floors of their homes for safe keeping. In the early nineteenth century, a collection of these documents surfaced at a local market in Aswan, where an Italian archeologist named Giovanni Belzoni purchased them. By 1906, other scholars of ancient Egyptian history such as A.H. Sayce and A.E. Cowley published the first collection of these papyri, the majority of which were written in Aramaic.⁸⁸

Dating from 449 to 420 B.C.E., the *ketubot* among the Elephantine papyri collection reflect the early stages of the rabbinic-talmudic *ketubah*, but are “markedly different from its final formulation.”⁸⁹ Both the Elephantine and rabbinic-talmudic *ketubot* describe a *mohar*, which as noted previously is a brideprice paid by the groom, and the dowry, which is wealth in the form of cash or material goods provided by the bride’s natal family. They also both record stipulations in case of divorce and the regulation of certain marital duties. However, the Elephantine *ketubot* differ notably from the rabbinic-talmudic *ketubot* in their articulation of a mutual rather than unilateral understanding of marriage. One indication of this mutual understanding of marriage appears in the *verba solemnia*, or solemn declaration that formally enacts the marriage. The Elephantine *ketubot* affirm, “She is my wife, and I am her husband from this day and forever,”⁹⁰ whereas the lengthier *verba solemnia* of the rabbinic-talmudic *ketubot*,⁹¹ proclaims: “Be my wife according to the law of Moses and Israel,

⁸⁸ Some of these documents were written in Hieratic and Demotic. Note also that the Aramaic of the Elephantine documents, except for slight differences, resembles biblical Aramaic. The variation in the Aramaic spelling in these documents seems to indicate a more archaic language, but not significant differences in pronunciation.

⁸⁹ Shalom Sabar. *Ketubbah: The Art of the Jewish Marriage Contract*. Hebrew Union College Skirball Museum (1990), 3-4.

⁹⁰ Botta, Alejandro. *The Aramaic and Egyptian Legal Traditions at Elephantine: An Egyptological Approach*. Library of Second Temple Studies 64 (London, New York: T&T Clark, 2009), 59.

⁹¹ Note that the rabbinic-talmudic *ketubah* tradition developed multiple centuries after these Jewish marriage contracts from Elephantine were written.

and I will cherish, honor, support, and maintain you in accordance with the custom of Jewish husbands who cherish, honor, support, and maintain their wives faithfully.”⁹²

Both the Elephantine and rabbinic *ketubot* are written from the perspective of the bridegroom, which could easily result in a unilateral articulation of the marriage, but the Elephantine contracts emphasize the mutual sense of belonging and responsibility husbands and wives have towards one another. In the Elephantine *ketubot*, the man is described in terms of possession or relation to the woman, just as the woman is described in terms of possession or relation to the man. This is far from the case in rabbinic-talmudic *ketubot*, which describe a legal construct in which a man acquires a woman, but not vice versa. Another unique feature of Elephantine *ketubot* reinforces this sense of mutuality, balance, and reciprocity: namely the receipt formula “your/my heart is satisfied” in both the bridewealth and dowry clauses. The required satisfaction of both parties signify the value of reciprocity in these unions.

But even more distinctive and significant is the mutuality expressed in relation to divorce. Elephantine *ketubot* include a clause that empowers not only men, but also women to initiate divorce,⁹³ which simultaneously reflects and creates a sense of egalitarianism. No distinction is made in terms of gender; both husband and wife are capable of dissolving the union by the same procedure. The divorce is granted if either the husband or the wife “stands up in the assembly and says, ‘I hate [name of the other person], my wife/my husband.’”⁹⁴

⁹² Aramaic text: הווי לי לאנתו כדת משה וישראל ואנא אפלח ואוקיר ואיוון ואפרנס יתיכי ליכי כהלכות גוברין יהודאין דפלחין ומוקרין וזנין ומפרנסין לנשי

⁹³ Ji-Yun Kim. “Revisiting the Aramaic Marriage Documents: Marriage and Succession Mechanism in the Jewish Community of Elephantine.” Unpublished 2013.

⁹⁴ Kim, “Elephantine Marriage Contracts,” 7.

This egalitarian clause appears in stark contrast to rabbinic *ketubot*, which allow only men to initiate the divorce. It also contradicts the tradition of Mesopotamian marriage contracts of the same time period, which allow a woman to initiate divorce only if she is able to prove her husband's waywardness along with her complete innocence.⁹⁵ Women's attempts to initiate divorce under Mesopotamian law were unusual, likely due to the level of risk involved. If a wife failed to prove herself innocent, she would be cast into the water as punishment.⁹⁶ But Egyptian marriage laws were of a more egalitarian nature and permitted women to initiate divorce. Thus, it seems that the Jewish marriage contracts of Elephantine exhibit a stronger influence from Egyptian culture than from the proto-talmudic or the broader Mesopotamian legal system that ultimately influenced Talmudic law.

This reflection of Egyptian culture, rather than the proto-rabbinic culture, also manifests in a number of recorded intermarriages or other marital arrangements which would have been forbidden under rabbinic law. For example, among the marriages recorded in the Elephantine contracts, we find the case of Miptahiah, a woman from one of the leading families of the Elephantine Jewish community, who married an Egyptian man named Eshor in her second marriage. We also find the case of Tamut, an Egyptian handmaid owned by a Jewish man, who⁹⁷ married another free Jewish man and temple official, Ananiah.⁹⁸ Neither of these unions would have been permitted under Talmudic law.

The rabbis forbidden intermarriage in Kiddushin 68b, based upon the following biblical passage:

⁹⁵ Kim, "Elephantine Marriage Contracts," 31.

⁹⁶ Ibid. This procedure may reflect a strangely, cross-cultural theme of using water to punish women, whether in the Sota ritual described in Numbers 5:11-31, or much later in history during the Salem Witch Trials wherein women were frequently drowned.

⁹⁷ Tamut, not her slave-owner, was the one who married Ananiah.

⁹⁸ Kim, "Elephantine Marriage Contracts," 4.

“When Adonai your God brings you into the land you are entering to possess and drives out before you many nations—the Hittites, Girgashites, Amorites, Canaanites, Perizzites, Hivites and Jebusites, seven nations larger and stronger than you—and when Adonai your God has delivered them over to you and you have defeated them, then you must destroy them totally. Make no treaty with them, and show them no mercy. Do not intermarry with them. Do not give your daughters to their sons or take their daughters for your sons, for they will turn your children away from following me to serve other gods, and Adonai’s anger will burn against you and will quickly destroy you.”⁹⁹

This passage from Deuteronomy forbids relationships with only seven non-Israelite ethnic groups, but the rabbis extend this prohibition in the Talmud to include all non-Jews and forbid all cases of intermarriage in Kiddushin 68b:

“Now, that verse refers [only] to the seven nations. How do we know it applies to other nations [as well]? Scripture says, ‘For he will turn away [your son],’ which includes all who may turn [him] away. That is well according to R. Simeon, who interprets the reason of Scripture.¹⁰⁰ But on the view of the rabbis,¹⁰¹ what is the reason? Scripture says, ‘and after that you shall go in unto her, and be her husband, [etc.],’ from where it follows that before that point, marriage (kiddushin) with her is invalid.”

The last verse cited in this Talmudic excerpt is Deuteronomy 21:13, which refers to a woman captured in war. The rabbis understand the phrase “after that” to refer to the time after her period of mourning, which would follow the extermination of the seven nations. If a Jewish man married a non-Jewish woman after the seven nations were destroyed, according to rabbinic logic, the non-Jewish woman must have come from a nation not included among these seven. Thus, all intermarriage is forbidden under rabbinic law.

⁹⁹ Deuteronomy 7:1-4.

¹⁰⁰ In other words, Rabbi Simeon understands the reason for the prohibition against marriages with these seven nations to be their ability to turn one’s children away from Judaism. With this reasoning, he believes the prohibition should be extended to any nation that could potentially turn one’s children away from Judaism, which is to say, all non-Jewish peoples.

¹⁰¹ These rabbis presumably oppose Rabbi Simeon’s reasoning for extending this prohibition.

Furthermore, in the case of Tamut, the Egyptian handmaid who married the Jewish temple official, Ananiah, the rabbis would have had even more reason to prohibit their marriage. The rabbis find the condition of being half-slave, half-free extremely problematic. Their ideal state of being would be in complete freedom, but even full slavery seems less problematic than half-slavery from a legal standpoint. The rabbis did not consider a half-slave eligible for marriage, as half-slaves were still subject to their owner's desires. On more than one occasion, the rabbis compel slave owners who own a half-slave, half-free woman to fully emancipate her so that she can marry and enjoy the protections of marriage.¹⁰² These Elephantine marriages, however, occurred centuries before the Talmud was redacted and do not take into account any of these later rabbinic prohibitions against intermarriage or the marriage of slaves who had not been formally emancipated. However, the ancient Jewish marriage contracts that appear after these Elephantine *ketubot* appear increasingly similar to the *ketubot* discussed in the Talmud.

The *Ketubot* of Tobit

The second oldest source of information we have on Jewish marriage contracts appears in the apocryphal Book of Tobit, which has the narrative setting of the eighth century B.C.E. Most scholars, however, date the book's composition much later, to somewhere between 225 and 175 B.C.E.¹⁰³ Shalom Sabar dates the Book of Tobit a bit earlier than most scholars, to the fourth or third century B.C.E, and assumes that marriage writs were common among the Jews of this period. However, other scholars such as Deborah Greniman are careful not to assume from a singular verse in Tobit that most Jews at the time of its

¹⁰² See Yevamot 66a and Gittin 43b.

¹⁰³ Joseph A. Fitzmyer. *Tobit: Commentaries on Early Jewish Literature*. Berlin: De Gruyter (2003), 51.

composition wrote out marriage contracts. Greniman only infers that it may have been “customary at least among some Jews [of this time period] to write a marriage contract.”¹⁰⁴

This singular reference to a Jewish marriage contract appears in Tobit 7:13, which relates that a man named Re’uel, or Raguel, wrote a marriage contract stating that he was giving his daughter, Sarah, to his cousin, Tobiah, “as a wife according to the ruling of the scroll from Moses.”¹⁰⁵ Geoffrey Miller notes that the “chief function of [this] contract [in the narrative] is to show that Tobiah has married Sarah and that their marriage is in accordance with Mosaic law.”¹⁰⁶ A similar phrase, “according to Mosaic law and Jewish custom” appears later in the Talmud¹⁰⁷ as well as in Jewish marriage contracts and bills of divorce in the Roman period and the early Middle Ages.¹⁰⁸ The *verba solemnia* in the Book of Tobit thus more closely resembles that of the rabbinic-talmudic *ketubot*. In Tobit 9:21, it is also noted that Raguel gave half of his property to his daughter Sarah’s new husband, which may represent a type of dowry and further reflect a proto-rabbinic legal tradition with its unique *verba solemnia* and dowry tradition.¹⁰⁹

Ketubot of the Judean Desert

Several centuries after the time of Tobit, a number of *ketubot* were written and preserved in the Judean Desert. These marriage contracts, written shortly before the Bar Kokhba rebellion in 136 C.E., are the earliest surviving Jewish marriage contracts from after the destruction of the Second Temple.¹¹⁰ Most of these marriage contracts were written in

¹⁰⁴ Greniman, 96.

¹⁰⁵ παρέδωκεν αὐτὴν τῷ τωβία γυναικὰ καὶ εἶπεν ἰδοὺ κατὰ τὸν νόμον μωυσεως

¹⁰⁶ Geoffrey David Miller. *Marriage in the Book of Tobit*. Berlin: De Gruyter (2011), 112.

¹⁰⁷ *Ketubot* 72a, quoting the Mishnah *Ketubot* 7:6, describes women who can be divorced without being given their *ketubah* settlement, using the phrase: “דַּת מִשָּׁה וִיהוּדִית.”

¹⁰⁸ Miller, *Marriage in the Book of Tobit*, 112.

¹⁰⁹ Labovitz, *Marriage and Metaphor*, 207.

¹¹⁰ Greniman, 98.

Greek. A. Wasserstein understands the language in which most of these contracts were written to be a sign of Hellenism, whereas Ranon Katzoff argues that these contracts contain “Jewish customs in Greek garb.”¹¹¹ Deborah Greniman explains that the scribes may have tried to make their Jewish marriage contracts more palatable to Greek norms so that they would hold up in Greek governmental courts.¹¹²

The Talmud, which again had not been redacted at this point in history, would have permitted the writing of a *ketubbah* in any language, including Greek, so long as no alterations or falsifications of the original terms occur.¹¹³ Nevertheless, the legal terms these Judean marriage contracts present “largely do not resemble those of the rabbinic *ketubah*.”¹¹⁴ Not one of them mentions anything that could be identified with the biblical *mohar* payment, which has led some scholars to believe that the *mohar* custom had disappeared after biblical times.¹¹⁵ But several of these contracts¹¹⁶ mention dowries, and two of them actually mention *ketubah* money.¹¹⁷

The most significant of these contracts, Babata’s *ketubah*, was found by Israeli archeologist Yigael Yadin in 1961. Yadin discovered this *ketubah* among a bundle of papyri¹¹⁸ in a Judean Desert cave. Babata’s *ketubah* was written in Aramaic and more similar to the rabbinic *ketubah* than any of the other contracts found. The monetary amount listed in

¹¹¹ Greniman, 99.

¹¹² Greniman, 99.

¹¹³ See Gittin 10b, 19b, and 87b.

¹¹⁴ Greniman, 99.

¹¹⁵ Labovitz, 208.

¹¹⁶ These contracts include p. Yadin 18 and P. Yadin 37.

¹¹⁷ Labovitz, 207.

¹¹⁸ Among the other documents was another *ketubah*, that of Shlomtzion daughter of Judah, which Yadin dated to 128 C.E. A French archeologist named Roland de Vaux discovered two additional *ketubot* in the Judean Desert in the Wadi Murba’at. These documents date to 117 C.E., but are less well preserved. See Michael’s *Love, Marriage, and Family in Jewish Law and Tradition*. Northvale, NJ: J. Aronson (1992), 156.

Babata's *ketubah* was 400 dinari,¹¹⁹ twice the amount for a typical virgin, even though this was her second marriage. The declaration of marriage formula was unfortunately damaged, but it contains what may be the phrase "wife [according to the l]aw of Moses."¹²⁰ Babata's *ketubah* also contains provisions similar to those mentioned in Exodus 21:10, which obligates a husband to provide his wife with "her food, clothing, and *onah*." However, in place of *onah*, the *ketubah* mentions providing her with a bed.¹²¹ Her *ketubah* also includes the provision found in the Talmud about redeeming one's wife if she is taken captive.¹²² Given all of these shared elements, Babata's marriage contract may represent "a partial, early version of what came to be accepted as the *ketubah*."¹²³ However, it also contains elements similar to those found in later Palestinian *ketubot*, including a provision enjoining the husband to grant a divorce on the wife's demand, regardless of whether he himself wants one.¹²⁴ In the next chapter, I will explore more archeological findings on *ketubot*, particularly Palestinian *ketubot*, and juxtapose these findings with an analysis of what came to be referred to as "the traditional *ketubah* text."

¹¹⁹ The Talmud uses *dinar* and *zuz* interchangeably, demonstrating that they were equal in value. Marcus Jastrow. *A Dictionary of the Targumim, the Talmud Babli and Yerushalmi, and the Midrashic Literature*. Jerusalem, 385.

¹²⁰ *לאת [ה כד]ן משה* in line 5. See Kim, "Elephantine Marriage Contracts," 13.

¹²¹ The term *bed* could be a euphemism for sexual activity, or a literal bed.

