

## A Covenant of Same-Sex Nisu'in and Kiddushin

By Eyal Levinson

As part of my rabbinical studies my mentor Reb Daniel Siegel asked me to compose a *kidushin ve'nisuin*, a wedding, for same-sex couples grounded in the *Halakha*. For most of my life I was angry towards the *Halakha*, the Jewish law, as it was presented to me in Israel, where I grew up. Through the process of writing the paper I made peace with the *Halakhic* man within me. I acquired a new understanding of the *Halakha*, one that understands her to be a peacemaker among the people and connecting the people to YHVH, the *Breath of Life*, *hakdosha brukha hee*.

As her true self was revealed I discovered an evolving, continuously renewing body of knowledge. One which listens to the wise of each generation and follows the majority's decisions though it is always open to past minority opinions. She heeds to the wise and she is respectful of ordinary people's wisdom. And above all she teaches modesty and multiplicity.

I discovered *Halakhic* solutions, which brought joy to my homosexual soul, committed to Judaism and Torah. With this new insight, I wrote a long paper, 'Same-Sex Kidushin ve'Nisuin', the core of which is presented here.

For such a ceremony, we suggest, on the one hand, to use the freedom of our creative imagination, and on the other, that it is grounded in the *Halakha*. With God's help, and using as much material as we can from our rich tradition, the majority of the Jewish people will accept the ceremony. Yet, it is still a 'new baby' born to the forces of a changing social order and emerging out of the needs of some of its members.

There are two parts to the 'journey' of a Jewish wedding. Nowadays they are combined into one ceremony, separated by the reading of the *ketubah*, the wedding contract. These are the *erusin* or *kidushin* (betrothal or espousal), and the *nisuin* (nuptials).

The *erusin* establishes the earthly, legal commitment entered by the couple. The *nisuin* invites the Divine to join in and help the couple to establish a sacred commitment.

Rabbi Isaac Klein (Guide to Jewish Religious Practice, JTS, 1979, p 393) writes: "Nowadays, in the Diaspora, where secular governments have jurisdiction over all matters pertaining to marriage, and the woman's interests are safeguarded by the civil law, the only function of the *ketubah* is perpetuating an ancient tradition."

But as I write, for same-sex couples it is not true anywhere that the secular government gives credence and protection to their marriages.



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Since this is true, either the *ketubah* can be kept as a spiritual document signed by both partners in the presence of two witnesses and acknowledged by the community, with the legal obligations of the couple registered in other ways—or a *ketubah* can be signed that really does specify the legal obligations and commitments, doubling as a pre-nuptial agreement under civil law.

The couple should also be encouraged to sign a *tna'im* document (as suggested by Reb Zalman Schachter Shalomi) which will make the marriage subject to a set of *tna'im*, conditions, that will help to avoid suffering if a need arises for the dissolution of the marriage (*get*).

### **Two thorny issues in the *erusin* part of the marriage.**

The main problem encountered in the *erusin* is the *kinyan*, the acquisition, of the woman by the man. This is a sad reminder of past times when women were transferred from fathers to husbands. This part is enacted through the groom's assenting to the *ketubah's* conditions and the bride's acceptance of a *shve prutah*, the equivalent of the smallest coin, or, today's wedding ring.

Our modern understanding of equality for all human beings is deeply disturbed by such an act. The modern solution of a mutual acquisition by the exchanging of rings, though may be a suitable answer for many, does not satisfy Rachel Adler and others who regard the act as contradictory to their inner truth. Adler explains: "The problem with marital *kinyan* is not simply that it is unilateral, but that it commodifies human beings... *kinyan* of persons violates values conscientious people have come to regard as moral goods." (Engendering Judaism (Harper, 1998), p. 191.)

