Jewish heterosexual marriage is based on an embedded inequity between the male and female partner. *Kiddushin*, the central legal act that creates a binding relationship between the couple is ritually and legally a unilateral act, performed by the male participant – he presents her with an item of value (a ring)\(^1\) and states “You are set aside (*m*kudeshet*) to me – thereby changing the status of the female participant and “betrothing” her to himself, such that she is now sexually forbidden to any other man; he is not similarly bound to her.\(^2\) The underlying inequity of Jewish divorce law too is a function and mirror of this imbalance: divorce undoes what was done at *kiddushin*, and so the one who binds must be the one who releases.\(^3\) Only the man may give the *get*, the Jewish divorce document, and it is his action alone that can terminate the marriage. *Kiddushin* and *get* are two sides of one coin, and the price has been all the additional material difficulties that can arise – for women in particular – in the course of the Jewish divorce process.

A variety of “fixes” have been proposed over time for the resulting problems, most notably to forestall the phenomenon of *agunot/m’suravot get*, women whose husbands withhold a divorce in order to extract money, child custody, and/or a more favorable divorce settlement, or simply out of spite and a desire to exert control over their (ex-)wives. However, not all of these possible solutions are accepted in all stream of Judaism that profess to be bound by the halakhic system (the many strands of Orthodoxy and Conservative Judaism most particularly). More fundamentally, these many proposals that have been put forth tend to have in common that they address symptoms, but leave the underlying disease in place. The thesis of this piece, rather, is that to make Jewish divorce a process that truly functions equitably for both Jewish women and Jewish men, we must go to the root cause of the inequities that currently exist. It is my
basic premise here that how we marry and how we divorce are integrally connected: marriage based on structural inequities yields inequitable divorce procedures, and a key means to achieve equitable divorce is to begin with equitable marriage. Could Jewish law provide for, or at least accommodate, alternative means of marriage and divorce? And if so, what other options might we find within the traditional legal sources by which to structure an egalitarian marital commitment between two persons⁴ and a concomitant procedure for undoing such a commitment – that is, what might be the legal underpinnings for an alternate ceremony, and (crucial in this context), how would such marriage be terminated when desired/needed?

Given all the issues that arise from marriage via kiddushin, it should not be surprising that some Jewish thinkers have begun to consider other models by which Jewish couples could create and mark committed bonds to each other, to be exclusive sexual and emotional partners and to create a Jewish household together. In terms of divorce in particular, in the absence of kiddushin there ought to be no requirement for a get to terminate the relationship either (though some other method might be necessary), and therefore no opening for all of the get process’ attendant difficulties and injustices. A variety of proposals for rethinking or replacing the legal structure of Jewish marriage are making their way into the public record, in journals and on-line, and sometimes through word-of-mouth. This work is not intended as a comprehensive review of all proposals either extant or possible (if such could even be accomplished); rather, I will survey below some of those proposals that I have encountered in my research (and through personal connections) that I believe most strongly consider alternatives to kiddushin and get as legal as well as ritual concerns.⁵

More particularly for my purposes here, I will discuss what might make these ceremonies binding, and how they are released (i.e., how divorce takes place); indeed, I believe a cogent argument can be made that these are intimately intertwined, in that it is the legally binding nature of the initial act that makes a legal process of severing necessary, and conversely it is the necessity of a severance process that attests to the initially binding nature of the relationship. Also to be considered is how these processes are (or are not) constructed so as to equalize and/or protect the legal rights of both parties at both the outset and the termination of the relationship. I see these as falling (currently) into two broad categories
and will discuss them as such: a) two suggestions that invoke the language and/or structure of *kiddushin* while deliberately seeking to do so in such a way that *kiddushin* itself does not actually take hold; b) two mechanisms that eschew the language and conceptual underpinnings of *kiddushin* altogether, and instead seek to create a ceremony and binding commitment between partners out of other elements of the halakhic system.

a) *Kiddushin*-like models

First, I will bring together two proposals coming from very different ideological perspectives and with very different intent, which nonetheless come to very similar conclusions about method. Both are attempts to preserve something of the form and language of *kiddushin*, while side-stepping the actual legal institution and its inherent difficulties and inequities. Where they particularly correspond is in their use of attempted betrothal declarations that are found in rabbinic sources but specifically designated there as invalid or of doubtful legal status towards creating legally binding *kiddushin*.