¹²² 147. Trans. Y. Yadin, J. C. Greenfield, A. Yardeni, "Babatha's *Ketubba*," *Israel Exploration Journal* 44 (1994), pp. 79-84.

¹²³ Greniman, 99.

¹²⁴ See Naphtali Lewis ed., *The Documents from the Bar Kochba Period in the Cave of Letters* vol. 1 (Jerusalem: Israel Exploration Society, 1989), 130-133.

Chapter 2: The Traditional Text of the *Ketubah*

How the Traditional *Ketubah* Text Became (Mostly) Standardized

Before examining what has come to be recognized as “the traditional *ketubah* text,” it is important to note that despite what some may infer from the description of “traditional,” this text has not always appeared in the precise form we encounter today. This *ketubah* text is “traditional” in the sense that it reflects many aspects of Jewish tradition, particularly notions about marriage from the Babylonian Talmud. But as a consequence of reflecting primarily Babylonian Talmudic thought, this traditional text excludes other important components of the Jewish tradition, particularly the Palestinian Talmud and Palestinian *ketubot*, which were obscured by the Babylonian rabbis’ undisputed hegemony. Art historian and scholar of *ketubot*, Shalom Sabar observes that the inclusion of various clauses from the Babylonian Talmud suggests that the basis of the *ketubah* text we know today developed in Babylonia, even though the Babylonian Talmud itself does not provide a full *ketubah* text.¹²⁵ One such Babylonian clause, for example, is *הוי לי לאינתו* (lit. be for me a wife), a formulaic phrase that appears in the traditional *ketubah* today.¹²⁶ Claudia Nahson notes that there was far greater diversity among Palestinian *ketubot*, as there was no set formula for them.¹²⁷

Palestinian *ketubot* differ significantly from Babylonian *ketubot* and even from one another. Diversity is a central characteristic of Palestinian *ketubot*, which reflect ancient Palestinian traditions that predate Talmudic traditions.¹²⁸ The deep-rootedness of these

¹²⁵ Shalom Sabar. *Ketubbah: The Art of the Jewish Marriage Contract*. Hebrew Union College Skirball Museum (1990), 8.

¹²⁶ Bava Metzia 104a. This passage suggest that the men of Alexandria used to write, “You shall become my wife, when you are taken to the chuppah” in their *ketubot*.

¹²⁷ Claudia Nahson, *Ketubbot: Marriage Contracts from The Jewish Museum*, Pomegranate Publishers (1998), 8.

¹²⁸ Friedman, Mordechai Akiva. *Jewish Marriage in Palestine: A Cairo Genizah Study*. Tel-Aviv: Tel-Aviv University, Chaim Rosenberg School of Jewish Studies (1980), 28.

diverse traditions made it both unappealing and difficult for the Palestinian academy to promote a unified formula for the *ketubah*. Each community, such as Ramle, Tyre, or Damascus, had *ketubah* traditions particular to its locality. But variations exist in *ketubot* even from the same city and by the same scribe, suggesting a strong aversion to uniformity.¹²⁹

Palestinian *ketubot* also tended to include stipulations that were omitted from Babylonian *ketubot*, particularly those found in Mishnah *Ketubot* 4:7-12. These stipulations include the obligation to redeem a wife from captivity, to use the *ketubah* amount, should she pre-decease her husband, to provide an inheritance for her sons and sustain her daughter until they marry, and to allow a wife to remain in her husband's home, should he pre-decease her. Babylonian scribes may have omitted these clauses out of a sense of their superfluousness. After all, the Mishnah specifies that these stipulations apply whether or not they are recorded in a *ketubah*. These clauses may have also been omitted due to fear of bad luck, as they discuss circumstances involving death.¹³⁰ These stipulations do not appear in the *ketubah* formularies of the Babylonian geonim, such as the Saadiah Gaon or the Chai Gaon; nor are they found in the *ketubot* of various diaspora communities whose marriage contracts are based on the formularies of the Babylonian geonim.¹³¹

But perhaps the most significant difference between Palestinian *ketubot* and their Babylonian counterparts was their concept of mutuality. The Palestinian tradition conceived of marriage as a *shutafut* or "partnership,"¹³² and Palestinian *ketubot* consequently express

¹²⁹ Friedman, *Jewish Marriage in Palestine*, 13.

¹³⁰ Friedman, *Jewish Marriage in Palestine*, 16.

¹³¹ Ibid.

¹³² Friedman, *Jewish Marriage in Palestine*, 19.

mutual obligations. *Ketubah* texts specify that the groom was expected to “nourish, provide for, honor, and esteem” the bride, while the bride was expected to “serve, attend, honor, and esteem him.” In concluding formulae, the consent to the Palestinian *ketubah*’s content had to be confirmed by both parties, as both the bride and the groom gave instructions for the writing and signing of the *ketubah*.¹³³ In one of the Tyrian *ketubot*,¹³⁴ the groom asked the bride to be not only his wife, but, quoting Malachi 2:14, “my companion and my wife in covenant.”¹³⁵ Unfortunately, this sense of companionship and mutuality was lost when Babylonian *ketubot*, with their unilateral expression of marriage, became the dominant style of *ketubot* among the Jewish people. After the Crusades, the Palestinian *ketubah* tradition all but disappeared except for its slight influence on medieval Italian *ketubot*, which kept the classical Palestinian stipulations and a faint hint of mutuality.¹³⁶

S. Goren examines additional differences between the two Talmuds and their treatment of the *ketubah* text in his monumental work *The Ketubbah in the Babylonian and Palestinian Talmuds*.¹³⁷ However, as mentioned above, the establishment of the Babylonian rabbinic hegemony led to a standardization process of *ketubot* that has obscured the fascinating diversity of non-Babylonian *ketubah* texts. The Babylonian geonim were crucial in securing the cultural dominance of Babylonian rabbinism¹³⁸ and *ketubot*. Two of these prominent figures, Saadia Gaon and Chai Gaon as mentioned above, include precise

¹³³ Friedman, *Jewish Marriage in Palestine*, 19.

¹³⁴ See no. 20:6 in Friedman, *Jewish Marriage in Palestine*, 19.

¹³⁵ Friedman, *Jewish Marriage in Palestine*, 19.

¹³⁶ The Mahzor Roma includes the wife’s agreement to “serve and honor [the husband] in modesty and in purity and cleanness,” reflecting a sense of mutual obligation. Friedman, *Jewish Marriage in Palestine*, 43.

¹³⁷ See S. Goren’s “The Ketubbah in the Babylonian and Palestinian Talmuds,” *Torah She-be-al Peh* 3 (1961):117-130) to see the basic differences between the two Talmuds and their treatment of the *ketubah* text.

¹³⁸ By rabbinism, I mean rabbinic Judaism, as opposed to a Babylonian Judaism of biblical times.

formularies for the *ketubah* text in their writings, which were then strategically disseminated to other Jewish communities outside of Babylonia.¹³⁹ Their attempt to standardize the *ketubah* text continued long after their time, as other Jewish leaders arose and attempted to promote certain *ketubah* text formulas.

After the Geonim, other Jewish leaders including, Judah ben Barzillai of Becelona (late 11th century to early twelfth century), Eliezer ben Joel haLevi of Bonn (1140-1225), and Simeon ben Zemah Duran of Majorca (1361-1444) also included formulas for *ketubot* in their works. One of the most well-known formulas for medieval *ketubot* can be found in Maimonides' 12th century work, the *Mishneh Torah*.¹⁴⁰ Maimonides had endeavored in this work to clarify Jewish tradition once and for all, but others continued to produce guides for writing *ketubot* centuries after his time. For example, the 1552 manual from Venice called *La Kol Hefetz* also contains instructions on how to write a *ketubah*.¹⁴¹ Ashkenazim, who did not adhere to Italian customs, preferred to use the 1667 *Nahalat Shiv'ah* guide from Amsterdam to determine how to write their *ketubot*.¹⁴² This work was far more comprehensive and written by a trusted Ashkenazic source, the Polish Rabbi Samuel ben David Moses haLevi (1625?-1681). Numerous Jewish communities tried to establish a traditional norm by outlawing future alterations. In 1489, the community of Candia (Crete) issued an ordinance that "no one will be permitted to alter the text of the ketubbah deed from the text established by former scholars, early or late, new or old."¹⁴³

¹³⁹ Sabar, 29.

¹⁴⁰ Yibbum 4:33.

¹⁴¹ Sabar, 10.

¹⁴² Ibid.

¹⁴³ Sabar, 29.

Certain *takanot*¹⁴⁴ were also enacted to standardize *ketubot* and marital practices in general. The most famous of these *takanot* was that of Rabbeinu Gershom (Gershom ben Judah Me'or ha-Golan, c. 960–1028) who banned any Ashkenazi Jewish husband from divorcing his wife against her will and from taking a second wife, even though both of these practices were permitted under biblical law. The Sephardim did not accept these bans or a previous *takanah* which standardized the money clause in Ashkenazic *ketubot*, even though Rabbeinu Gershom's ban largely resembled the original intention of the *ketubah*, which was to protect women from being divorced capriciously against their will.¹⁴⁵

While the Middle Ages were marked by a strong and persistent desire to standardize the *ketubah*, attempts at standardization were not entirely successful, mostly to due to the tendency to have significant regional differences in Jewish customs. No attempts to outlaw alterations managed to stop the variations in *ketubot* by region or period.¹⁴⁶

The Language of the Traditional *Ketubah*

Now that we have briefly considered the historical diversity of *ketubah* texts, we are almost ready to examine the structure and wording of the dominant, “traditional” *ketubah* text. But before we do so, I would like to highlight the significance of the language in which it is written. Many Jews could easily mistake the traditional *ketubah* text for a Hebrew document, given the shared alphabet of the Hebrew and Aramaic languages. For this reason, it is essential to distinguish between the two languages and explore why Aramaic was used rather than Hebrew.

¹⁴⁴ Takkanot are ordinances declared by rabbinic authorities in order to promote the common good or to foster the spiritual development of those under their jurisdiction.

¹⁴⁵ Sabar, 9.

¹⁴⁶ Sabar, 8.

Hebrew, one could easily argue, is the quintessential language of the Jewish people. It was chosen to be the language of the only Jewish country, the modern State of Israel, due to its lengthy Jewish history, which traces back to biblical times. Indeed, over the centuries, the majority of Jewish holy texts, both scripture and prayers, as well as numerous commentaries on these texts were written in Hebrew. During the time of the Talmud, however, Aramaic was the lingua franca which enabled Jews to communicate with other ethnic and religious groups. Aramaic had begun to replace Hebrew as the spoken language of the Jews of Asia Minor following the Assyrian and Babylonian conquests. Ezra 4:7 describes how Aramaic became the official language in provinces between the Euphrates and the Mediterranean.¹⁴⁷ Nehemiah 13:24 laments how the children of Jews could no longer speak “the Jewish language,” but instead spoke in the local people’s vernacular.¹⁴⁸ Many Jews felt threatened by Aramaic’s displacement of Hebrew and its political and spiritual ramifications. In response to the people’s growing preference for Aramaic, Rav Yehudah and Rabbi Yohanan both tried to dissuade Jews from praying in Aramaic:

“Rav Yehudah has said, ‘A man should never pray for his needs in Aramaic,’ for Rav Yohanan declared: If anyone prays for his needs in Aramaic, the Ministering Angels do not pay attention to him, because they do not understand the Aramaic language!”¹⁴⁹

The Tosefta in turn attempts to reinstate Hebrew as a language that Jews can both speak and understand, by obligating fathers to teach their children Hebrew as soon as they can

¹⁴⁷ In Ezra 4:7, it is reported that Bishlam, Mithredath, Tabeel, “and the rest of his companions” wrote a letter to Artaxerxes, King of Persia, and “the writing of the letter was written in the Aramaic character, and set forth in the Aramaic tongue.”

¹⁴⁸ ואינם מכירים לדבר יהודית-וכלשון עם ועם

¹⁴⁹ Sotah 33a.

רב יהודה: לעולם אל ישאל אדם צרכיו בלשון ארמית, דאמר רבי יוחנן: כל השואל צרכיו בלשון ארמי - אין מלאכי השרת נזקקין לו, לפי שאין מלאכי השרת מכירין בלשון ארמי.

speak.¹⁵⁰ Despite these pro-Hebrew, anti-Aramaic sentiments, Aramaic prayers such as the *Kaddish* emerged and gained popularity. Nevertheless, Hebrew remained the primary prayer language. Given this ambivalence about the Aramaic language, one might wonder how one of the most important Jewish texts for the perpetuation of the Jewish people came to be written in Aramaic.¹⁵¹

One explanation is that the rabbis believed it was crucial for the *ketubah* to be understood, as the *ketubah* deals with potentially contentious matters such as marital status and financial obligations. Too many disputes arising from misunderstandings of marital status and financial agreements could have potentially destroyed the fabric of the Jewish society the rabbis were trying to build. Since the rabbis permit the use of vernacular for other texts they deem important to understand, such as the Shema,¹⁵² we may infer that the *ketubah* was similarly permitted and even encouraged to be in Aramaic in order to facilitate every Jew's clear understanding of the text.

Another explanation is that the rabbis needed to use Aramaic in order to relate to the Aramaic-speaking Jews they wished to organize. Using Aramaic not only made the rabbis' statements intelligible to more Jews of that time, it also made them more culturally palatable. Hebrew had become a language of the elite; and in order to reach the masses, the rabbis

¹⁵⁰ Tosefta Chagiga, 1, 3: "A young child who is not dependent on his mother is obligated in the *mitzvah* of succah;...if he knows how to shake, he is obligated in lulav; if he knows how to enwrap himself, he is obligated in tzitzit; if he knows how to speak, his father **teaches** him the Shema, Torah, and *Hebrew*, and if he doesn't, it would have been better had he not come to the world..."

¹⁵¹ The *ketubah* was regarded as so essential that, when the Jews were expelled from France in 1306 and had their possessions taken from them, Rashba (Rabbi Shlomo ben Aderet, 1235-1310) ordered that no married life could be resumed until every man gave his wife a replacement *ketubah*. This *ketubah* was known as a *ketubah de'irkhesa* and is required, even today, for everyone who has misplaced or lost their original *ketubah*. See Maurice Lamm, *The Jewish Way in Love and Marriage*. San Francisco: Harper & Row (1980), 198.

¹⁵² Sota 32b.

needed to speak and produce documents in the language of the masses. Thus out of both political motivations and practicality, the rabbinic legal language became Aramaic.

As more Jewish legal discussions took place in Aramaic, certain Aramaic phrases evolved into fundamental legal concepts that were difficult to translate with precision into other languages. For instance, the Septuagint struggled to accurately translate the word *mohar* into Greek. The closest word it could find was *pherne*, the Greek word for dowry, which is problematic because a *mohar* differs significantly from a dowry, as the former is the amount a groom must contribute, whereas the latter is an amount that a bride's family contributes.¹⁵³ Thus, for the sake of legal clarity, the *ketubah* came to be written in Aramaic, the established language of Jewish law. Most Jews with *ketubot* are now unable to understand Aramaic and some, as a result, opt to include a translation of the contract in their native language. These translations of the traditional *ketubah* are often very loose because modern Jews would likely find the traditional text bizarre or even offensive, if they knew exactly what it said. In chapter three, I will elaborate upon the cultural distance between the values of the traditional Aramaic *ketubah* and those of many contemporary couples' *ketubot*. But in order to appreciate these differences, we must first examine the traditional Aramaic *ketubah* text.

