

A Proposal for the Text of the *Ketubbah*

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This paper was adopted as a Minority Opinion on April 27, 1983 by a vote of 5 in favor, 10 opposed and 5 abstentions. Members voting in favor: Rabbis Kassel Abelson, Ephraim L. Bennett, Robert Gordis, Mayer E. Rabinowitz and Harry Z. Sky. Members voting in opposition: Rabbis Isidoro Aizenberg, Jacob B. Agus, Morris Feldman, Edward M. Gershfield, David H. Lincoln, David Novak, Barry S. Rosen, Morris M. Shapiro, Israel N. Silverman and Henry A. Sosland. Members abstaining: Rabbis Ben Zion Bokser, David M. Feldman, Wolfe Kelman, Joel Roth and Alan J. Yuter.

Note: "The Text of the Ketubbah," a paper by Rabbi Morris M. Shapiro, was adopted as the Majority Opinion of the Committee on April 27, 1983 by a vote of 13-6-1. "Sociological Reality and Textual Traditions: Their Tension in the Ketubbah," a paper by Rabbis Joel Roth and Daniel Gordis, was adopted as a Minority Opinion by a vote of 6 in favor, 9 opposed and 5 abstentions. These papers also appear in this volume.

The Latin proverb *tempora mutantur et nos mutamur in illis* (times change and we change with them) is as much an admonition as it is an observation. No age in recorded history has seen so many radical transformations as has ours, and nowhere have these changes been more marked and far-reaching than in the area of personal relations. After due allowance is made for the exaggeration and sensationalism that accompany much of the discussion of the "sexual revolution," two conclusions seem to me to be incontestable:

- (1) New patterns of sexual behavior have been adopted by at least a sizable minority of young people in America today.
- (2) Jewish young men and women are highly represented among these practitioners of the "new lifestyles" in American society.

Undoubtedly, many factors enter into the present situation. Jews are probably the most highly urbanized group in the population; hence, their young people enjoy -- if that is the word -- a large degree of freedom from parental supervision and control, and from the constraints of traditional community standards. Moreover, Jews generally belong to the highly mobile middle class, for whom life patterns are subject to greater strain and change than in more stable levels of society. These groups are also more

exposed to new cultural influences, including those advocating or reflecting "advanced" patterns of behavior. Finally, and most fundamentally, American Jews represent the most deracinated religious group in America, with widespread ignorance of, and indifference to, Jewish moral standards being all too common.

Whatever the causes may be, the facts, I believe, are indisputable. Perhaps the most drastic modification of traditional mores has been the proliferation of premarital practices and extramarital relations in our day. I have called these phenomena "sex without marriage -- center of the new life-style."¹

Obviously, there can be no hard and fast statistics with regard to the increase and extent of these two types of non-marital relations in our time. A partial clue may be found in the number of brides who are not virgins at the time of their marriage and in the percentage of children born out of wedlock. Nearly half of all unmarried American women have had sexual intercourse by the time they are nineteen years old. Of the births to teenage girls that result from first pregnancies, 45% are illegitimate and six in ten of the legitimate births among girls in this age group were conceived before marriage. "To marry and then to conceive is the exception among teenagers." In 1950 illegitimate live births represented 3.9% of all births; in 1955, 4.5%; in 1960, 5.3%; in 1965, 7.7%; in 1970, 10.7%; in 1971, 11.3%; in 1972, 12.4%; in 1973, 13.0%. In the last seven years, the number of non-marital relationships in the U.S. has doubled.²

Rabbis today need no statistics to be aware of these trends among Jewish young people. Jewish couples who come to be married *kedat Moshe veYisrael* will frequently tell the rabbi that they have decided to be married after having lived together for some time. Even when such a declaration is not made, the same address for the bride and the groom will often appear on the marriage license.

Very recently there have been signs that some of the glamor of the "new morality" has been rubbing off, with the result that there is a return to more traditional forms of conduct, at least for a minority of young people. It is, however, very doubtful that this new and welcome trend has appreciably reduced the percentage of "meaningful relationships" (to use the current cliché-ridden euphemism) among the nonmarried or has substantially lowered the number of individual sexual intimacies outside marriage.

Manifestly, the challenges confronting the contemporary rabbi are great. If he is to make a genuine contribution to human well-being, his goal must not be to go back to the good old days, which were not so good when they were not old. He must seek to win the loyalty of young people for a viable sex code that will preserve all that is significant in the Jewish historical experience and its religio-moral tradition, while being sensitive to the new conditions marked by the new opportunities and temptations that confront

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our youth.

These are weighty matters that will require dedication, energy and insight over many years before progress will be noticeable. Here I should like to call attention to a problem facing the conscientious rabbi today that is, perhaps, minor, but is nonetheless real.

In view of the widespread changes in sexual mores, how is a rabbi to describe the bride in the *ketubbah*? Here another, perhaps lesser, factor, enters into the picture. In a day when the equality of women is widely accepted as an ethical value and is increasingly demanded by women as their right, many of us are sensitive to the description in the *ketubbah* of the state of chastity of the bride, when no such corresponding epithet is applied to the groom.

But this latter consideration aside, the problem becomes acute when the rabbi understands, or has been explicitly informed, that the bride has had sexual relations before marriage. To write *betulta* in the *ketubbah* means to perpetuate what is manifestly an untruth.