Adler suggests changing the existing *kinyan* with a different Halakhic concept, a *shutfut*, a partnership, and therefore transforming the acquisition into covenanting. A *shutfut* still requires the act of *kinyan* but in this case it is of the partnership and not of the persons involved. My beloved partner, Amnon, pointed out that the problem of such a solution is that such a partnership is an entity separated from the people involved in it. He explains that what two people, who choose to walk through life together, establish between them, is far more than a partnership, it is a union.

Since we are driven by a commitment to carry to the next generation those features of the marriage ceremony, which do not contradict our inner truth, those that we find unacceptable we must attempt to renew and as a last resort, change or abolish. I wish to offer a way in which we can renew our understanding of *kinyan* and its use in our ceremonies. I also advocate the position that the act of exchanging rings, which establishes the *kinyan* should be present in same-sex marriages to reinforce the equal status with the heterosexual ceremony of *kidushin ve'nisuin*.



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In the *Tanach* we find several places where *kinyan* is understood differently from exchanging goods for the purpose of acquisition and therefore gaining control over the object. In Genesis (14:9) *koneh* appears as- 'making or creating'. *El Elyon*, a manifestation of the Divine, is the "Creator of heaven and earth"- '*koneh shamaim va'aretz*'.

A similar use of this verb we discover in Deuteronomy (32:6), Proverbs (8:22), and Psalms (78:54 and 139:13). In Proverbs (16: 16 and 23: 23) we find a related interpretation of the verb *kanah*. "Acquire wisdom and gain knowledge, don't forget and don't turn away from My words. Do not forsake her and she will guard you, love her and she will shape you. The beginning of wisdom is to acquire wisdom and in all your acquisitions acquire knowledge." (4: 5-7)

In the above example *kanah* is used as both acquiring and gaining through the process of accepting. If one accepts wisdom into her life, then wisdom will shape and form that person. In a similar manner we can acquire a person by the process of accepting this person into our life. By substituting the word wisdom with the word lover for instance, the above sentence becomes: "Acquire a lover and gain a friend, don't forget and don't turn away from him. Do not forsake him and he will guard you, love him and he will shape you. The beginning of wisdom is to acquire a lover and in all your acquisitions acquire him."

Through love we shape each other's soul, through accepting each other into our lives we become unified. The Maharal of Prague elaborates on this idea: "Well, acquire a friend: in a friendship we use the term 'acquire' because a friend is his friend's acquisition."

As in Proverbs, the Maharal uses *kanah* as accepting a friend into one's life. The person becomes a friend and hence one's *kinyan*, not through exchange of money or other material goods, but rather through the act of accepting one another and the friendship. The same understanding we find in *Archot Tzadikim*: "Acquire a friend who tells you when you do wrong, who teaches you how to do good, and helps you with his soul and his money – this is a loyal friend." (Gate 5, *Sha'ar Ha'Ahavah*)

Another example we find with Chavah, Eve, mother of all living, who, after giving birth to her first son, Cain, finally accepts her partnership with Adam, and declares: "... I acquired a man with YHVH" (Gen. 4: 1)

Above, Chavah is the one to acquire her man not the other way around. This *kinyan* is a result of a collaboration, a mutual creation, becoming unified in the newborn. Rashi reminds us that this kind of partnership is not a regular collaboration between two earthly subjects and rather a threeway: "The saying 'I acquired': YHVH. It is like – with YHVH. When YHVH created me and my man, all by himself He created us. But in this process of creation we are all partners." (Rashi on Genesis 4: 1)



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Sifri tells us about this unique partnership between two people and God: “When a person acquires a friend to himself he gains – reading with him, studying with him, eating with him, drinking with him, revealing to him all his secrets. And he also says (Ecclesiastes 4) and the threefold cord is not quickly broken.”