The Beginning of the *Ketubah* Text

Many *ketubot* begin with a preamble ranging from two words to several lines long. The most common two word preamble is "b'siman tov" or in Aramaic "b'simana tava."¹⁵⁴ Longer preambles include biblical verses, such as Proverbs 18:22, "He who finds a wife has

¹⁵³ Gail Labovitz, "Go to Your *Ketubah*" in *Marriage and Metaphor: Constructions of Gender in Rabbinic Literature* (Lanham, MD: Lexington Books, 2009), 207.

¹⁵⁴ Sabar, 10.

found happiness and has won the favor of Adonai” and Jeremiah 33:11, “The sound of mirth and gladness, the voice of bride and groom.”¹⁵⁵ Some Italian and Sephardi *ketubot* would also employ biblical verses about the characters for whom the bride and groom were named, quotes from the wedding liturgy, or specially commissioned nuptial poems.¹⁵⁶ Persian, Afghani, Yemenite, and Indian Jews also tended to use longer preambles including: biblical texts and poetic blessings to the bride and groom; wishes to build a successful new home and raise a large family; and elaborate invocations sometimes paralleling similar superscriptions in Muslim documents, including marriage contracts.¹⁵⁷ But for the purposes of this discussion, let us consider the opening of the legal contract proper as the official “beginning” of the *ketubah*.

Date

The legal contract proper begins with the Hebrew date on which the groom proposes marriage and the bride accepts the proposal. First the day of the week is listed, followed by the month and year. Grammarians may find it interesting that the masculine form of a number is used for the days of the week and the month, while the feminine form is used for the year. Although this simply reflects the grammatical gender of the words day, month, and year, some might wish to extrapolate from this a homiletic teaching on the coalescence of male and female present even in the first line of the traditional *ketubah*.

A uniquely Jewish way of measuring time, the year is generally noted as from the creation of the world, which can also evoke the recurring wedding imagery of Adam and Eve in the Garden of Eden. However, this is not the only way Jews and *ketubot* measure time. The

¹⁵⁵ Sabar, 10.

¹⁵⁶ Ibid. Sabar cites a *ketubah* from Florence in 1737 with such a poem as an example.

¹⁵⁷ Sabar, 10.

Byzantine Jewish rite, found in Cordu and Avlona, count years from the destruction of the Second Temple. Yemenite Jews count years according to the Seleucid Era, known as the minyan sh'tarot, in their *ketubot*. This dating system, generally used for business documents, counts time from the year 312-311 B.C.E., supposedly six years following the arrival of Alexander the Great to the Land of Israel. It also reflects a Greek practice of measuring time in periods of time relative to a historical event, rather than the lifetime or rule of any one person. All three of these time measurement systems highlight different aspects of Jewish history.

Similarly, the day of the week or time of the month chosen for a wedding ceremony may highlight or reflect certain aspects of Jewish identity. In *Ketubot* 1:1, the Mishnah specifically designates Wednesday for first-time brides, but prior to the late eighteenth century, Jews tended to plan Friday weddings, so that they could combine the lavish Sabbath dinner with the wedding banquet.¹⁵⁸ The same was true of holidays, such as Sukkot, Passover, and Shavuot. It was not only practical to combine feasts, but also doubled the sense of joy at the festive, nuptial banquet. As for the time of month, it seems that Jews have long preferred the first half of the month to the latter half for wedding dates.¹⁵⁹ This may reflect a teaching from the *Shulchan Aruch*,¹⁶⁰ which instructs one to wed while the moon is still waxing.¹⁶¹

One might wonder why the *ketubah* begins with the date as opposed to any other information. Maurice Lamm explains that Jewish law “prescribes that the date appear at the

¹⁵⁸ Sabar, 11.

¹⁵⁹ Sabar, 11.

¹⁶⁰ This *Shulchan Aruch* did not exist until the 16th century, but this teaching or folk preference may have likely existed prior to this text.

¹⁶¹ *Shulchan Aruch*, Yoreh Deah 179:2

beginning [of legal documents] in private agreements, but at the end in court agreements. Though the *ketubah* has the status of a court decree, it is in the nature of a private agreement, and so the date is placed first.”¹⁶² Beginning the *ketubah* with the date may also serve a practical purpose, i.e. the more identifying details included in the beginning of a *ketubah*, the more easily one can confirm or disprove the validity of the marital arrangement.

Location

Next, the *ketubah* mentions the city in which the wedding was performed. Historically this was “without specifying the country, since borders shifted frequently,” though in America today, we usually add the name of the country.¹⁶³ Non-Ashkenazim would often include the names of nearby rivers to specify geographic location in light of these shifting borders.¹⁶⁴ This was a common detail noted in both Sephardic and Ashkenazic divorce documents,¹⁶⁵ but only the Sephardim made it a common practice to do so with *ketubot* as well, especially at the urging of the Rema, a well-respected, Sixteenth Century scholar and Jewish legal authority.

A number of historical *ketubot* also mention the groom’s place of origin if he were from another town.¹⁶⁶ One’s town of origin was considered culturally significant in both biblical and rabbinic literature. Numerous stories in both bodies of literature refer to people in terms of their place of origin, even if they have journeyed some distance and settled elsewhere.

Names of the Relevant Parties

¹⁶² Lamm, 199.

¹⁶³ Nahson, 8-9.

¹⁶⁴ Sabar, 11.

¹⁶⁵ Lamm, 199.

¹⁶⁶ Sabar, 11.

The groom's name is listed first, followed by the bride's name. Both include their fathers' names, which are always used in legal matters. The mothers' names are omitted from the document, as traditionally mothers' names were only used "when praying for recovery from illness, as a symbol of mother's compassion"¹⁶⁷ or as a way of evading the Angel of Death who might be looking for someone under his or her father's name. Family names were also regularly included on Italian and Sephardic *ketubot*, and occasionally in Ashkenazic and Persian *ketubot*.¹⁶⁸ *Ketubot* often detail the lineage of prominent families, reflecting an ancient interest in *yichus* that may be rooted in the Talmud.¹⁶⁹ Of course, added to their names is also the "appellation for a rabbinic scholar, Rav, or priestly or Levitic descent, *kohen* or *levi*."¹⁷⁰ Sometimes the groom's occupation is also listed in the *ketubah*.¹⁷¹

Traditional *ketubot* tend to be rather exact in naming the individuals who are getting married, as it is vital to specify who has experienced a fundamental change in marital or legal status. The rabbis were also hyperaware of the possibility of mixing up people with the same name, which may have led them to believe, "the more details, the better." In Bava Batra 167b, the rabbis grapple with the hypothetical case of two couples in the same city with the same names. In this case involving divorce documents, which also require specificity due to the importance of marital status, Rav teaches that two people with the same name of "Joseph son of Simeon who live in one town, must not divorce their wives except in the presence of each

¹⁶⁷ Lamm, 199.

¹⁶⁸ Sabar, 11.

¹⁶⁹ In Bava Metzia 85a, Rabbi Yochanan said, "Whoever is a talmid chacham (Torah scholar), and his son is a talmid chacham, and his grandson is a talmid chacham, the Torah will never again cease from his descendants."

¹⁷⁰ Lamm, 200.

¹⁷¹ Sabar, 11. This detail is particularly interesting due to the number of modern family names that reflect the occupation of their ancestors.

other.”¹⁷² This extreme measure of requiring all people with that name to be in attendance was deemed necessary to avoid confusion about anyone’s marital status. Elsewhere in the Talmud, there is similar concern about the name of a city. Sanhedrin 113a discusses a curse pronounced by Joshua, wherein he specifies that it was meant for “neither Jericho under a different name, nor a different city by the name of Jericho.” Centuries later, Rashi still expresses concern over the confusion of one person with another as it relates to marital status. In his commentary on Genesis 29:18, based on from Genesis Rabbah 70:17, Rashi asks:

“Why was it necessary to for Jacob to say ‘for Rachel, your younger daughter’? It is because Jacob knew that Laban was a deceiver that he said to him, ‘I will work for you for Rachel,’ and lest you say that I meant another Rachel from the street, Scripture states: ‘Your daughter.’ Now, lest you say, ‘I will change her name to Leah, and I will name her (Leah) Rachel,’ Scripture states: ‘[your] younger [daughter].’

In Jacob’s case, he was still tricked into marrying the wrong bride, but the rabbis hope to avoid such confusion over identity and marital status by including a substantial amount of detail in the beginning of *ketubot*.

Sexual Status of the Bride

The next identity-related information specified in the *ketubah* is the bride’s socio-sexual status. Her previous marital and sexual status are of both conceptual and financial relevance to the *ketubah*. There are three categories into which the *ketubah* traditionally classifies a bride: virgin, divorcee, or widow. As specified later in the *ketubah*, for a virgin bride, the minimum amount is 200 *zuz*,¹⁷³ whereas for a widow or divorcee, it is only 100

¹⁷² Bava Batra 167b.

¹⁷³ A *zuz* is a silver coin equal to one fourth of a shekel. Marcus Jastrow. *A Dictionary of the Targumim, the Talmud Babli and Yerushalmi, and the Midrashic Literature*. Jerusalem, 385.

zuz. This significant difference in monetary standards may reflect a groom's sense of possessing completely exclusive rights to a woman's sexuality or other productivity. He may be willing to pay a premium to know that no other man has enjoyed those rights before him. However, even the 100 *zuz* for non-virgins constituted a significant sum, as an average house in Talmudic times could be purchased for 50 *zuz*.¹⁷⁴

In many traditional *ketubot*, especially Sephardic *ketubot*, "an equivalent of these amounts in the local currency is usually fixed" and often haggled over.¹⁷⁵ Some might say this haggling defeats the purpose of standardizing the money clauses in the *ketubah*, which had reduced the social importance of revealing the personal terms of the marriage contract.¹⁷⁶

Given the strong possibility of offending modern sensibilities by categorizing women according to previous sexual experience, some couples may choose to have an otherwise traditional *ketubah* with the following modification: Rather than listing virgin, divorcee, or widow, one could simply describe the bride as a כלתא (Aramaic for bride) in the text. Maimonides provides a useful precedent for this in his model *ketubah*, found in Mishneh Torah Yibbum 4:33, which refers to the bride as a "בתולתא כלתא." All one need to do is drop the first word, בתולתא (virgin), in order to avoid this problematic categorization of the bride.¹⁷⁷

Verba Solemnia

¹⁷⁴ [Louis Jacobs](http://www.myjewishlearning.com/life/Life_Events/Weddings/Liturgy_Ritual_and_Custom/Ketubah.shtml), "The *Ketubah* or Marriage Contract" in *The Jewish Religion: A Companion*, Oxford: Oxford University Press, 1995. Reprinted on http://www.myjewishlearning.com/life/Life_Events/Weddings/Liturgy_Ritual_and_Custom/Ketubah.shtml

¹⁷⁵ Nahson, 9.

¹⁷⁶ Sabar, 8.

¹⁷⁷ However, if a couple is troubled enough by the traditional categorization of women by sexual experience, they may also be troubled by the unilateral aspect of traditional marriage and therefore decide not to use a traditional *ketubah* text. This possibility will be explored further in the next chapter.

As noted in the previous chapter, the *verba solemnia* in the traditional *ketubah* reads: “Be my wife according to the law of Moses and of Israel.” This phrase in the *ketubah* shares the same ending as the oral marriage proposal formula, “You are hereby betrothed to me according to the law of Moses and Israel,”¹⁷⁸ and with witnesses’ signatures, it effectively testifies that the groom proposed to the bride.

This formula exhibits no sense of reciprocity. The groom enacts the marriage through his declaration, but the bride says nothing in return. Both the bride’s silence and the grammatical structure of the declaration *הוי לי* (“be mine”) suggest the bride’s passivity and, some argue, chattel-like status. Rabbi J. David Bleich’s description of how the three methods of enacting a marriage, i.e. *כסף*, *שטר* and *ביאה* (money, deed, and sexual intercourse) parallel the methods prescribed for the transfer of property in rabbinic law, supports this chattel-like conception of brides:

*“The title to real estate is transferred by payment of the purchase price; marriage is [similarly] effected by kesef, delivery of an object of value, usually in the form of a ring, by the groom (the “purchaser”) to the bride. Transfer of real property can be effected by delivery of a deed; a man can [similarly] acquire a wife by delivery to her of a shetar kiddushin ... Real property can be transferred by hazakah, i.e. the recipient performing an overt act demonstrating proprietorship, e.g. plowing a furrow ... Bi’ah, or cohabitation for purposes of marriage, is the counterpart of hazakah; it is an overt demonstration of the exercise of the servitude that is being acquired.”*¹⁷⁹

The Groom’s Responsibilities

The bride’s status as a passive object may be reinforced further by the groom’s promise to provide for the woman’s basic needs. Rather than portraying the woman as an

¹⁷⁸ When officiating at interfaith or same-sex weddings, Reform rabbis occasionally omit the phrase “according to the law of Moses and Israel” because these marriages violate traditional rabbinic law.

¹⁷⁹ J. David Bleich. “*Kiddushei Ta’ut*”: Annulment as a Solution to the *Agunah* Problem.” *Tradition* 90 (1998): 33.

agent capable of acquiring basic needs for herself, the traditional *ketubah* text presents the bride as a vulnerable being in need of men's protection and guardianship.¹⁸⁰

The specific promise of the *ketubah* is that the husband will “work for, honor, provide for, and support [the bride], in accordance with the practice of Jewish husbands, who work for their wives, honor, provide for and support them in truth.” The Talmud makes no reference to this “support” clause, but Lamm suggests that this omission is due to the obvious need for support in a marriage. Another term for this support clause is the “alimentation clause,” which is repeated for the sake of *shufra dishtara*, or the beauty of the legal contract, given the perceived eloquence of this clause.¹⁸¹ After this clause, additional marital promises appear that link this rabbinic conception of marriage to biblical practice:

“And I will set aside for you a mohar of two hundred zuz due to you for your maidenhood, which belong to you according to the law of the Torah, and you food, clothing, and other necessary benefits which a husband is obligated to provide; and I will live with you in accordance with the requirements prescribed for each husband.”

Here we see the *ketubah* strongly linked to the biblical practice of *mohar*, which again reinforces the authority of the rabbis as the authentic leaders of the Jewish people in post-biblical times. Although I will not elaborate here on the three specific obligations to provide one's wife with food, clothing, and *onah*, as they were discussed in the previous chapter of this work,¹⁸² it is significant that these elements of the rabbis' understanding of marriage

¹⁸⁰ Note that this is the case of the traditional *ketubah* text, even though the rabbis themselves recognized that many women were able to support themselves financially and in other ways. See *Ketubot* 70b-71a for a discussion of cases where women declared that they would prefer to support themselves through their work rather than be supported by their husbands, who then had no claim to the proceeds from their handiwork.

¹⁸¹ Lamm, 200.

¹⁸² They are also discussed in *Ketubbot* 47b-48a.

appear in the *ketubah* text, while other elements, such as procreation and companionship, do not.

The Talmud further obligates a Jewish husband to pay all medical expenses in the case that his wife becomes ill¹⁸³ and to pay the costs related to her burial, which includes two flute players and two lament-leading women.¹⁸⁴ The frequency of kidnappings also made it necessary to introduce a clause stating that the husband was to protect his wife and ransom her, should she be taken captive.¹⁸⁵ For most men, this clause included the phrase “and I will take you back as my wife,” but for a man of priestly descent, who was forbidden by biblical law to take a captive woman as a wife (since she may have been violated by her captors), the clause did not include this bit. A priest is obligated to ransom his wife and return her to her natal family, and not permitted to cohabit again with his kidnapped wife.¹⁸⁶ Although specified in the Talmud, many of these clauses are omitted in today’s traditional *ketubot* for two reasons. First, they discuss a variety of misfortunes; and, as the French codifier, Isaac b. Abba Mari observed, “People do not like to anticipate their own misfortune in their marriage contracts.”¹⁸⁷ Second, the Talmud makes it clear that numerous obligations still apply, whether or not they were recorded in the actual *ketubah* document, simply because they were ordained by the rabbinic court.¹⁸⁸

Maimonides summarizes the aforementioned obligations, along with other Talmudic obligations in his *Mishneh Torah*, noting also: the wife’s right to continue living in the

¹⁸³ *Ketubot* 51a.