Dr. (and Rabbi) Meir Simha Feldblum writes from an Orthodox (and Israeli) perspective, and with the intent to address the social problem of *agunot/m’suravot get*. He is also aware that many modern (and he specifies, particularly non-religious) women would reject the premises of *kiddushin* were such premises, and their potential consequences, fully understood. Thus, he turns to what he feels is an acceptable alternative hinted at in writings of medieval halakhists and Talmudic commentators: *derekh kiddushin*, “in the manner of *kiddushin*.” This concept derives from the case in which the father of a minor girl has gone abroad and failed to maintain contact with his family. Due to her age, only her father should be able to contract a marriage for her; she cannot do so herself due to her minority, and no other family member has rights over her in this regard. Were he known to be dead, however, her mother and/or brothers could contract a rabbinically valid marriage for her. Some authorities, therefore, consider the possibility of her mother and/or brothers arranging a marriage also in the case of the absent father. Opinions differ; some consider this marriage to have the same force as in the case of the deceased father, while others consider it to have no standing as *kiddushin*, even rabbinically. Yet – and this will be the key point for Feldblum’s proposal – even those of the latter opinion may rule that because the “marriage”
takes place “in the way of kiddushin,” and with the intent to be a married couple, marital relations between the young woman and her “husband” are not to be considered licentious or forbidden.\(^\text{10}\)

Moreover, because the “marriage” is “in the way of kiddushin,” but not actually kiddushin, the end of the relationship requires no special act, and most particularly does not require a get.

Felddblum thus proposes “*derekh kiddushin*” as a model by which an alternate form of marriage may be allowed and recognized within the legal system as a form of valid connection between a man and a woman that is not to be deemed as prohibited licentiousness – but which is not legally binding *kiddushin* and hence does not demand a *get* to end the relationship. To be certain, he continues to privilege *kiddushin* as the optimal form of marriage within Jewish law and tradition; indeed, he imagines a two-tiered system that particularly divides along the lines of the religiously observant (who would surely continue to marry through *kiddushin* and the established halakhah) and the secular segment of the Israeli populace. However, when a (non-religious) woman (or a man, for that matter) rejects *kiddushin* – rejects a marriage based on a legal model of ownership, rejects a marriage in which she could be trapped at the whim of her husband\(^\text{11}\) – then a committed, monogamous relationship between the couple might nonetheless be absorbed into the category of “*derekh kiddushin*,” or even devised as such from the outset.

In the ceremony he proposes, the groom uses the words “*harei at m’yuhedet li*” – “behold, you are singled out for me” – a formula which is mentioned in BT Kiddushin 6a and later codes as only doubtfully creating *kiddushin*.\(^\text{12}\) The couple thereby forego the acquisitional nature of *kiddushin* and the unilateral divorce process if the marriage does not last, which is certainly materially beneficial to women.

Rabbi David Greenstein argues for a more thoroughgoing rejection of *kiddushin* in its traditional form, in that it relies on a “theory of marriage” that is built on exclusive and non-reciprocal sexual access for the man to the woman (and hence, in conjunction, assumes heteronormativity). However, he does embrace the concept of sexual exclusivity that *kiddushin* and the metaphor of ownership represent on a symbolic as well as a legal level: “...*there really is a profound sense of exclusive ownership* that stems from the feelings of love and relationship that are sanctified by a marriage...Moreover, the feeling works in two directions – both the claim of ownership over another as well the sense of being owned by another can be equally present and significant.”\(^\text{13}\) Mutualizing traditional *kiddushin*, however, does not suffice as
a corrective in his view, for reasons that rest on legalistic grounds as well as on those of ideology. Following Feldman’s lead, he too turns to a form of marital declaration that is mentioned but explicitly rejected as non-binding in rabbinic and later halakhic writings, found in Mishneh Torah (Hilkhot Ishut 3:2 and 6):

