

A Dissent in Part, a Concurrence in Part to Rabbi Labovitz's Teshuvah on Egalitarian Marriage Within Halakhah

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Both Rabbi Gail Labovitz and I agree that the traditional form of Jewish marriage does not fit contemporary circumstances.¹ We are not the first Conservative/Masorti rabbis to seek to modify traditional Jewish marriage. The rabbis of the Rabbinical Assembly have been adjusting the parameters of Jewish marriage since the 1950's, and Rabbi Benzion Bergman's teshuvah on a more egalitarian ketubbah was discussed and voted upon during the first two CJLS meetings I attended after I was appointed to the CJLS in 2003. I quote from Rabbi Bergman's teshuvah in mine as a memorial and tribute to his work.

A number of factors inspired me to write this teshuvah. Rabbi Gail Labovitz presented her teshuvah for readings before the full CJLS in 2016- 2018, and the reception of her teshuvah by the CJLS made it clear that it faced a number of difficulties both practical and theoretical. In light of these, Rabbi Julie Schoenfeld, then CEO of the Rabbinical Assembly, asked me to write this teshuvah. Moreover, I disagreed with Rabbi Labovitz's central arguments, prompting me with another reason to write. Also, I had contributed to the section on weddings in *Moreh Derekh*, the Rabbinical Assembly Rabbi's Manual, published in 1998, and the egalitarian ketubbah and ceremony I included in those materials are very close to what I present in my 2020 teshuvah. (I have refined my materials over the years.) Neither the egalitarian ketubbah nor ceremony was included in *Moreh Derekh*, but Rabbi Jan Kaufman, an editor of the Rabbi's Manual, told me they had prompted serious debate among the editorial committee at the time.

I decided to abstain on Rabbi Labovitz's teshuvah because I appreciate the tremendous effort and thought she has put into her work and because I believe that a non-kiddushin form of Jewish marriage might be welcomed by a number of rabbis and/or couples. Nonetheless, I disagree with her central arguments and I believe that a fully egalitarian version of the ketubbah and kiddushin is the preferable solution. Furthermore, I am troubled by Rabbi Labovitz's pesak that the two ceremonies that she included in her teshuvah are the only non-kiddushin ceremonies valid for the Conservative/Masorti movement (pages 46–47 of her teshuvah). In so ruling, Rabbi Labovitz has invalidated all other non-kiddushin modes of Jewish marriage and ceremonies that have been employed by RA rabbis and Jewish heterosexual couples, a ruling that has serious ramifications for those couples and rabbis who have used them or are planning to use them, and I am disturbed by this negation. [I must emphasize that I have termed the Aramaic and Hebrew ketubbot and ceremony I offered in my teshuvah as an egalitarian ketubbah and an egalitarian wedding ceremony. Other rabbis may devise other ketubbot (as many texts of the traditional

¹In addition, I agree with Rabbi Labovitz that *pilagshut*, discussed on pages 25–28 of her teshuvah, is not a good option for the reasons she mentioned there.

ketubah have been formulated and use) and other ceremonies.] I am open to other versions of an egalitarian ketubah and ceremony. Our teshuvot may inspire a flowering of other models, and I noted another egalitarian reconceptualization in note 54 in my teshuvah.

Rabbi Labovitz and I disagree on many levels in our central arguments:

1. I believe that the traditional forms of Jewish marriage, ketubah and kiddushin, can be maintained through reinterpretation in an egalitarian conceptualization. Rabbi Labovitz believes that kiddushin cannot be reshaped in an egalitarian mode and cannot be modified sufficiently.

2. We Conservative/Masorti Jews have been reimagining and reshaping many traditional non-egalitarian practices for a century or more. I wrote:

Reimagining kiddushin and ketubah in an egalitarian mode flows naturally from the spiritual values and ethical ideals we espouse as Conservative/Masorti Jews, and it manifests how our knowledge of the historical development of our tradition inspires us. Our profound love for our tradition means that we must reinterpret existing traditions to suit new social arrangements, and in so doing we invoke spiritual and ethical principles that have guided Jewish behavior to new circumstances... we are shaping a vision of what Jewish community and Jewish life should be, living in holiness and searching for God.

Some have argued that (certain) traditional mitzvot, rituals, and practices are so non-egalitarian in essence that they cannot be reinterpreted. (See also point 8 below) If reshaping traditional non-egalitarian practices cannot take place, whether in regard to marriage or other concepts, rituals, and mitzvot, then we have come to a roadblock, indeed a cul-de-sac, that will send us back a century.