¹⁸⁴ *Ketubot* 48a. These were professional women who composed and sang essential funeral poetry. In Mishnah *Ketubot* 4:4, Rabbi Judah states, “Even the poorest man in Israel must not furnish less than two flutes and one lament-leading woman.”

¹⁸⁵ *Ketubot* 51a.

¹⁸⁶ *Ketubot* 51a.

¹⁸⁷ Friedman, *Jewish Marriage in Palestine*, 16.

¹⁸⁸ *Ketubot* 51a.

husband's home after his death as long as she remains an un-remarried widow; the right of the wife's daughters to receive their subsistence from the husband's estate after his death until they are married; and the right of her sons to inherit her *ketubah* money in addition to their share in her husband's estate together with their brothers, who may have been born by other wives, if the woman had pre-deceased her husband.¹⁸⁹

In return, the husband is granted four privileges of rabbinic origin that are understood, even though they are not articulated in the *ketubah*: the right to the fruits of the wife's labor; the right to any ownerless object she discovers; the right to benefit from the profits of her property during her lifetime; and the right to inherit her property if she dies during his lifetime.¹⁹⁰

The Bride's Acceptance of the Proposal

Neither the husband's privileges, nor the bride's responsibilities appear in the traditional *ketubah* text. The only mention of the bride's actions is that she consents to become his wife.¹⁹¹ This formal expression of consent reflects a Talmudic law¹⁹² requiring the consent of the bride to validate a marriage. This rabbinic law derives from the biblical story of Isaac and Rebekah's marriage, which includes the verse: "And they said, 'Let us call the girl and ask for her reply.'"¹⁹³ After recognizing the bride's consent, the traditional *ketubah* text provides an Aramaic translation of another biblical verse, specifically a phrase from Ruth 4:13, "And she became his wife."¹⁹⁴

¹⁸⁹ See Mishnah *Ketubot* 4:4, *Ketubot* 47a-b, and Maimonides' *Mishneh Torah*, Hilchot Ishut 12:2.

¹⁹⁰ *Mishneh Torah*, Hilchot Ishut 12:3.

¹⁹¹ וצביאת מרת דא

¹⁹² *Kiddushin* 2a-b.

¹⁹³ Genesis 24:57

¹⁹⁴ והות ליה לאנתו

Dowry

Next the traditional *ketubah* text describes the dowry, or *nedunya*, which the bride brings from her natal family into the marriage. This custom of providing a dowry has a clear biblical precedent, specifically the dowry of servants¹⁹⁵ that Rachel and Leah were given for their weddings. The Mishnah specifies that a father must provide a dowry of at least 50 *zuz*, although parents of higher socio-economic status often gave far more than this minimum amount.¹⁹⁶ The dowry was considered so important that community funds could be used to provide a dowry for an orphan or a girl from an impoverished family.¹⁹⁷

The dowry may include items listed in the *ketubah*, plus other valuables that the bride brings with her. Ashkenazim standardized the dowry amount at 100 *zuz*, roughly one half of the *mohar* paid by the groom,¹⁹⁸ so that it did not need to be specified in the *ketubah*. But Sephardim and Mizarachim continue to specify the total amount of the dowry in the *ketubah*, listing in detail the number of individual pieces of jewelry or even silk scarves, for example.¹⁹⁹

Some might describe the dowry as the female equivalent of a traditional inheritance. Typically, sons were the only ones to receive an inheritance share from their father's estate, while daughters were given a portion of their father's wealth in the form of a dowry. Also seen as an inducement for suitors, the dowry is considered property of the bride that is "leased" to the groom for the duration of marriage. The dowry differs, however, from the

¹⁹⁵ Namely Bilhah and Zilpah.

¹⁹⁶ *Ketubot* 6:5.

¹⁹⁷ Shulchan Aruch, Yoreh Deah 251:8.

¹⁹⁸ Lamm, 202.

¹⁹⁹ Sabar, 11.

bride's other private property, known as *nichsei melog*, which is not included in the *ketubah*. The husband is allowed to enjoy the "fruit" of the *nichsei melog* during the marriage, but the property itself belongs to the bride. The dowry was considered so important that a groom could refuse to marry his bride, if the father proved unwilling to pay the promised dowry.²⁰⁰

The Groom's Acceptance and Additional Gift

The traditional *ketubah* then notes that the groom has accepted the specified dowry amount. The groom's consent here highlights the relative lack of reciprocity in the traditional *ketubah* text, as he agrees to the financial terms set by the bride's guardians, rather than coming to any sort of agreement with the bride herself. In the traditional *ketubah* text, the bride agrees only to be married, but to no other terms. Everything else is decided by the groom and the bride's guardians.

The additional gift, which the groom customarily pledges in the *ketubah*, is called a *tosefet ketubah*, or addition to the basic *ketubah* amount. This amount is typically another 100 *zuz* to match the dowry, and it represents another debt to be redeemed upon the marriage's dissolution, rather than a gift given at the beginning of the marriage.²⁰¹ This additional gift is voluntary and offers increased protection to the wife, in the case of divorce or her husband's death.

Lien on the Groom's Property

²⁰⁰ *Ketubot* 108b–109a.

²⁰¹ Lamm, 202.

Given that the *ketubah* and *tosefet ketubah* represent substantial debts owed to the wife at the dissolution of a marriage, there must be a guarantee for these debts. Based on the enactment of Shim'on ben Shetach mentioned in the previous chapter, the *ketubah* specifies that the groom's entire estate will serve as the guarantee for these debts. The *ketubah* includes this crucial lien on the groom's property to ensure that the wife is provided for as promised. It even presents this clause in the first person, as if the groom personally uttered these words in the presence of witnesses:

*"I take upon myself, and my heirs after me, the surety of this ketubah, of the dowry, and of the additional sum, so that all this shall be paid from the best part of my property, real and personal, that I now possess or may hereafter acquire. All my property, even the mantle on my shoulders, shall be mortgaged for the security of this ketubah and of the dowry and of the addition made thereto, during my lifetime and after my lifetime from this day forever."*²⁰²

Validity of the Lien

The next segment of the traditional *ketubah* reinforces the groom's understanding of the legal validity of the debt and the lien on his property, by emphasizing that it is "not to be regarded as an *asmakhta*," or an indecisive contractual obligation, or a routine "rubber-stamp"²⁰³ procedure, but rather as a serious legal commitment. This section of the traditional *ketubah* also places this particular marital agreement on par with other Jewish marital arrangements, which may inspire a stronger sense of responsibility to one's wife and the greater Jewish community, as the *ketubah* text references the "sums due to every daughter of Israel, executed in accordance with the enactment of our Sages, of blessed memory."

²⁰² Translation from Lamm, 203.

²⁰³ Lamm, 203.

Sealing the Deal

The contract concludes by noting the completion of the legal acquisition, by an agent legally fit to establish such a transaction. The text once more specifies the names of the groom, the bride, and their families; and the last sentence of the *ketubah* affirms, "Everything (noted above) is valid and established."²⁰⁴ In order to avoid any unwanted additions to the legal agreement, the last word of the contract, *v'kayam* or "established," had to be written at the end of the line. Scribes even write the letters towards the end of a *ketubah* somewhat larger than the rest of the contract's words in order to end the legal text at the precise end of the document's visual line.²⁰⁵

Signatures of the Witnesses

The witnesses cannot legally sign the *ketubah* until a symbolic act of acquisition, called a *kinyan sudar*, takes place. In this act symbolizing the bride's taking possession of all of the promised property, one of the witnesses gives a handkerchief or other non-monetary item to the groom on behalf of the bride.²⁰⁶ The groom then returns the item, and they record in the *ketubah* the word, *ve'kanina* meaning, "and we have completed the act of acquisition," before they can sign and attest to the *ketubah*'s validity.

Before signing, the scribe and/or witnesses would also proofread the *ketubah* once more. If there were any errors, the scribe would note them on the *ketubah* and then rewrite the last line about the *ketubah*'s validity after these addendums.²⁰⁷

²⁰⁴ והכל שריר וקים

²⁰⁵ Sabar, 12.

²⁰⁶ Lamm, 204.

²⁰⁷ Sabar, 12.

The Talmud sets the number of necessary *ketubah* witnesses at either two or three.²⁰⁸ Most Ashkenazic and Sephardic *ketubot* follow this guideline by including two witnesses. But Jews in Islamic countries, especially Persia, often include more, sometimes as many as eight or more witnesses. The signatures of witnesses appear below the last line of the *ketubah* text on the right hand side and must be followed by the Hebrew word for witness, *עד*. While the groom is not required to sign, some permit him to sign below the witnesses, as long as his signature cannot be mistaken for that of a witness. On a traditional *ketubah*, the bride's signature is not included, because she is the one being acquired in a unilateral acquisition conducted by men.

Many contemporary Jewish couples are happy to adhere to these traditional *ketubah* customs for the sake of tradition or out of a strong desire to observe *halachah*. Others, however, are troubled by the Talmudic conception of marriage or simply find that it does not reflect their understanding of marriage. Both sorts of couples will be discussed at length in the next chapter, which analyzes the survey results about contemporary *ketubah* choices in light of not only the traditions described above, but also significant cultural changes that have occurred in America since the 1960's.

²⁰⁸ The rabbis based the number of required witnesses on Deuteronomy 19:15, which says, "At the mouth of two witnesses, or at the mouth of three witnesses, shall a matter be established."

Chapter 3: *Ketubot* Today

Modern *Ketubot*

Many Reform Jews now take for granted the countless, non-Orthodox *ketubah* options available to them both online and in Judaica stores. While there have always been regional differences in *ketubot*, the current proliferation of *ketubah* options is unprecedented in Jewish history. A quick search on the internet can bring up thousands of different *ketubah* options, which combine drastically different types of text and artwork. One can order a Chabad text with a Moroccan artistic motif, a Karaite text superimposed on an abstract collage, a modern Israeli text printed on an enlarged photograph of the sunset, or an interfaith same-sex text with a two-toned papercut design. Virtually any text or type of art one can conceive of is now available with a few clicks of a button.

One might wonder how *ketubot* have come to be so diverse, especially in light of the numerous and relatively successful attempts at *ketubah* standardization discussed in the previous chapter. The answer to this question may very well lie in one, particularly influential book: *The Jewish Catalog*. But before we can understand the impact or even content of *The Jewish Catalog*, we must first explore the Jewish counterculture of the 1960's which led to its creation.

The 1960's were characterized by a uniquely anti-hierarchical spirit, which inspired American Jewish youth to challenge the institutional model of Jewish life, with which they had grown up. Rather than join large suburban synagogues, a number of younger Jews began to form new models of Jewish community known as *havurot*. While each *havurah* had its own unique style and culture, *havurot* were generally unified by a few shared characteristics. For instance, they tended to be “relatively small groups of Jews [who] came together regularly

for programs which include Jewish study, celebration, and personal association.”²⁰⁹ *Havurot* also tended to advocate self-empowerment and egalitarian principles of community. These principles significantly informed publications such as *The Jewish Catalog*, which enabled thousands of young Jews to experiment with Jewish life on their own terms.

The Jewish Catalog was based loosely on a non-Jewish publication called *The Whole Earth Catalog*, which was an American countercultural catalog first published by Stewart Brand in 1968. Brand presented his work as an aid to help the individual develop “personal power,” which is to say “conduct his own education, find his own inspiration, shape his own environment, and share his adventure with whoever is interested.”²¹⁰ Richard Siegel, Michael Strassfeld, and Sharon Strassfeld then went on to compile their own catalog designed to educate the individual Jew about numerous Jewish topics of interest. Published in 1973, *The Jewish Catalog* “served as the vehicle for transmitting the innovations pioneered by the creative young Jews of the *havurah* movement throughout North America and beyond.”²¹¹ This book led to a religious revival of sorts, by promoting knowledge about various ritual practices along with a renewed interest in Jewish music and art. Over time, this revolutionary book expanded to three volumes and sold more copies than any other book published by the Jewish Publication Society, excluding the Bible.²¹² The first edition of the

²⁰⁹ Bernard Reisman, *The Chavurah: A Contemporary Jewish Experience*. NY: The Union of American Hebrew Congregations (1977), 4.

²¹⁰ Stewart Brand. “The Purpose of The Whole Earth Catalog.” *Whole Earth Catalog: Access to Tools and Ideas*. Web 26 March 2014.
<<http://www.wholeearth.com/issue/1010/article/196/the.purpose.of.the.whole.earth.catalog>>

²¹¹ Jonathon Sarna. “Havura Judaism” in *American Judaism: A History*. New Haven, Connecticut: Yale University Press (2004), 321.

²¹² Ibid.

catalog included a seven-page entry by David Moss about creating one's own *ketubah*.²¹³ This article on *ketubot* reflected not only a growing demand for more substantial Jewish education,²¹⁴ but also the growing popularity of the American do-it-yourself folk art tradition. It effectively cultivated a generation of Jewish artists by essentially "teaching hippies to do Jewish folk art."²¹⁵

As for the *ketubah* chapter itself, *The Jewish Catalog* introduces *ketubot* in the context of teaching one about Hebrew calligraphy and the Jewish scribal tradition in general. It suggests writing a *ketubah* as a way to practice the Jewish art of calligraphy. "In order to make it [the task of Hebrew calligraphy] delightful," writes David Moss, "I would suggest to you, aspiring calligrapher, that you try your hand at ketubbot—Jewish marriage contracts."²¹⁶ Of course, Hebrew calligraphy skills could also be developed by making mezuzot, but Moss suggests that one start by making a *ketubah*, since there are fewer halachic rules governing the writing of *ketubot*. Moss emphasizes that "a ketubbah does not have to be on parchment, nor does it have to be printed by hand: it need not be written with special pens or inks. It may be embellished and any form of lettering may be used." He does

²¹³ David Moss. "The Lovely Art of Ketubbah-Making." Ed. Siegel, Richard, Michael Strassfeld, and Sharon Strassfeld. *The Jewish Catalog; A Do-it-yourself Kit*. Philadelphia: Jewish Publication Society of America (1973), 195-201.

²¹⁴ "Interview with Richard Siegel about *The Jewish Catalog*." Personal interview. 27 June 2013: "In 1969, there was a *Havurah* take over in the General Assembly of the Nation Council of Jewish Federations and Welfare Funds, where young Jews demanded that Jewish federations make Jewish education a communal priority. They felt that too much basic Jewish knowledge had been kept in the purview of rabbis exclusively, when it belonged to all Jews. This take over ultimately resulted in the creation of JESNA –Jewish Education Services of North America, which had a good run for 40 years."

²¹⁵ "Interview with Bruce Phillips." Personal interview. 10 March 2014.