The ‘threefold cord’ is the Divine cord keeping the friendship from falling apart. This kind of ‘threefold relationship’ we encounter in our first recorded same-sex covenant, when Yehonatan reminds his lover David that the Divine is forever a part of what they have between them: “And Yehonatan told David: Go in peace, for we have sworn both of us in the name of YHVH saying, YHVH will be between me and you and between my seed and yours for eternity.” (I Sam. 20: 42)

I suggest calling this special *kinyan* by the name – *kinyan hadadi*, a mutual acquisition/acceptance, with which we may choose to recognize our weddings. *Kinyan hadadi* is not a *ba'alut*, ownership, of one over the other, but instead it is a joint acknowledgment and a mutual embracement of the union. And like God creating heaven and earth in Genesis this *kinyan* is also a new creation forming a new reality.

The other thorny issue in the *erusin* part of the marriage is the second blessing recited by *mesader ha'kidushin*, the officiant. This blessing which come from the Talmud (Bavli ketubot 8a) is:

“Blessed are you, Adonai our God, ruler of the universe who has sanctified us with your commandments and commanded us concerning the forbidden sexual relations/“nakednesses” (*arayot*). You have forbidden us the merely espoused, and permitted us those who have been fully wedded to us (*nesu'ot*) by means of the bridal chamber and holy setting-aside (*huppah v'kiddusuin*).” (See Adler’s Engendering Judaism, p. 177).

Then the mesader continues to say: “Blessed are you YHVH who sanctify his people Israel by *chupah ve'kidushin*.”

Awakened to a new understanding of *tzedek* or justice, this blessing contradicts our perception of a union between equal subjects. For same-sex couples this blessing, which is only concerned with men’s sexual relations to other women (apart from their own wives), is superfluous.

We need to find a substitute to this blessing in order to keep the existing structure of the ceremony. This is the time when we must listen to the Psalmist when he declares: “It is the time to act for YHVH, undo your Torah.” (Ps. 119: 126; see Rabbi Nathan’s interpretation in T. B. Berachot 5: ) For the sake of God we must undo the old and find a more suitable blessing to replace the insensible outdated one. I suggest:



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“Blessed are you YHVH, our God source of all, who sanctified us with commandments and commanded us to love our friends as ourselves, and have forbidden us to disgrace others, and have permitted us to one another by chupah v’kidushin. Blessed are you Yah who makes Your people holy by chupah v’kidushin.”

*Bruchah At Yah, Eloheinu ruach haolam asher kidshatnu b’mitzvotaiha v’tzivtanu al v’ahavta l’re’acha kamocha, v’asrah aleinu l’halbin pnei habriyot, v’kashrah otanu echad el hasheni (achat el hashniya) al yedei chupah v’kidushin. Bruchah At Yah mekadeshet amah Yisrael al yedei chupah v’kidushin.*

The above blessing keeps the structure of the old, only substituting two mitzvot with two others. The last line manifests our new understanding of *chupah v’kidushin* when we see God as binding us to one another and finally making the whole community, *klal yisrael*, holy by the unification of yet two more souls who long to be united.

### **Exchanging rings**

After the *mesader kidushin* made sure both parties enter the marriage of their own free will, the groom in the traditional ceremony gives the bride an object, a *shve prutah*, an equivalent of the smallest coin. Today it is almost universally the custom to give a ring. When giving the ring the groom recites the formula: “Behold, you are made holy to me with this ring, in accordance with the Law of Moses and Israel.”

In present-day weddings a new *minhag*, is taking place. Trying to bring the ceremony closer to how we understand an egalitarian marriage to be, the couple exchanges rings. This exchange of rings should be part of a same-sex marriage. But due to our new understanding of *kinyan*, as *kinyan hadadi*, I suggest a reversal of roles. The person receiving the ring should say: “Behold, I hereby sanctify myself to you with this ring.” And then continue to say: “According to our understanding of the Law of Moses, Miriam, and Israel.”

*“Harei ani mitkadesh l’cha (mitkadesh lach) betabaat zo k’havanateinu et dat Moshe Miriam v’Yisrael.”*

The roles are then reversed between the lovers. The words, “According to our understanding” are added because unfortunately it is not yet the understanding of the majority of the Jewish people. Moreover this is a clear statement that we understand what we are doing in relation to each other, to our people, and to God. Adding such a clause may help some rabbis to perform such a ceremony. Miriam the prophetess is added to reflect our contemporary attempt to make Judaism a fully egalitarian religion.