Undoubtedly, most of our colleagues follow the traditional procedure and write *betulta*, with a growing sense of discomfort. Perhaps we may salve our consciences on the ground that the time-honored formula contributes to peace in the household. As the Talmud tells us, "Great is peace, for even God bent the truth for its sake, as it is said, Sarah laughed, saying, 'My husband is old.' But the Lord said to Abraham, 'Why did Sarah laugh,' saying, 'I am old?'"³ Nonetheless, the Divine precedent is not applicable to our situation. Obviously, the peace that God preserved in Abraham's household is not at stake in the case of a couple who have been living together publicly before their marriage.

Another suggestion that has been advanced is to grasp the nettle and write *be'ulta* (deflowered)⁴ instead of *betulta* (virgin) in the *ketubbah*. This usage actually occurs in a *ketubbah* in the Taylor-Schechter Geniza Collection in Cambridge University.⁵ Some authorities, in fact, insisted on the use of the term *be'ulta* in the *ketubbah* when a divorced couple was being remarried, since it was obvious that the bride was not a virgin.⁶ In this case, of course, no stigma was implied by the usage.

However, to adopt this procedure in our situation today would mean publishing a private and intimate fact to the world, and it is not likely to win wide acceptance. A little less obvious, but carrying a negative connotation nevertheless, is the practice by some of our colleagues of using the term *itteta* (woman). It has also been proposed, whether in earnest or in jest, to write *be'ulta* so illegibly that it would look like *betulta*!

For self-evident reasons, none of the proposals mentioned is satisfactory. I should like to propose a new solution, one that has the double advantage of having a basis in tradition and taking modern sensibilities into account.

The basic principle that must be kept in mind is that the *ketubbah* is

concerned with describing the legal status of the bride, not her personal conduct or her standard of behavior. My proposal is based upon terminology to be found in several of the *ketubbot* extant in the Cairo Geniza which have been studied by M.A. Friedman in his painstaking work on these texts. However, it should be clearly understood that he is not responsible for the suggestion I am advancing.

Of the 67 fragments of the *ketubbah* extant that Friedman has published, approximately half preserve the designation for the bride. In the majority of cases, 24 instances, she is described as a virgin, in 4 she is called a divorcee (*mesabbakta*). However, in 4 instances (nos. 19, 24, 29 and 52) the designation for the bride is *panyeta*, the Aramaic equivalent of the Hebrew *penuyah* (single, unmarried).

Friedman suggests that the term may have been used to identify a bride who was entering her first marriage, but was known not to be a virgin, or a bride who had been married previously and whose status the court having ascertained, permitted her to remarry. In view of the absence of hard facts regarding the circumstances of these marriages, these explanations must remain within the realm of speculation. All that is certain is that the term was applied to women who were legally eligible for marriage.

Whatever the status of these medieval brides may have been, the term, which is to be vocalized *panyeta* (single, unmarried),⁷ would meet the contemporary problem admirably.⁸ I suggest that in lieu of the term *betulta*, we use *panyeta* (single) in all cases except that of a widow, a divorcee, or a proselyte. In all these latter instances, the terms presently in use carry no pejorative connotation and are entirely satisfactory.

I am not suggesting that the use of *panyeta* be obligatory. I propose only that it be recognized as a legitimate option for those of us who feel that the present usage raises issues of truth and equity that need to be faced and that can be resolved by the proposed term.

By reviving this usage of a millennium ago, we shall obviate any possible stigma or embarrassment to the parties concerned and at the same time obey the biblical injunction, "Love peace and truth."⁹ Here is a striking instance of the past serving to meet a problem in the present.

NOTES

1. This is the title of Chapter 11 in my book *Love and Sex: A Modern Jewish Perspective* (New York: Farrar, Straus & Giroux, 1978), which seeks to deal realistically and sympathetically with these relationships and the conditions which give rise to them.

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2. The data are derived from the Statistical Abstract of the United States (Table 271), taken from the United States National Center for Health Statistics (see *Love and Sex*, pp. 162-63).

3. *Bava Metzia* 57a. The biblical references are Genesis 18:12, 19.

4. Dated Fustat 1015, the document is 16.245 in the Taylor-Schechter Geniza Collection.

5. I am indebted to our colleague Mordechai A. Friedman's superb, exhaustive book, *Jewish Marriage in Palestine: A Cairo Geniza Study* (Tel Aviv and New York, 1981) for these references. The relevant data are to be found in vol. 1, pp. 117-18 and vol. 2, pp. 155-56.

6. Correctly, the form should not be *be'ulta*, which is a hybridization of Hebrew and Aramaic, but *be'ilta*, the *Pe'al* participle passive, or *meba'alta*, the *Pa'el* participle passive, which occurs in the Targum of Ruth 1:12.

7. Friedman transliterates the term as *penita* (vol. 1, p. 117). The form is the feminine participle passive of the *Pe'al* of the root *p.n.y.*, with the emphatic aleph (equivalent to the Hebrew definite article), hence, *panyeta*. Nongrammarians will recall the common talmudic *tanya*, which is morphologically identical with our term (except for the absence of the emphatic ending *ta*).

8. The financial stipulations for the *panyeta* in the *ketubbah*, which are essentially symbolic today, would remain as they are at present for a *betulah*, in accordance with the principle *kol Yisrael behezkat kashrut*. This presumption may fairly be made even today for the majority of Jewish brides. The legal principle *azlinan batar rubba* (we accept the majority as normative), is applied by Rav in all areas of law, while Shmuel restricts it to financial issues (*mamonot*). See, e.g., *Bava Batra* 92b and elsewhere. The standpoint presented in this note is in accordance with the views both of Rav and Shmuel.

When *panyeta* is used, consistency would dictate, as Professor Joel Roth has indicated, that the phrase *kesef betulaikhi* be replaced by *kesef kiddushaikhi*.

9. Zechariah 8:19.