²¹⁶ Moss, *The Jewish Catalog*, 195.

not mention that the Talmud permitted the writing of a *ketubah* in any language,²¹⁷ presumably as this would undermine his goal of promoting the art of Hebrew calligraphy. Instead, he emphasizes the “great leeway allowed in the making of ketubbot” and reiterates that the “possibilities of materials, designs, formats, patterns, themes, etc. are limitless.”²¹⁸ His observations about the diversity of acceptable *ketubot* reflects the contents of the Cairo Geniza, in which sixty-five *ketubot* were found. Most of the Geniza *ketubot* “are written on parchment, but a few, particularly formularies and copies, are on paper. These include the earliest known Hebrew manuscripts on Oriental paper, from Damascus, 933 (nos. 53-55).”²¹⁹ This flexibility regarding form, argues Moss, “allows you and me to create ketubbot that are original, meaningful, creative, and beautiful—and still are strictly valid according to halakhah.”²²⁰

Moss encourages his readers to make their own *ketubot* by suggesting that they will experience a significant emotional reward as a result of making a unique *ketubah* that will “be used, appreciated, and cherished.”²²¹ Moss also emphasizes the personal connection to Jewish history that making a *ketubah* can foster. “When you pick up your pen to begin your own ketubbah,” he says, “you will be engaging in a very traditional and authentic form of Jewish graphic expression.”²²² Moss then links this form of art to the principle of *hiddur mitzvah*, which is derived from Rabbi Ishmael's comment on Exodus 15:2, “This is my God and I will glorify Him.” Rashi Ishmael asks, “Is it possible for a human being to add glory to

²¹⁷ See Gittin 10b, 19b, and 87b.

²¹⁸ Moss, 201.

²¹⁹ Mordechai Akiva Friedman. *Jewish Marriage in Palestine: A Cairo Genizah Study*. Tel-Aviv: Tel-Aviv University, Chaim Rosenberg School of Jewish Studies (1980), 9.

²²⁰ Moss, 196.

²²¹ Moss, 195.

²²² Moss, 196.

his Creator? What this really means is, ‘I shall glorify Him in the way I perform mitzvot. I shall prepare before Him a beautiful lulav, beautiful sukkah, beautiful tzitzit, and beautiful *tefilin*.’”²²³ The Talmud in Shabbat 133b adds to this list a beautiful Torah scroll which has been written by a skilled scribe with fine ink and fine pen and wrapped in beautiful silks. This Talmudic passage in particular suggests a long-established link between fine Hebrew calligraphy and the concept of *hiddur mitzvah*, which Moss argues, “is urging us to make the required ketubbah a beautiful, hand-done work of art.”²²⁴ Moss does not cite the Talmudic or midrashic sources for the principle of *hiddur mitzvah*, but he does describe examples of Jewish art from the Middle Ages that reflect this principle. He recommends using gold, deep blues, black, and bright red to give one’s *ketubah* a traditional appearance, as these colors were frequently used in medieval Jewish manuscripts and early book printing.²²⁵ He also describes how the convention of illuminating a Hebrew manuscript’s first word evolved from a Latin convention of beginning texts with a highly decorated initial letter.²²⁶

Moss does not mention the first appearance of artwork in *ketubot*, perhaps because it is so difficult to identify. None of the extant Elephantine or Judean Desert marriage contracts mentioned in the first chapter contain any form of decoration.²²⁷ Nor does the Book of Tobit describe any form of illustration in reference to the marital contract. Franz Landsberger suggested, based on a single Cairo Genizah *ketubah*, that the decoration of marriage contracts began when Jews “partook of the Hellenistic predilection for the beautiful” around the first

²²³ Midrash Mechilta, Shirata, chapter 3. See Jacob Lauterbach. *Mekhilta De Rabbi Ishmael*. Philadelphia: Jewish Publication Society (2000), 25.

²²⁴ Moss, 196.

²²⁵ Moss, 199.

²²⁶ Moss, 200.

²²⁷ Shalom Sabar. *Ketubbah: The Art of the Jewish Marriage Contract*. Hebrew Union College Skirball Museum (1990), 4.

century B.C.E.²²⁸ But there are no extant *ketubot* from this time period to support his theory. The earliest confirmed examples of decorated *ketubot* are from the tenth through thirteenth centuries and include bright colors, geometric patterns, floral decorations, and micrography.²²⁹ The thirteenth century Rabbi Simeon ben Zemach Duran from Spain and North Africa attests to these *ketubah* decorations in his response. He specifically mentions the filling of *ketubah* borders with biblical verses and pictorial decorations, so that no stipulations can be added after its signing.²³⁰

Although Moss is writing for a predominantly Ashkenazi audience, he cites non-Ashkenazi artistic traditions as a precedent for the creation of artistically elaborate *ketubot*. Moss notes in particular the “ornate Italian ketubbot; geometrical ketubbot from North Africa; ketubbot resembling oriental carpets from Persia, [and] simple, folk-art ketubbot from Israel.”²³¹ Art historian Shalom Sabar can offer valuable background information on how these Italian, Sephardic, and Mizrahi *ketubot* came to be so ornately decorated. While Ashkenazim introduced the public reading of *ketubot* into the wedding ceremony, they did so for legal reasons, which did not lend themselves to the creation of elaborate *ketubah* art. Ashkenazi *ketubot* continued to be “executed on small, rectangular pieces of paper or parchment, inspired with a uniform text and customarily left undecorated. No ornamentations or even appropriate biblical quotes or other inscriptions were used.”²³² Non-Ashkenazim, however, took the public nature of *ketubot* in another, more socially-

²²⁸ Franz Lansberger. “Illuminated Marriage Contracts with Special Reference to the Cincinnati *Ketubahs*,” *HUCA* 26 (1955), 505.

²²⁹ Micrography is a form of art consisting of miniature text written in the shape of an illustration.

²³⁰ Sabar, 9.

²³¹ Moss, 196.

²³² Sabar, 9.

oriented direction.²³³ In Italy,²³⁴ the public reading of the *ketubah* served in large part to display the family's wealth and status, and as the *ketubah* became a more public document, it began to see more and more elaborate decoration.²³⁵ In Islamic countries, the Jews' *ketubah* artwork came to reflect the decorative Islamic marriage contracts of their neighbors.²³⁶

While emphasizing the importance of beautiful *ketubot*, Moss juxtaposes the unique art of home-made *ketubot* with the "horrible mass-produced 'dime store' ketubbot with which most people are now getting married."²³⁷ This statement reveals a significant change in Jewish Americans' social class. Previous generations of American Jews created simple, yet effective dime store *ketubot* out of financial necessity. But Moss' article reflects a new point in American Jewish history when Jews had both "an interest in beautifying ritual and... disposable income."²³⁸ It also reflects a unique strategy for drawing young Jews into Jewish activities, namely focusing on something more accessible, such as artwork. Moss' article focuses on artistic techniques and practical concerns, such as: where to acquire parchment or high quality paper, tips on writing the entire text in one sitting for the sake of consistent lettering, and advice on framing the *ketubah*.²³⁹

²³³ Ibid.

²³⁴ Although Italy is in Europe, the Italian rite is not considered Ashkenazi or Sephardi. It is its own distinct Jewish entity.

²³⁵ Sabar, 9.

²³⁶ Ibid.

²³⁷ Moss, 196.

²³⁸ Sharon Liberman Mintz of the Jewish Theological Seminary, as quoted by Samuel G. Freedman. "Christians Embrace a Jewish Wedding Tradition." *The New York Times*. The New York Times, 11 Feb. 2011. This point could only come after the majority of American Jews had transitioned into the middle class over the previous two decades.

²³⁹ Moss, 198.

Regarding the text of the *ketubah*, Moss provides an entire page with the Conservative Movement's standard *ketubah* text and explains how to customize it with details such as the wedding date, bride's socio-sexual status, and names of the families. He also reminds would-be *ketubah* artists not to write out the word "*v'kanina*," so that the rabbi can write it in on the day of the wedding.²⁴⁰ Moss does not analyze the meaning of the traditional text in his article, but rather vaguely highlights the concept of protecting women, while avoiding the problematic issue of unilaterally acquiring a woman with a *ketubah*. He may have purposely avoided a critical analysis of the text, as his primary goal was to emphasize the positive qualities of the *ketubah* in order to raise excitement about this art form. Alternatively, his lack of attention to this problematic issue may simply reflect a time in American Jewish history before feminism had significantly Jewish American ideas on marriage.²⁴¹ Betty Friedan's book *Feminine Mystique* had come out in 1964, but it took many years for feminist ideals to successfully permeate the Jewish community enough to influence *ketubah* texts.

Moss describes two primary *ketubah* texts that were in use in the early 1970s. Neither of them was terribly feminist in nature. "Today," writes Moss, "there are basically two ketubbah texts in use. The Orthodox one may be found in *Hamadrish*, published by Hebrew Publishing Co., NY 1939; the Conservative text may be found in *A Rabbi's Manual*, published by the Rabbinical Assembly."²⁴² He notes that the Conservative text "adds some clauses

²⁴⁰ Ibid.

²⁴¹ One might argue with this premise because, as noted later, the Berkovits *tena'im* and the Lieberman clause specifically take into account the woman's experience in divorce. However, these documents seem interested only in providing a remedy for the *agunot* problem, rather than fundamentally eliminating the traditional Jewish marriage's unilateral legal approach. One could also disagree with this premise on the basis that Rachel Adler's article on *mikvah* practices appears in *The Jewish Catalog* itself and raises feminist concerns.

²⁴² Moss, 195.

which give permission to a bet din—religious court—to go through civil authorities to force the husband to give his wife a Jewish divorce write if the marriage is dissolved under civil law and the husband refuses to go through Jewish divorce proceedings.”²⁴³ He also briefly mentions another *ketubah*, known as the Berkowitz Ketubbah,²⁴⁴ which was “in the process of being formulated and considered by various Orthodox authorities.” This *ketubah*, he says, “would provide a sort of ‘conditional’ marriage which would be annulled under certain circumstances.”²⁴⁵ Both of these “*ketubah* options,” which were in fact additions rather than true alternatives to the Orthodox *ketubah*,²⁴⁶ help to counteract the longstanding imbalance wherein a man wields significant power over his wife and can refuse to grant her a *get* or religious divorce document. Unfortunately, however, these options are like medications that suppress symptoms, rather than cure the underlying illness of inequality.

From *The Jewish Catalog* it is clear that in 1973, American Jews did not have the proliferation of liberal texts that we have today. In fact, it seems that many liberal Jews avoided the *ketubah* altogether, perhaps because it was a halachic document and the largest

²⁴³ Ibid.

²⁴⁴ Here Moss demonstrates a misunderstanding of Eliezer Berkovits’ work. Not only does he misspell Berkovits’ name, but he also portrays Berkovits’ work as a *ketubah* rather than as a *tena'im* document. The *tena'im* are conditions that two families traditionally agreed upon prior to the marriage of their children. Berkovits’ *tena'im* do not replace the *ketubah*. They come into play before the *ketubah* document is even written, and they provide non-ketubal stipulations meant to protect the future wife from entering the excruciating position of an *agunah*. See Berkovits, Eliezer. *Tenai be-nisuin uve-get*. Jerusalem: Mosad Harav Kook, 1966.

²⁴⁵ Ibid.

²⁴⁶ I.e the Berkowitz *ketubah* and the Conservative *ketubah* with the Lieberman clause, which will be discussed later in this chapter.

liberal denomination, the Reform movement, was not terribly concerned with *halachah*.²⁴⁷ Moss observes that Reform rabbis of that era “do not generally use a ketubbah, though they are usually very willing to use one if the couple requests it.”²⁴⁸ The survey I will describe later in this chapter also reveals how a substantial number of contemporary Reform respondents’ parents and grandparents did not have *ketubot*, which further evinces the lack of Reform *ketubah* options only a few decades ago.

The Reform *ketubah* texts we have today reflect significant cultural changes, particularly in terms of how American Jews view gender and marital relationships. These changes are largely the result of feminism becoming a more prominent force in the American Jewish community in the 1970’s and 1980’s. Sylvia Barack Fishman notes just how profound these changes were in her article on the impact of feminism on American Jewish life:

*“The lives of Jews in the United States—like the lives of most Americans—have been radically transformed by 20 years of feminism. Some of these changes have been effected by the larger feminist movement and some by a specifically Jewish feminist effort. Thus, while many feminist celebrities, such as Betty Friedan and Bella Abzug, are Jews, the focus of their feminism has not been specifically Jewish in nature; they have profoundly changed the behavior and attitudes of American Jews as Americans and not as Jews.”*²⁴⁹

In other words, feminism entered the Jewish community not only through mainstream American culture, but also through Jewish feminists who approached feminism from a consciously religious and cultural standpoint. Dr. Rachel Adler notes in a paper about the

²⁴⁷ This was especially true of Reform Judaism before it began to shift towards increased traditionalism. However, there were a number of exceptions, including that of Rabbi Richard Levy, a Reform Jew who had created his own personal *ketubah* in 1973.

²⁴⁸ Moss, 195.

²⁴⁹ Sylvia Barack Fishman. “The Impact of Feminism on American Jewish Life” *American Jewish Yearbook*, vol. 89 (1989), 3.

Shekhinah Conference in 1984 that by the early 1980's, religiously-oriented Jewish feminists were asking questions "not merely about the inclusion of Jewish women in the structures and beliefs that existed, but the transformation of Judaism by a creative Jewish feminism."²⁵⁰ Beginning with the inception of the Jewish women's movement in 1971 which may have peaked in the 1990's, there was a significant increase in exploration of "male-dominated fields like theology, liturgy, ritual performance, and communal organization... [aimed at responding] to the insights, needs, and gifts of women."²⁵¹ The exploration of ritual in particular prompted significant changes in *ketubah* texts, which began to take into account the experiences and full personhood of Jewish women.

Moreover, Jewish feminism reinforced the countercultural movement by calling into question the established, male-dominated Jewish institutions and practices as well as by helping disenfranchised individuals find their own Jewish voices. Feminism also substantially promoted the concept of inclusivity. As Laura Gellar wrote in the *Sh'ma Journal*, the fundamental questions of Jewish feminism "move us toward inclusiveness, overcoming separateness, seeking connection."²⁵² This push for inclusion based upon gender later paved the way for inclusiveness based on sexual orientation and even interfaith relationships. As these inclusive currents grew stronger, LGBT and interfaith marriages came to be seen as increasingly acceptable in the Jewish community. In the next section of this chapter, I will explore, among other contemporary *ketubot*, *ketubot* that have come to include not only feminist values, but also a warm recognition of LGBT Jews and interfaith couples.

²⁵⁰ Rachel Adler. "The Shekhinah Conference: A Defining Moment in Jewish Women's Spirituality," [Unpublished 2011], 2.

²⁵¹ Adler, "Shechinah Conference," 12.

²⁵² Laura Geller, "Women's Spirituality and Jewish Tradition," *Sh'ma* 17:325, January 9, 1987.33-34.

***Ketubah* Choices Couples Making Today**

In order to learn more about the *ketubot* used by contemporary American Jewish couples, I created a survey with twenty-five questions about their *ketubah* choices. I asked friends and colleagues to help disseminate this survey to American Jews of any denomination in order to garner a more diverse understanding of the various *ketubah* choices made today. I received 39 responses in total: 13 had traditional Orthodox *ketubot*, 4 had Conservative *ketubot*, and the remaining 24 respondents had non-halachic *ketubot*.²⁵³

Given the more detailed analysis of the traditional, Orthodox *ketubah* text in the previous chapter, I will note only interesting textual variations due to place of family origin in this chapter's discussion of Orthodox *ketubah* texts. The focus of this chapter is not so much on the content of texts, but rather the reasons couples have for choosing a particular type of text. First, I will explore why people choose to get Orthodox *ketubot* today, especially when, as noted above, there are so many other options available.