3. I hold that the basic concept of marriage was bilateral and equal and that the social structure of Israelite and ancient Jewish society shaped it into being a relationship in which the groom/husband played the primary role. Rabbi Labovitz holds that the concept itself was originally unequal and, therefore, cannot be redeemed and must be abandoned completely because it is basically an unequal mode of acquisition and it has operated historically as such. I disagree sharply, and part of my disagreement stems from my knowledge and research into marriage and marriage contracts that were in use long before rabbis and indeed long before the ancient Israelites. The ketubah used among Jews and ancient Israelites for which we have documentation for as long as 2500 years ago is a special form of a general bilateral contract. In the social and legal circumstances in which it developed, the position of the groom was generally favored over that of the bride. The ketubah developed from a bilateral contract into a special contract for marriage in which the husband's privileged role in society meant that the husband took the initiative and the wife had to be protected in case of divorce or widowhood. Those socio-economic circumstances shaped the ketubah, and it is not the ketubah and kiddushin that shaped those socio-economic circumstances.

4. That those socio-economic circumstances shaped the language of kiddushin is demonstrated by the use of coinage. First, "market-value" is not determined through negotiation. Second, the

amount of the coinage is minuscule: the perutah is the smallest copper coin. Downgrading the coinage to a mere perutah, a monetary amount of the lowest possible value, demonstrates that the use of a language of acquisition is a convention without content. The language of acquisition is a metaphor employed to signal that at a specific point in time, a change in relationship has taken place. The parties to kiddushin are different from those to a real purchase, and the bride's consent must be obtained. Kiddushin is a legal act that is substantively distinct from the purchase or sale of property. The bride was never conceived of as chattel being purchased, as a slave-woman was (sadly) thought of.

5. Substitute and alternate forms of Jewish marriage incorporate elements of traditional ketubah and kiddushin as much as possible rather than creating entirely new rituals or rely upon secular models of marriage. This means that those who are proposing and using them are reinterpreting kiddushin rather than creating new forms of Jewish marriage. Onlookers, and even participants, would have difficulty recognizing the distinction (which is why Rabbi Labovitz's final draft provides for a required formal declaration that her ceremony is not kiddushin).

6. Rabbi Labovitz's most trenchant criticism is that I have created an egalitarian ceremony, not an egalitarian bond, and during the reading of my teshuvah before the CJLS in November 2019, she pointed out that I included a *tenai bekiddushin* (because I am aware of the issues involved in how gittin operate in the Conservative/Masorti community, especially as a member of the Joint Beit Din of the Conservative Movement since 2008, more on that below) and argued that it demonstrates that my ceremony does not create an egalitarian bond that can be dissolved in an egalitarian manner, while hers does. I disagree with the first critique — the ceremony and ketubah that reflects it are egalitarian in concept as well as form. Most intriguingly, while Rabbi Labovitz argues that her modes of effecting marriage are egalitarian, she herself includes a *tenai bekiddushin* statement to be signed by the groom and the bride (page 63 of her teshuvah). Should the same critique that she levelled at my teshuvah be levelled at hers? That is, by including *tenai bekiddushin*, she has demonstrated that her ceremony and documents do not create a true egalitarian marriage and that unilateral divorce initiated solely by the husband still operates for the modes of Jewish marriage she espouses.

7. Regarding the dissolution of the marriage bond created by the ceremony and ketubah that reflects it as detailed in my teshuvah: as I wrote, I hope to address the issue of egalitarian divorce and gittin in a future teshuvah, and while it may seem that I ought to have included this issue in my teshuvah on egalitarian kiddushin and ketubah, I am cognizant of how divorce and gittin operate in the Conservative/Masorti movement and how the Joint Beit Din of the Conservative Movement functions, especially as a court of last resort for women whose husband refuse to extend a get. The Joint Beit Din develops slowly: I joined it in 2008, and it took more than five years for me (with the assistance of Rabbi Debra Newman-Kamin) to put the issue of allowing mesadderai gittin to choose whether to use female or male witnesses for gittin on the agenda. Even now in 2020 we are still discussing whether to make this policy official (although a number of mesadderai gittin have been doing so anyway even without an official change in policy). Rabbi Bergman's teshuvah on *shali'ah le-kabbalah*, a way of allowing the ex-wife an active role in receiving a get in the traditional form of Jewish divorce, approved by the CJLS in 2000, is not followed by the Joint Beit Din. In light of my experience and knowledge, I believe that in the short term *tenai bekiddushin* is the most realistic way for a couple married through my ceremony

to dissolve their marriage, if a divorce takes place. My future teshuvah on egalitarian divorce and gittin, if approved, will take time to become operational.

8. A minor point: I included the possibility of a symbolic way of indicating that the couple are creating a shared household by placing the rings together in a cloth, an idea put forth by Rabbi Rachel Adler. Rabbi Labovitz argues that I should not suggest this because Rabbi Adler was trying to avoid (traditional unilateral) kiddushin. Perhaps, but this argument does not hold because, after all, the mitzvot, rituals, institutions, etc. that Conservative/Masorti movement has transformed were never intended originally at their creation (or continued practice) in antiquity, medieval times, or modernity to be egalitarian. This has not stopped us so far, nor should it in the future.

May we continue to shape our halakhah according to the ethical ideals and spiritual values we hold dear!