### **Birkat Chatanim or Sheva Brakhot**



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The seven blessings, which follow the reading of the *ketubah*, and the exchange of the rings, are called- *birkat chatanim* or *sheva brachot* and are the next step in the wedding's journey. These blessings date back a long time and are cited by Rabbi Yehudah, a third century Babylonian Jewish authority. Their ancient origin and survival hint at strong mystical powers. "Their function in the traditional ceremony," explains Adler (p. 181) "is to reframe the *kidushin* acquisition as an archetype of redemptive union." Since it is such a powerful formula, we must do our best to keep it as it is or change as little as possible when the need arises.

The first four blessings can remain as they are, or substitute the masculine with a feminine language to address the Divine.

The fifth blessing relates to the childless woman, *Tzion*, who celebrates when she gathers her children into herself. This text can express the gathering of the gays and lesbians, sons and daughters of *Tzion*, long rejected by our communities, back into her midst. To avoid any misunderstanding I suggest to replace (in the Hebrew sentence) the word *akarrah*, barren, with *Tzion*, and to add *bnoteiha*, her daughters, to make it egalitarian.

"Filled with joy and happiness will be *Tzion* gathering back into her with gladness her children. Blessed are you Divine source of happiness who make *Tzion* rejoice with her children."

Using the masculine language except for the very last few words, the sixth blessing appears as if it was written for a male same-sex couple. The only change we need to do is to replace the last two words- *chatan ve'kalah*, bride and groom with *ahuvim*, lovers. Women should replace *re'im ahuvim* with *re'ot ahuvot* and the last word- *ahuvim* with *ahuvot*.

"Source of joy, You will make lovers happy as you did in the very beginning to Your creatures in the Garden of Eden. Holy One of Blessing You radiate joy for lovers."

In the last blessing we need to replace "*Chatan ve'kalah*, bride and groom," with *ahuv ve'ahuvo* and *ahuvim*, "lovers," at the end of the blessing. The middle part '*kol chatan ve'kol kalah*' I suggest to drop. Women should change *chatan ve'kalah* to *ahuva ve'ahuvatah* and *ahuvot* at the end, and also change *kol chatanim* with *kol kalot* or *kol ahuvot*.

"Blessed are you Yah Creator of joy and gladness, Creator of lovers, of mirth and song, delight and rejoicing. May there always be heard in our streets and our cities, voices of joy and gladness voices of happy lovers under their chupah and voices of young people feasting and playing their instruments. Blessed are you Yah who cause lovers to rejoice with one another." (The translation of the sheva brachot is inspired by Rabbi Marcia Prager as appears in 'The Spiritual Journey of Kidushin—A Jewish Wedding')



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For gays and lesbians, the breaking of the glass can symbolize *shvirat hamuskamot*, the breaking of the social order which rejected them. Therefore their marriage becomes not only a personal celebration but also a political act of *tikun olam*. The couple may step on the glass together or break two glasses.

*Bedeken*- traditionally is the veiling of the bride and is part of the *kabalat panim* when the bride before the wedding receives the important personages of the community. They place a veil over her head and bless her. This *minhag* connects us with our biblical mother Rivkah (Rebecca) when she saw Itzchak her husband for the first time and covered herself with a veil (Genesis 24:65). Lesbians who wish to use the *hinumah*, the wedding veil, may choose to cover each other. This act can also symbolize the way we intend as a couple to help each other in every aspect of life including dressing one another. In a same-sex union I recently attended the couple decided to put socks and shoes on each other's feet in front of the guests. By doing so, each one treated the other as a king and both acknowledged in front of the community their intention to continue treating one another in that manner in their marriage life.

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