Reasons for Choosing a Traditional *Ketubah* Text

Most of the respondents who chose a traditional, Aramaic Orthodox *ketubah* identified themselves on the survey as Orthodox Jews. As Orthodox Jews, they presumably strive to follow *halachah* in every area of life, especially with regard to ritual matters such as *ketubot*. A few of these respondents acknowledged the “wiggle room” regarding *ketubot* that could still be considered halachically valid. This was typically in reference to *ketubot* that are not written in Aramaic, but that did not seem like appropriate options for the respondents. One explained his reasoning as follows:

²⁵³ Note: These numbers do not add up to 39, because two respondents had more than one *ketubah*. Both a Conservative couple and a Reform couple chose to get a second, Orthodox *ketubah*, in case their future children wanted to become frum or make aliyah.

“Our choice [of ketubah text] was guided by the principle that Orthodox Ketubot are in Aramaic, across the board, and to veer from that practice would be ‘sketchy.’ As long as the text was unquestionably kosher we didn’t want to explore any of the halachic possibilities that others may choose to take advantage of, even if still making a legitimate ketubah.”

The language choice of Aramaic rather than Hebrew or English reveals this couple’s strong desire to conform to the stricter standard of established Orthodox customs in order to avoid any suspicion about the halachic validity of their text. Although he does not use the term *mar’it ayin*, one may wonder if this respondent feels that any non-Aramaic text could appear to be too similar to the non-halachic *ketubot* that religiously liberal Jews often write in Hebrew or English. Yet at the same time, the use of the slang term ‘sketchy’ from this Modern Orthodox respondent²⁵⁴ reveals a certain level of comfort with mainstream American culture. He is clearly a product of both worlds, traditional Jewish and contemporary American. But he made a more *machmir* or religiously stringent decision regarding the language of his *ketubah* text.

Interestingly, it is not just Orthodox Jews who decide to get Orthodox *ketubot*. One respondent who grew up in the Conservative movement and descends from both a Conservative rabbi and a Reform rabbi,²⁵⁵ decided to use an Orthodox, rather than Conservative *ketubah*. This respondent’s reported motivation was to have a *ketubah* that would “be considered halachic and valid by as many people as possible,” even if the text included “values not held by us or most other people any more, such as a focus on the marriage process as being rather commercial in nature.” This respondent was particularly concerned “that Israeli authorities can be very/overly strict when looking at *ketubahs*, and

²⁵⁴ This respondent is currently a *Chovevei Torah* rabbinical student and previously grew up in the Conservative movement.

²⁵⁵ His paternal and maternal grandfathers, respectively.

did not want to cause problems for any future children of ours, should they decide to make aliyah.” Another Conservative respondent who initially agreed to use an Orthodox *ketubah* later regretted not “pushing for the more egalitarian legal stepping,” but noted that at the time she was worried that if she had chosen an egalitarian *ketubah*, it “wouldn't have been considered 'valid' by some people because we ‘bought each other.’”

There were also four respondents, educated by Hebrew Union College, who report choosing an Orthodox *ketubah* text, either before or after their studies at the Reform seminary. Three of them chose traditional *ketubot* prior to their matriculation at Hebrew Union College. Two of the three expressed concerns about others viewing their marriages as halachically valid in the future. The third simply agreed to use the *ketubah* text chosen by the Modern Orthodox rabbi who officiated at his wedding. This respondent does not recall having any conversations about the text and described himself as being “fairly ignorant at that time [during his wedding planning process] about *Ketubot* in general and especially about the text or its history, meaning, etc.” The fourth respondent chose to use an Orthodox *ketubah* several decades after graduating from Hebrew Union College. When he first married in 1986, he did not have a traditional Jewish wedding ceremony, let alone a *ketubah*. But 19 years later, he decided to re-marry his wife in a traditional Jewish wedding, partly as a result of a conversation he had with a Chabad rabbi with whom he was studying *Chassidut*. This respondent saw the traditional ceremony, particularly the traditional *ketubah* as a way to “correct whatever was lacking in our original wedding.” He felt that the traditional *ketubah* would offer something not present in “a lovely romantic exchange of promises mutually between husband and wife,” such as a more absolute sense of responsibility and a healthy respect for the possibility of divorce.

Other respondents, both Orthodox and non-Orthodox, assert the ability of the Orthodox *ketubah* to provide a strong sense of tradition as well as to make the marriage “feel Jewish.” One respondent shared that she used an Orthodox *ketubah* as the strongest affirmation possible of her Jewish identity, even though she did not identify as Orthodox. As a first generation immigrant to America, she explained the need for this sense of affirmation in light of her family’s history in the Soviet Union, where it was forbidden to practice Judaism:

“It was important for me to have a traditional Jewish wedding [including a traditional ketubah], since my family could not have Jewish weddings for several generations.”

Others stated that the traditional Jewish marriage was valuable not merely on a symbolic or halachic level, but also on a personal level. One respondent shared, “My views of having a *ketubah* are shaped by Torah and Rabbinic Law: it is a contract in which a man promises to provide for his wife. I appreciate that this is part of my religion and that I am valued to this extent.”

Some tried to make these traditional values explicit through literal translations of the Aramaic text into English. Five of the thirteen respondents with Orthodox *ketubot* listed the desire for others to clearly understand the nature of the traditional *ketubah* document as their reason for including an English translation. However, there were often discrepancies between the English and Aramaic texts. The smallest discrepancy noted was that one respondent included “the parties’ regular English names and their English surnames” rather than their Hebrew names listed in the Aramaic text. Another minor variation from the literal translation was an English translation that translated the Aramaic word *betulah* as “maiden” rather than “virgin.” Two of the respondents who chose literal translations of the Aramaic

mention specifically avoiding English “translations” that included more romantic terminology:

(1) *“I understand the desire to have ‘love’ words on a ketubah in English, but it feels disingenuous to me to put that into the English translation, knowing that most people would only understand the English and get the wrong idea about the ketubah.”*

(2) *“We specifically rejected ketubot that included promises of eternal, love, etc., which is not what the ketubah is about, as well as ones that referred to making a home full of ‘respect for all people,’ since we don’t respect all people.”*

These respondents were frank about their dislike for the romantic and idealized language common in the English translations they came across. Others saw the English component as a chance to supplement the traditional legalistic text with a hint of personalization and romance.²⁵⁶

The remaining eight respondents with Orthodox *ketubot* opted not to include an English translation. Most of them found the English was unnecessary, as the Aramaic text alone was sufficient for their halachic needs. However, one of these respondents expressed regret about not including an English translation, saying, “I kind of wish that I had taken the time to look at an English translation, but no, it’s all there for me in Hebrew and Aramaic.” Some even complained about the custom of decorating *ketubot*, including the respondent who said it “seems like an awful lot of trouble to go to for a legal document. Do people decorate their wills or property deeds in such a way, too?” To her, the *ketubah* is only a legal document. But to others, it may have further significance.

Values Expressed in Orthodox *Ketubot*

²⁵⁶ This was especially true of a couple using an Orthodox *ketubah* for a wedding officiated by a Conservative rabbi, who invited them to choose an English translation from among eight different options.

Adin Steinsaltz suggests that the value of the traditional *ketubah* is that it “gives a marriage halachic legitimacy. Without one,” he explains, “the couple’s relationships is considered licentious.”²⁵⁷ When I inquired about the values respondents believe to be represented in their Orthodox *ketubot*, some articulated the same opinion as Steinsaltz; and nearly all of them noted the promise of a husband to provide for his wife’s needs. Many seem to recognize the unilateral nature of these contracts. “It’s interestingly one-sided,” said one respondent, “and we’re okay with that.” Others seem to overlook its unilateral nature²⁵⁸ and find small tokens of “what each spouse brings into the marriage” in the traditional *ketubah* text.²⁵⁹

One of the respondents sees in the traditional *ketubah* a “Jewish value of protecting your property and recognizing the physical and monetary rights of those you are in partnership with,” but he is careful to clarify that he does not “think of [his] wife as [his] property,” even though he “consider[s] [him]self to be responsible for her physical and financial wellbeing.” He seems to recognize common feminist critiques of traditional Jewish marriage, especially those that treat women as half-property, half-person. He also attempts to explain the traditional *ketubah* in terms of the American legal concept of a prenuptial agreement, which is similar in the way that it provides clarity about money and property in the case of divorce, but notably different because of its reciprocal rather than unilateral nature.

²⁵⁷ Adin Steinsaltz. *The Talmud, the Steinsaltz Edition: A Reference Guide*. Eugene, Oregon: Wipf and Stock Publishers (2006), 206.

²⁵⁸ Note that as I pointed out in chapter 2, while the arrangement is technically unilateral, there are still substantial costs to the wife, which are unstated in the *ketubah*, but still legally enforceable.

²⁵⁹ The *mohar* (brideprice) and *nedunya* (dowry) presumably have a symbolic value for this respondent.

Another respondent felt that the Orthodox *ketubah* could effectively combat harmful stereotypes about Orthodox marriages, stating:

*"As much as people think that frumkeit is all about oppressing women and that I as a frum woman am just a blind sheep who is not allowed to think for myself, and that frum women must work, keep house, make babies, make her husband happy, and get nothing in return... I have no idea where they get this notion, because the ketubah **clearly** states otherwise. I am a woman. I am an Eishes Chayil. And my husband respects and honors that, as he promised to do when he signed my ketubah."*

Another value that came up multiple times was "recognition of family of origin," especially in the case of Ashkenazi-Sephardi marriages. One respondent spoke extensively about the significance of using a text from the Spanish-Portuguese tradition of Shearith Israel, NY, which "has been used by the congregation since it began, and refers to the US as the 'North American colonies.'" This unique piece of history was very meaningful to her, even though it was her husband's family's heritage rather than her own.

Beyond the legal text, some Orthodox *ketubot* include additions that express personal values or at least individual tastes. One respondent described an alphabetical acrostic on the border of his *ketubah*, "which reflected our hope that our marital life would be filled with blessings... [and our] affinity for alphabetical acrostics." This practice seems to reflect the spirit of *The Jewish Catalog* in its creativity, but actually has a precedent in older, non-Ashkenazi *ketubot*. Italian and Sephardic *ketubot* would often add personal touches including: a biblical verse about the characters for whom the bride and groom were named; wedding *piyyutim*; and a special nuptial poem called an epithalamium, which was composed for specific weddings.²⁶⁰ Persian, Afghani, Yemenite, and Indian Jews would similarly

²⁶⁰ The latter were generally only composed for wealthy families as they had to be specially commissioned by skilled writers. See Sabar, 10.

personalize their *ketubot* with long preambles containing biblical texts, poetic blessings to the bride and groom, and wishes for a successful new home and a large family.²⁶¹ It is unclear in this case if the couple simply borrowed from another Jewish culture's Orthodox practices, or if they were indirectly influenced by creativity of *The Jewish Catalog*.

Conservative *Ketubot*

Conservative *ketubot* resemble the aforementioned Orthodox *ketubot* in their concern for halachic adherence. However, these texts often differ due to the addition of particular clauses. The most well-known clause added to the Conservative *ketubah* is the Lieberman Clause, which Professor Saul Lieberman proposed as a *takanah* to the Rabbinic Assembly and the Jewish Theological Seminary in 1953. The purpose of this *takanah* was to help solve the problem of *agunot*, or women whose husbands refuse to grant them a religious divorce and who are thus prohibited from remarrying.²⁶² In this clause, both the bride and groom agree to recognize the authority of the *beit din* of the Rabbinical Assembly and the Jewish Theological Seminary to summon either party at the request of the other to carry out a Jewish divorce along with or following a civil divorce. The text of the Lieberman clause reads as follows:

“_____, the groom, and _____, the bride, further agreed that should either contemplate dissolution of the marriage, or following the dissolution of their marriage in the civil courts, each may summon the other to the Bet Din of the Rabbinical Assembly and the Jewish Theological Seminary, or its

²⁶¹ Ibid.

²⁶² In the 1973 *Jewish Catalog*, David Moss mentions another *ketubah* that was then in the process of being formulated and considered by various Orthodox authorities. This *ketubah*, which he refers to as the Berkowitz Ketubbah, was actually a set of *tena'im* or marital conditions set before the *ketubah* was written that were created in order to address the same problem regarding *agunot*. The conditions provided for “a sort of ‘conditional’ marriage which would be annulled under certain circumstances.” Moss, 195.

*representative, and that each will abide by its instructions so that throughout life each will be able to live according to the laws of the Torah.*²⁶³

In 1991, the Joint Bet Din of the Conservative Movement also suggested that couples sign a letter of intent in addition to the Lieberman clause in the *ketubah* that would ensure its viability in American courts. Perhaps the most noteworthy aspect of the Lieberman clause and subsequent letter of intent is that they provide a measure of mutuality by requiring the signatures of both groom and bride. However, the marriage described in the paragraphs above the Lieberman clause is still the traditional, unilateral arrangement.

Another, lesser-known *ketubah* text was created by the Conservative Rabbi Gordon Tucker. It is written in Hebrew, rather than Aramaic, and reflects not only *halachah*, but also the Palestinian *ketubot*, which were more mutual in structure. The Tucker *ketubah* is not recognized by most as halachic, but it has been used as a precedent for mutual *ketubot* for the Conservative Movement's recently published same-sex commitment ceremonies.²⁶⁴ The text for the Tucker *ketubah* reads as follows:

"On the ____ day of the week, the ____ day of the month ____ in the year 57__, as we are accustomed to reckon it here, in ____, ____, we hereby testify that the groom ____ said to the bride ____ "You are consecrated to me as my wife, with this ring, according to the laws of Moses and Israel", and that the bride ____ said to the groom "You are consecrated to me as my husband with this ring, according to the laws of Moses and Israel". The groom ____ and the bride ____ accepted all the conditions of betrothal and marriage as set forth by biblical law and by the rulings of the Sages of blessed memory. The groom and bride further agreed willingly to work for one another, to honor, support, and

²⁶³ וצביאו מר ____ בר ____ חתן גגן ומרת ____ בת ____ דא דאן יסיק אדעתא דחד מינהון לנתוקי נישואיהון או אן איתנתוק נישואיהון בערכאות דמדינתא דיכול דין או דא לזמנא לחבריה לבי דינא דכנישתא דרבנן ודבית מדרשא דרבנן דארעא דקיימא או מאן דאתי מן חילה וליצותו תרוייהו לפסקא דדיניה בדיל דיכלו תרוייהו למיחי בדיני דאורייתא

²⁶⁴ See Elliot Dorff, Daniel Nevins and Avram Reisner. "Rituals and Documents of Marriage and Divorce for Same-sex Couples" Sivan 5772, Spring 2012. Web 26 March 2014. <http://ketuvketubah.com/wp-content/uploads/2012/08/RA-Same-Sex-Marriage1.pdf>

nurture one another, to live with one another, and to build together a household of integrity as befits members of the Jewish people. The bride accepted a ring from the groom, and the groom accepted a ring from the bride, for the purposes of creating this marriage and to symbolize their love. The groom and bride also accepted full legal responsibility for the obligations herein taken on, as well as for the various property entering the marriage from their respective homes and families, and agreed that the obligations in this Ketubah may be satisfied even from movable property. We have had both the groom and the bride formally acquire these obligations to the other, with an instrument fit for such purposes. Thus all is in order and in force."

This text begins traditionally with the date, location, and relevant names. But it quotes the traditional marriage declaration,²⁶⁵ which is recited in the ceremony rather than written in a traditional *ketubah*. Then it introduces a significant component of mutuality by recording that the wife made the same declaration to her husband as he made to her and recognizing their mutual promises, which range from unique interpretations of traditional promises to more modern notions of love. The Tucker *ketubah* also omits the traditional, explicit monetary provisions and only alludes to the financial obligation of the *mohar*. While the lien is explicitly mentioned near the end of the contract, the *mohar* is only implied by the phrase "the conditions of betrothal and marriage as set forth by biblical law." Tucker argues that this does not make the *ketubah* objectionable and cites *Even Haezer* 69:1-2,6 as proof that these obligations are independent of the exact wording of the *Ketubah*.²⁶⁶

Tucker also responds to those who feel that a mutual declaration would render the marriage invalid by noting that the *ketubah* is independent of *kiddushin*, and the *ketubah* witnesses are merely testifying as to what they heard.²⁶⁷ Plus, he notes that a woman saying

²⁶⁵ I.e. Harei at m'kudeshet li, etc.