If she gave [the money/token of kiddushin] and said to him “I am betrothed (m’kudeshet) to you,” (or) “I am betrothed (m’oreset) to you,” (or) “I am a wife to you,” or in any language of bestowal (i.e., of herself to him), she is not betrothed... (3:2)

The words which the man should say when he betroths, their subject must be that he acquires a woman/wife, and their subject should not be that he bestows himself to her. How so? If he said to her or wrote in a document that he gave to her “I am your husband,” (or) “I am your betrothed,” (or) “I am your man/husband,” or anything of the sort, there is no kiddushin here at all... (3:6)

On this basis, Greenstein proposes a ceremony in which neither partner attempts to “acquire” the other, but rather each presents the other with a ring and makes a statement of his/her own commitment of giving him/herself to a spouse: “Harei ani mitkadesh/et likha/lakh,” “Behold, I am betrothed/set aside for you” (or, in Greenstein’s own translation, “I hereby sanctify myself to you...”). As he explains: “the gift of the ring is declared by this formula to exemplify a gift of self...each is creating a change of status to themselves and dedicating that changed status to the other...”

Because of the conceptual and procedural similarities between these proposals (despite some significant differences as well), they face some similar conceptual and legal/procedural challenges. Notably, while both of these proposals explicitly aim to avoid creating a halakhically valid state of kiddushin, it is somewhat less clear what by what alternative means marriages enacted through these methods might be considered legally binding on the participants. Feldblum asserts that the relationship created by “derekh kiddushin” is to be considered something other and more legitimate than
Yet as he emphasizes elsewhere, the key effect of the designation as “derekh kiddushin” is to remove the relationship from the category of licentiousness (and hence the forbidden), but also to avoid making it binding as rabbinic or toraitic kiddushin; it is not specified if the relationship binds in some other way, or precisely how. Greenstein too emphasizes that the relationship created by his ceremony is not to be understood as kiddushin, and even describes it as “non-halakhic” at one point, in the sense that it is not to be understood as conforming to previously established marital law. Intertwined with this question is that of how bonds formed in these ways are to be undone. One of the factors that should distinguish derekh kiddushin from concubinage, Feldblum argues, is that “according to our proposal…a procedure would be introduced for counseling and divorce, which is not the case regarding the concubine…” But while it may be argued (as I have already suggested) that the need to legally undo an act is itself a marker that the initial act had legally binding force, neither article delineates how such relationships are undone with the same degree of specificity given to the ceremonial creation of the relationship; Greenstein refers his readers in single end-note to the work of Rachel Adler (see below), while Feldblum appears to assign the task of creating a procedure to the (Israeli) rabbinic court system that would also oversee the original marriages.

b) Alternative Models Beyond Kiddushin

The following are two models that eschew both the conceptual underpinnings and language of kiddushin, in favor of drawing on other legal concepts within halakhah that could serve as a basis for a binding commitment between two people: partnership law and vows/oaths. The first of these is proposed by Dr. (and now Rabbi) Rachel Adler, in her critical work of feminist theology Engendering Judaism, under the name “Brit Ahuvim”/“Lovers’ Covenant.” The term Brit/Covenant in the name is central Adler’s conceptualization of marriage and the ritual and legal means by which a marriage ought to be created and maintained. Adler rejects the model of acquisition and ownership altogether:

“The problem with marital kinyan is not simply that it is unilateral, but that it commodifies human beings. The groom’s commodification and acquisition of the bride is not rectified by the
bride’s retaliation in kind...The vocabulary and constitutive assumptions of kiddushin cannot be made to reflect a partnership of equals.”

Thus she must instead find another basis on which to establish relationship: “We have just reached a point in history where it is possible to envision, and sometimes to realize, marriages in which two remain two, marriages that are not incorporations but covenants...This intention is not reflected in an act of acquisition. It can only be expressed by an act of covenancing.”