²⁶⁶ Gordon Tucker. "Egalitarian *Ketubah*." *Ritualwell*. Web 26 March 2014.
<http://www.ritualwell.org/ritual/egalitarian-ketubah>

²⁶⁷ Such as the mutual declaration *harei ata m'kudash li*.

harei ata m'kudash li was never actually forbidden, because classical rabbis saw the idea as absurdly hypothetical.²⁶⁸ But now, Tucker argues, a millennium after Rabbeinu Gershom's *takanah* equalized the number of spouses Jewish men and women could acquire, the possibility of a woman reciprocating the marital vow is no longer absurd. Rather it reflects an egalitarianism and mutuality that we take for granted. Of course, Tucker recognizes that those with a different *hashkafah* or jurisprudential perspective will not be persuaded by his arguments in support of the mutual declaration mentioned in his *ketubah* text.

Of the survey respondents who reported having a Conservative *ketubah*, only one of them mentioned using the Tucker *ketubah*. Others included the Lieberman clause or, more frequently, chose to make their own *ketubah* based on their inability to find a *ketubah* text that both met their halachic needs and reflected their personal understanding of marriage. About half of the Conservative respondents report doing extensive research and inviting a number of rabbis into the process of creating a suitable text. They mention creating composite *ketubot* "using texts from teachers and rabbis we knew, articles we read, [and] our own research." The Aramaic often proved challenging and either necessitated rabbinic assistance or was replaced, often regretfully, with Hebrew clauses that could be more easily

²⁶⁸ See *ibid.*: "This is further underscored by the Tosafot in Qiddushin 4b. There the Tosafot express some consternation that Rashi (in a formulation that differs from our own text of Rashi) would have interpreted the Gemara's disqualification of Qiddushin declared by the woman to mean the hypothetical case of a woman saying *harey atah m'kudash li*. According to the Tosafot, that's an impossible understanding of the Gemara because it's absurd. It simply doesn't apply to marriage as they knew it. The Tosafot make the point that the Gemara must have been disqualifying the passive language of *harey ani m'kdushet lecha*, and then when it is meant as a replacement for the usual declaration of the male. [A further interesting point is that the compilers of the Piskei Tosfot did not list this dismissal of *harey atah m'kudash li* as a ruling of law, for it was no such thing. It was merely a critique of Rashi's understanding of the text based on the patent meaninglessness (in the time of the Gemara) of the phrase]."

understood. Many of their modifications may seem idiosyncratic, but hold emotional or ideological significance to the couples. One couple decided to remove the section on divorce and make it into a separate *shtar* or legal document. On an emotional level, they did not want to acknowledge the possibility of divorce, due to their parents' divorces. Another couple chose to base their *ketubah* on the Dutch Sephardic rite, which the husband who had been raised as Anglican, felt was the most "Western and 'High Church'" *ketubah* version available. They then modified the traditional Dutch Sepharic text to reflect the wife's Ashkenazi heritage and her feminist beliefs. These modification included the addition of the Lieberman clause and two other clauses. The first clause has the bride "waive her right to financial support in exchange for retaining the right to her own wages and usufruct,"²⁶⁹ while the second "makes the balance of the *ketubah* payment go to whoever is the breadwinner at the time of divorce." This *ketubah* in particular represents not only a significant level of concern for *halachah*, but also the cultural identities and personal values of both the bride and groom.

Conservative *Ketubah* Values

Other respondents reported that their Conservative *ketubot* reflect the values of "equality and halachic adherence." One respondent felt that his *ketubah* reflects both American and Jewish values. "It is completely Jewish and yet the fact that we felt entitled to look to other sources to make it more 'right' by our way of being Jewish seems terribly American to me," he said, "Actually, it seems more Conservative than anything else, which is rather telling." Conservative *ketubot* are certainly not the only *ketubot* that bring in a variety

²⁶⁹ Indeed, the Talmud discusses this arrangement as a permissible option in *Ketubot* 70b and 71a.

of sources in order to create something that is “more 'right' by [a particular couple’s] way of being Jewish.” Reform *ketubot* seem to take this composite approach to the next level.

Reform *Ketubot*

Eighteen of the 39 survey respondents described their *ketubot* as Reform. This demographic of Reform Jews includes multiple same-sex couples as well as one interfaith couple. Their *ketubot* tend to be in Hebrew rather than Aramaic and almost always include an English translation. One respondent commented, “We know that Aramaic is more appropriate for legal documents, but our *ketubah* really didn't function that way (even if that's the original intention).” Others mentioned considering an Aramaic text, but either felt disconnected from the language or became frustrated with Aramaic translation. It was much easier to find assistance in translating English into Hebrew, due to the greater prevalence of Hebrew speakers.

Nearly all of the reported Reform *ketubot* begin traditionally by listing the date and relevant names. Many of them also retain the traditional *ketubah* ending “*v'hakol sharir v'kayam*.” However, the body of Reform *ketubah* texts usually describes mutual personal vows rather than legal obligations. For example, let us consider the Reform *ketubah* text from *ketubahkraft.com*:²⁷⁰

On the __ day of the week, the __ day of __, in the year __, corresponding to the __ day of __, in the year __, __, son of __, and __, daughter of __, join each other in __, before family and friends to make a mutual covenant as husband and wife, partners in marriage. The groom, __, promises __, the bride: "You are my wife according to the tradition of Moses and Israel. I shall cherish you and honor you as is customary among the sons of Israel who have cherished and honored their wives in faithfulness and in integrity." The bride, __, promises __, the groom: "You are my husband according to the tradition of Moses and

²⁷⁰ This particular website may be further down on the results list in a Google search, but it offers one of the most user-friendly presentations of diverse *ketubah* texts that one can order. See Jennifer Kraft. “Ketubah Texts: How to Choose” *Ketubahkraft*. Web 26 March 2014. <http://www.ketubahkraft.com/texts.html>.

*Israel. I shall cherish you and honor you as is customary among the daughters of Israel who have cherished and honored their husbands in faithfulness and in integrity." "We, as beloveds and friends, promise each other to strive throughout our lives together to achieve an openness which will enable us to share our thoughts, our feelings, and our experiences. We promise to try always to bring out in ourselves and in each other qualities of forgiveness, compassion, and integrity. We, as beloveds and friends, will cherish each other's uniqueness; comfort and challenge each other through life's sorrow and joy; share our intuition and insight with one another; and above all do everything within our power to permit each of us to become the persons we are yet to be. All this we take upon ourselves to uphold to the best of our abilities." **All is valid and binding.***²⁷¹

Immediately after the traditional opening, this Reform *ketubah* reveals a distinct sense of mutuality. First, the bride and groom “join each other... to make a mutual covenant as... partners in marriage.” Then structural symmetry reinforces the sense of mutuality, as when the wife and husband make identical promises similar to those listed in the Tucker *ketubah*.²⁷² The Reform text here also emphasizes the couple’s role as beloveds and friends, which are not only more balanced roles in terms of social power, but also reminiscent of traditional wedding liturgy.²⁷³ However, this *ketubah* may distance itself from the problematic aspects of traditional Jewish marriage,²⁷⁴ or simply intend to create more poetic flair by replacing the phrase “Jewish husbands” with “sons of Israel.” But the additional modification of the groom’s traditional promise to “cherish and honor” rather than “work for, honor, provide for, and support” may suggest a cultural and ideological distance from the classical rabbis and a partial embrace of popular Christian marital vows.²⁷⁵

²⁷¹ Jennifer Kraft. “Reform English Text Literal Translation.” *KetubahKraft*. Web 26 March 2014. http://www.ketubahkraft.com/Reform_Hebrew_English_Literal.pdf

²⁷² This sort of mutuality builds upon and extends the mutuality embodied in many Palestinian and Italian *ketubot*.

²⁷³ I.e. the *rei'im ahuvim* mentioned in the traditional *Sheva Brachot* or seven wedding blessings.

²⁷⁴ The phrase Jewish husbands carries a certain meaning in traditional rabbinic thought that perhaps this couple did not wish to convey.

²⁷⁵ See footnotes 277 and 278 on Christian marital vows in the Reform *Ketubah* Values section.

Rather than specifying concrete agreements, the promises in this Reform *ketubah* are phrased as aspirations and embody language that does not carry any absolute consequences for behavior. Some of these aspirational terms and phrases include: “strive,” “try,” “do everything within our power,” and “to the best of our abilities.” These terms may be used as a form of recognizing the couple’s personal limitations. A recognition of limitations is also evident in the traditional *ketubah*, which accounts for the possibility of the dissolution of a marriage, whether by death or divorce. By addressing the possibility of the marriage’s dissolution, the traditional *ketubah* recognizes the limitations on both the length of our days and our ability with maintain a particular relationship as circumstances change. The traditional *ketubah* also spells out clear legal consequences and actions to be taken in these unfortunate events. But in the Reform *ketubah*, the couple’s commitments are largely unquantifiable, especially in comparison with the traditional monetary sums spelled out in the *ketubah*. “The best of one’s ability” is far more difficult to determine than a sum of coins. One might wonder if this *ketubah* can be considered a real contract with its vague agreements. A few particular behaviors, such as sharing feelings or challenging each other, are specified, but the extent to which they must be performed remains unclear. Far from a standard legal document, this *ketubah* reflects an aspirational nature, more closely resembling a mission statement for a new, joint organization of spouses.

But one might wonder if the same is true of other Reform *ketubot*. The *ketubah* text included above is certainly not the only Reform *ketubah* text. The same website offers another Reform *ketubah* text option, which reads as follows:

“On this day _____ the bride and groom affirmed their commitment to each other as husband and wife. With our community of family and friends as witness, we made these promises to each other: We pledge to be equal partners, loving friends, and supportive companions as we walk through life’s path

together. We will build our relationship on open communication, honesty, loyalty and devotion. We pledge to each other our mutual trust and respect. We will offer support and encouragement for personal growth and the fulfillment of our shared dreams. May we celebrate the beauty and happiness of life and comfort each other in times of sorrow. Together we will create a home filled with laughter, wisdom, generosity and compassion. We promise to honor our ancestors, families, and all living beings, and we will treasure the traditions we have inherited."²⁷⁶

In this example Reform *ketubah*, the traditional opening is truncated and the traditional ending completely absent. As in the Reform *ketubah* above, this text also embodies the concept of mutuality with phrases such as "each other," "equal partners," and "supportive companions." But it lacks even the hints of the promises that a husband makes to a wife in a traditional *ketubah*. This *ketubah* specifies only vague actions that the couple intends to take, such as "offer support and encouragement for personal growth and the fulfillment of our shared dreams." Many of the promises are too subjective to measure in any quantifiable way. Rather than clarifying legal obligations, this *ketubah* specifies a couple's relationship goals. It also at times resembles a prayerful entreaty rather than a legal agreement, especially by including clauses, such as, "May we celebrate the beauty and happiness of life."

A number of these elements were also represented in the diverse Reform *ketubot* described by my survey respondents. This overlap may result from the tendency of Reform couples to create composite texts or "mash-ups" of dozens of options that they had typically come across online. Of course, this tendency cannot be true of all Reform generations. The majority of my survey respondents happened to be married after the internet had made more *ketubah* text options increasingly available. Only one respondent, who created her own

²⁷⁶ Jessica Kraft. "Reform English Text Creative Translation." *KetubahKraft*. Web 26 March 2014. http://www.ketubahkraft.com/Reform_Hebrew_English_Creative.pdf

ketubah in the early 1980's, based her *ketubah* on another source—the *ketubah* article in *The Jewish Catalog*.

Values Expressed in Reform *Ketubot*

There is significant overlap between the actual content of Reform *ketubot* and the values respondents reported as expressed in their *ketubot*. With more traditional *ketubot*, the values often have to be inferred from the text, but Reform *ketubot* tend to explicitly state relationship values. Common values reported in the eighteen Reform *ketubot* include: partnership, support, honesty, trust, growth, love, equality, respect, commitment, and tradition. A few also included the concept of building a Jewish home; and several mentioned laughter, music, and learning. Multiple respondents emphasized a practical value or benefit of the document itself, which was that it serves as a reminder “in times of stress... of the promises and commitments we've made, and what our responsibilities are to one another.” Reform *ketubot* may be more effective as reminders of commitments because they tend to be displayed in prominent places in the home.

Numerous respondents describe a strong emotional attachment or reaction to their Reform *ketubah*. One commented, “I love our *ketubah*-- it reflects us and our relationship in every way, shape and form. I love that the text is something we created together and really speaks to our values.” Another respondent shared that her Reform *ketubah* “feels very romantic and extremely relevant. It's like a vow renewal every year when we read it.” This respondent's use of the word *vow* here may reflect the influence of Christian weddings on her understanding of marriage.²⁷⁷ She is certainly not the only Jew in America whose concept

²⁷⁷ Note that even an Orthodox prayer book from 1948 reflects this Christian influence by providing a set of wedding vows in English that seem to be taken directly from the Anglican prayer book. See Joseph H. Hertz. *Daily Prayerbook*. New York Bloch (1948), 1009-1010mn.

of marriage has been shaped by mainstream American culture. Many American Jews have seen a number of films and television programs that prominently feature Christian wedding ceremonies.²⁷⁸ As weddings are not an everyday occurrence in most people's lives, these media representations of weddings may be one's primary reference as to what weddings should include.

While the Reform *ketubah* can reveal a certain degree of assimilation into the dominant culture and an appropriation of its practices,²⁷⁹ it can also mark a strong and specifically liberal Jewish identity. One could say that the *ketubah* represents a simultaneous embrace of particular Jewish values and rejection of others. For instance, one respondent reported, "Being Reform Jews, we knew we would choose a liberal text. Halakha was not important to us." Another added that a Reform *ketubah* "reflected our relationship values better, as well as our identity as liberal Jews. It was truly what we were 'signing up for' in our marriage." The main aspect of traditional Jewish marriage that selectors of Reform *ketubot* sought to avoid was the traditional concept of marriage as a man's unilateral acquisition of a woman. One respondent notes that her *ketubah* categorically "removes all mention of the bride-price [because] we weren't comfortable with the idea of one of us being purchased for the other in some way (much as we joke about my father-in-law's chickens having been part of my dowry)." She also specifically wanted to describe "our relationship as an equal partnership," which she felt was "very important."

B'rit ahuvim

²⁷⁸ One of the most commonly featured wedding vows in American film resembles the following: "I ___, take you ___, to be my lawfully wedded husband/wife. To have and to hold, from this day forward, for better or worse, for richer or poorer, in sickness or in health, to love and to cherish 'til death do us part."

²⁷⁹ Such as, Christian-based marital vows.

In response to a similar sentiment and value of equality, Dr. Rachel Adler developed an alternative marriage model that eliminates this problematic aspect of unilateral acquisition, and replaces it with an equal partnership within a halachic context. This model is called the *b'rit ahuvim*, or lovers' covenant, and draws upon other Jewish traditions, including the halachic concept of *shutafut*. Envisioned as an equal partnership for heterosexual or LGBTQ couples, the *b'rit ahuvim* mimics the covenant between God and Israel, differing primarily on the grounds of having two human partners. The *b'rit ahuvim* document is intentionally not a *ketubah*, but rather a *shtar b'rit*, or covenant document²⁸⁰ distinct from a *ketubah*, which specifies a couple's mutual obligations and expectations of each other. The *b'rit ahuvim* is also traditionally written in Hebrew,²⁸¹ rather than Aramaic and often accompanied by an English translation,²⁸² such as the following:

"On _____ (day of week) the _____ day of _____ (month), 57__, according to Jewish reckoning (_____month_____ day_____ year, according to secular reckoning), in the city of _____ (state or region_____country), _____ (Hebrew name) daughter/son of _____ and _____ whose surname is _____ and _____ (Hebrew name) daughter/son of _____ and _____-whose surname is _____ confirm in the presence of witnesses a lovers' covenant between them and declare a partnership to establish a household among the people of Israel. The agreement into which _____ and _____ are entering is a holy covenant like the ancient covenants of our people, made in faithfulness and peace to stand forever. It is a covenant of protection and hope like the covenant God swore to Noah and his descendants, saying, "When the bow is in the clouds, I will see it and remember the everlasting covenant between God and all living creatures, all flesh that is on earth. That," God said to Noah, 'shall be the sign of the covenant

²⁸⁰ Rachel Adler. "B'rit ahuvim: A Marriage Between Subjects." *Engendering Judaism: an Inclusive Theology and Ethics*. Boston: Beacon (1999), 193.

²⁸¹ Adler, *Engendering Judaism*, 194. "The *b'rit* document should be written in Hebrew, because it is traditionally a language for learning, law, and sacred expression and because it is spoken as a living language by large communities of Jews in Israel and in the Diaspora."

²⁸² Adler, *Engendering Judaism*, 194. "If Hebrew is not the primary language of the partners or those who will witness the wedding, the document should also be translated."

*that I have established between me and all flesh' (Gen. 9:16-17). It is a covenant of distinction, like the covenant God made with Israel, saying, 'You shall be My people, and I shall be your God' (Jer. 30:22). It is a covenant of devotion, joining hearts like the covenant David and Jonathan made, as it is said, 'And Jonathan's soul was bound up with the soul of David. Jonathan made a covenant with David because he loved him as himself' (1 Sam. 18:1-3). It is a covenant of mutual lovingkindness like the wedding covenant between God and Zion, as it is said, 'I will espouse you forever. I will espouse you with righteousness and justice and lovingkindness and compassion. I will espouse you in faithfulness and you shall know God' (Hos. 2:21-22)."*²⁸³

While the *b'rit ahuvim* reflects a classical rabbinic style of deriving principles from biblical proof texts, it grounds itself more substantially in biblical examples of covenants than the traditional *ketubah* does. The covenant model is inherently mutual, and this sense of mutuality permeates not only the first component of the *b'rit ahuvim* text included above, but also the stipulations that follow.

Rather than including the full text of the covenant's provisions,²⁸⁴ which are intended to follow the text above, I will share the creator's summary of the recommended contractual stipulations:

*"(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; and (6) a pledge that either spouse will protect the dignity and comfort of the other in his or her dying."*²⁸⁵

Other specific stipulations may be added based on the couple's unique concerns and aspirations for their marital relationship.

²⁸³ Adler, *Engendering Judaism*, 214.

²⁸⁴ These provisions can be found in full on page 215 of Rachel Adler's *Engendering Judaism*.

²⁸⁵ Adler, "*B'rit ahuvim*," 194.

While this text is intentionally not a “*ketubah*,” it does begin as many traditional *ketubot* do—with the date, location, and relevant names. However, the content of its body and its ending clearly demonstrate that it is not a traditional *ketubah* by any means. Rather than stating “*v’hakol sharir v’kayam*,” the *b’rit ahuvim* ends with another biblical verse, “Set me as a seal upon your arm, for love is stronger than death (Song of Songs 8:6) and is followed by the statement, “To this covenant we affix our signatures.” As the ones responsible for fulfilling their pledges, the marital partners are the first to sign the *b’rit ahuvim* document, followed by two witnesses.

Several of the survey respondents reported using a substantial amount of the *b’rit ahuvim* text in their composite Reform *ketubot*. One respondent said she “consulted the *b’rit ahuvim*, but chose not to use it because of [her] husband’s Orthodox family.” Though it fits into the halachic system by presenting an alternate approach to Jewish marriage rooted in halachic principles like *shutafut* (rather than attempting to modify the traditional *kiddushin* model), many who are concerned with *halachah* still opt for the traditional *ketubah*, even when it does not represent their individual marital values. One demographic that seemed particularly drawn to the *b’rit ahuvim* model was that of LGBTQ couples. One gay respondent shared that he “choose the text of the Brit Ahuvim because of its feminist and queer implications.” As a queer feminist, he did not “entirely buy into traditional marriage” and really appreciated the feminist approach of the *b’rit ahuvim*.

Another respondent was drawn to the *b’rit ahuvim* specifically because she did “not want to be like a straight couple.” She explained, “We wanted something that felt different, something that felt authentic to our situation.” A different respondent reported using the

Conservative Movement's text for same-sex couples²⁸⁶ and emphasized the emotional significance of the Rabbinical Assembly's decision to create "a text that recognized and validated our relationship." One self-identified bisexual respondent, who married someone of the opposite gender, did not select a specifically LGBTQ text, but did look for a *ketubah* text that reflected the idea of equality. She said, "Having been raised within the LGBTQ community and identifying as bisexual, my role as wife had to be equal with that of my husband." Other LGBTQ respondents did not feel that queer values played a significant role in their *ketubah* texts, aside from "scrapping the bride/groom bit."

Similarly, the only survey respondent with an interfaith *ketubah* did not report a significant impact on his *ketubah* text on account of his wife's non-Jewish identity. This observation, however, may have been skewed by the fact that his wife has been "very accepting of Judaism" and has even contemplated conversion at some point in the indeterminate future. Her openness to Judaism may explain why "honoring the traditions and teachings of Judaism" was among the pledges listed in his interfaith *ketubah*.

Few conclusions can be reached from a sample size of one. Other interfaith *ketubot* seem to reflect more about the non-Jewish identifies of one partner or the other. For example, the interfaith *ketubah* text available on *ketubahkraft.com* reads as follows:

"On the day of the week, the day of, in the year, corresponding to the day of, in the year, , son of, and, daughter of, join each other in, before friends and family to make a mutual covenant as husband and wife, partners in marriage. The groom,, promises, the bride: "You are my wife according to tradition. I shall cherish you and honor you as is customary among those who have cherished and honored their wives in faithfulness and in integrity." The bride,, promises, the groom: "You are my husband according to tradition. I shall cherish you and

²⁸⁶ Note that the Conservative Movement's text for same-sex couple was significantly influenced by the *b'rit ahuvim*, which provides a halachic construct into which a same-sex commitment relationship can fall.

honor you as is customary among those who have cherished and honored their husbands in faithfulness and in integrity.” “We, as beloveds and friends, promise each other to strive throughout our lives together to achieve an openness which will enable us to share our thoughts, our feelings, and our experiences. We promise to try always to bring out in ourselves and in each other qualities of forgiveness, compassion, and integrity. We, as beloveds and friends, will cherish each other’s uniqueness; comfort and challenge each other through life’s sorrow and joy; share our intuition and insight with one another; and above all do everything within our power to permit each of us to become the persons we are yet to be. All this we take upon ourselves to uphold to the best of our abilities.” All is valid and binding.”²⁸⁷

This text begins like many *ketubot* with the date and relevant names; and ends with the traditional ending. Like the first Reform *ketubah* text above, this interfaith *ketubah* text then describes the marriage in terms of a covenant and partnership. It also includes the same textual symmetry and aspirational vows. The only significant difference between this interfaith text and the Reform text above lies in the marital declaration: “You are my wife according to tradition”²⁸⁸ appears instead of “You are my wife according to the law of Moses and Israel.” This interfaith *ketubah* text also omits any reference to Jews or the children of Israel.

Although not technically in an interfaith marriage, another respondent reports using the same-sex text from the Rabbinical Assembly and changing the English translation from “‘all Jews’ to ‘all the children of Israel,’ because it felt more accurate and also includes the Christian part of our family who consider themselves to be children of Israel too.” This respondent’s spouse had converted to Judaism years prior to their wedding, but still had a predominantly Christian family, who were subtly reflected in this text.²⁸⁹

²⁸⁷ Jessica Kraft. “Interfaith Text in Hebrew and English.” *KetubahKraft*. Web 26 March 2014. http://www.ketubahkraft.com/Interfaith_Hebrew_English.pdf

²⁸⁸ Note how this statement is deliberately ambiguous about whose tradition is reflected here.

²⁸⁹ This nod to the Christian family members’ sensibilities in a way parallels the incorporation Ashkenazi or Sephardic traditions in the case of the interethnic Jewish marriages mentioned earlier in this chapter.

Art Vows

By attending interfaith weddings or simply Jewish friends' weddings, a number of non-Jews have been exposed to the concept of using a *ketubah* as part of one's wedding ceremony. The *New York Times* even featured an article about the influence *ketubot* have had on non-Jewish (specifically Christian) wedding practices. This article by Samuel G. Freedman begins with the story of Sally and Mark Austin, two members of an evangelical megachurch, who used a "*ketubah* as a way of affirming the Jewish roots of their faith."²⁹⁰ The Austins wanted "a permanent reminder of the covenant we made with God," and viewed this document as "superseding the marriage license of a state or a court."²⁹¹ After hearing about *ketubot* from an evangelical Christian relative, they were able to find and purchase a *ketubah* with a Reform Jewish text from *ketubahtree.com*. They were particularly drawn to the combination of a poetic text and beautiful piece of artwork that could serve as a sign of their marital covenant.

Michael Shapiro, the *ketubah* artist from *ketubah.com*, also noticed a substantial increase in orders from non-Jews, who went from zero to ten percent of his customer base over the last few years.²⁹² As a result, he created a spinoff website called *artvows.com*, which sells *ketubah*-like documents featuring beautiful artwork to non-Jews. *Artvows.com* purports to take one's wedding vows or favorite poetry and "transform them into a stunning piece of art"²⁹³ that "captures the essence of your promise to each other in a unique heirloom." The website also advertises ArtVows as marital tools that help to "keep the magic

²⁹⁰ Samuel G. Freedman. "Christians Embrace a Jewish Wedding Tradition." *New York Times*. February 11, 2011

²⁹¹ Ibid.

²⁹² Ibid.

²⁹³ "What is an ArtVow?" <http://www.artvows.com/faq-help/faq/?helpid=1074>

alive” with a “marriage of meaningful words and exclusive images that is as intimate and enduring as your love.”²⁹⁴ While some might say that Shapiro has merely approached non-Jews’ interest in *ketubot* as a business opportunity, the significance of ArtVows extends well beyond business matters into socio-cultural phenomena described in the conclusion.

²⁹⁴ Michael Shapiro. “Welcome to ArtVows.” *ArtVows*. Web 26 March 2014. <http://www.artvows.com/>

Conclusion

The *New York Times* article discussed in the previous chapter describes how non-Jews' "discovery of the *ketubah*" coincides with other social trends, including "the growth of interfaith marriage, and the mainstreaming of the New Age movement with its search for spirituality in multiple faith traditions." I would argue that the non-Jews' recent adoption of *ketubot* demonstrates not only these current social trends, but also the continuance of a long-history of cultural exchange. Jews were certainly not the first to produce marriage contracts. We "borrowed" the idea from neighbors, and now have new neighbors who are borrowing this idea from us.

While Jews certainly do not have full "ownership" of the idea of marriage contracts, Jews have contributed a great deal of innovation and thought into what a marriage contract could be. The earliest known marriage contracts were essentially prenuptial agreements created for the elite. Only those with substantial means would go through the trouble of hiring a scribe to document the wealth they were bringing into a marriage. But Jews changed the dynamics of marital contracts primarily by democratizing this custom. The rabbis of the Talmud in particular extended this practice to create universal marriage contracts among Jews, whether rich or poor. Shim'on ben Shetach made it even easier for the poor to participate in this custom by creating the "credit system" for the traditional brideprice, which resulted in the defining characteristic of traditional *ketubot*, i.e. the lien on the husband's property that did not exist in earlier marriage contracts.

Jews also developed a magnificent culture of *ketubah* art. The earliest examples may have been the result of Islamic cultural influences, but Jews continued to develop them in a way that would impact the world beyond Islamdom. Elaborate Italian *ketubot*, for example,

demonstrate how Jews further developed the artistic aspects of marital documents. While this artistic tradition may have been obscured for centuries, it was eventually uncovered and introduced into the American milieu of the 1960's, which triggered a chain of events leading to a radical transformation of what *ketubot* could be.

Art and *The Jewish Catalog* made *ketubot* accessible to the masses, including the prominent Jewish feminists whose views have helped to reimagine the text of marriage contracts as a fundamentally egalitarian, spiritual covenant rather than a receipt for a business deal in which one person is acquired by another. This fundamental reexamination of the Jewish tradition has engendered a new type of *ketubah*, a covenant-based document that whether it calls itself a *ketubah* or not,²⁹⁵ speaks to the spiritual needs of contemporary Americans so profoundly that it appeals to not only Jews, but also many non-Jews as well.

While we have gained so much from this transformation, in terms of spirituality, equality, and cross-cultural connections, we must also acknowledge that with these gains, we have experienced a significant loss. By replacing the traditional *ketubah* with today's romantic and aspirational marital covenant, we may have lost the ability to discuss difficult, but important issues, such as the possibility of divorce or the inevitability of death. These issues are not discussed often enough by couples prior to their weddings, because, unlike the texts of modern liberal *ketubot*, they are not romantic and inspiring. But couples would benefit tremendously from frank conversations about these and other difficult topics prior to their wedding day. Without discussing these issues, couples are unprepared for the

²⁹⁵ The majority of these covenant-based documents are still called a *ketubah*, even though they do not represent a traditional *ketubah* as understood in relation to the rabbinic concept of kiddushin. Only one of these documents, the *b'rit ahuvim*, is intentionally identified as a *shtar b'rit* rather than as a *ketubah*. However, the majority of contemporary *ketubah* artists and couples ignore this essential distinction between a *ketubah* and a *b'rit* document.

realities of married life, and their marriages are consequently left weaker and more susceptible to divorce.

But this need not be the case. There are at least three approaches that couples can take to make up for this loss. Couples could, in addition to the *ketubah*, address financial concerns and the possibility of divorce by writing a prenuptial agreement recognized by American law.²⁹⁶ They could also add specific stipulations to their *ketubot*, such as those suggested in the *b'rit ahuvim* section, to address the nitty-gritty details of what it means to have a covenant and not just vague aspirations with their new spouse. Lastly, engaged couples should strongly consider premarital counseling as a way to clarify their shared goals, potential challenges, and strategies for operating successfully as a couple through the normal ups and downs of married life. By taking any or all of these steps, contemporary Jewish and interfaith couples can sufficiently compensate for the loss of the traditional *ketubah* and help to create a more successful marriage based on communication, cooperation, and the ideal of a sacred covenant.

²⁹⁶ However, one must also be careful not to sign away one's rights when creating a pre-nuptial agreement today. In a pre-nup, a less affluent partner can be persuaded to settle for conditions that she or he may later regret should the marriage dissolve, such as renouncing her or his share of what would otherwise be community property in states like California. One way to prevent this injustice and demonstrate a commitment to both partners' wellbeing is to have an attorney representing each partner. The attorneys can help to provide the same sort of economic assurance that the traditional *ketubah* was designed to provide in the case of a marriage's dissolution. While not romantic in nature, these assurances serve a function that represents not only important practical concerns, but also sublime religious concerns about establishing justice and upholding our covenant with God.

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