In conjunction with covenant, the legal model Adler finds most apt to the sort of marriage she hopes to establish is that of shutafut, partnership. Rabbinic texts regularly consider persons functioning as partners in various economic contexts, such as investing in trade goods, or owning property such as animals, slaves, or real estate in common. One also finds references to two or more persons who have “placed in a purse,” a symbolic/legal gesture of pooling resources (for example, Mishnah Ketubot 10:4 and Tosefta Ketubot 10:4). Maimonides, in Hilkhot Shluhin v’Shtafin 4:1 and 3, specifies that it is in fact this exact process that functions as the legal commitment to a partnership and the act that invests the partners with rights and liabilities regarding the profits or losses of the business transacted with the partnership funds/property:

When partners want to become partners, by what [means] does each acquire [rights in] his partner’s money, to be a partner in it? If they are partnering with money, this one brings his money and this one brings his money, and they place them together in one purse and both of them lift the purse. (4:1)

The partners who “placed in a purse” – this one [contributing] one hundred and this one two hundred and this one three hundred – and all used the money, and they [the assets] diminished or grew, the profit or the loss is [divided] among them equally, according to their number and not according to the money (i.e., the proportional size of each initial investment). (4:3)

A critical point here is that while there is an acquisition taking place, it is not an acquisition of persons. As Adler notes, “Because the laws of partnership developed out of the laws of joint ownership, the partnership is regarded as a kind of property in which the partners have invested.”
the partnership is created is both rights in the benefits of the investment and also “legal obligations for maintaining the partnership and its projects.” Most importantly, this is a model in which the legal relationship “is formed by mutual agreement, and each party has the power to terminate it.”

Although in later halakhic developments, it became possible (and even the typical practice) to seal partnerships by *kinyan sudar* (“acquisition by means of a handkerchief”) or even by the verbal agreement of the partners, it is the original rabbinic form that Adler adapts as the central legal/ritual act of *b’rit ahuvim*. The two persons being united in marriage each place a personal item of value – this could be an item of personal significance, or the wedding rings that the couple will subsequently wear – that represents his/her contribution of resources to the partnership into a bag, which the two then lift together and thereby each acquire their share and responsibilities in the partnership. Additionally, the document in which the couple detail their commitments and obligations to each other – which Adler refers to as both a “partnership deed” and a “covenant document,” thereby bringing together her two metaphorical structures – is an essential and constitutive part of the legal act. That is, when the couple “pool their resources” and raise those items up together, they thereby acquire their share in the partnership, but also the obligations of the partnership, which are detailed in the document.

As noted above, a critical advantage of partnership law as a model for marriage is that it does not replicate one of the outstanding problems of the *kiddushin* model; it is not unilateral in either its process of creation or its process of dissolution. Just as either partner may initiate proceedings to end the partnership under most circumstances, so either partner has the ability to initiate a divorce of a marriage enacted by *b’rit ahuvim*. Adler’s suggested process for dissolution of *b’rit ahuvim* is given a much briefer description than the ceremony that initiates the relationship, but at the core of her proposal is the adjudication of a *beit din*: “This procedure should be conducted by a court of three learned Jews.” If needed, the couple may turn to a trained mediator or a *beit din* to assist them in resolving issues such as dividing marital property, arrangements regarding children, and any residual financial arrangements between the former spouses. The dissolution of the relationship and the agreed upon terms should then be documented by the court in both Hebrew and the vernacular, and the document signed by two witnesses.
Adler does not suggest a specific language for the document prepared by the *beit din*, though this might be because each couple will have distinct arrangements and no standard language is possible or desirable.

One final model that I have encountered in the course of my research is that of vows (*nedarim*) and oaths (*shevuot*); in this regard, I am particularly indebted to Rabbi Julia Andelman for sharing materials from and making time to speak to me about her own wedding ceremony to Dr. Eitan Fishbane, which used the model of vows. From biblical sources onwards, Jewish tradition and law have emphasized the binding power of vows and oaths and the religious and legal obligation of the person making a vow and/or oath to uphold his/her word. Nonetheless, as early as the tannaitic period the rabbis recognized that not all vows and oaths can or should be upheld: that they made be made in haste without proper consideration for their seriousness and implications, that they can have unintended and unanticipated consequences, that the circumstances under which someone made or intended to keep a vow or oath can change, etc. The rabbis therefore established procedures whereby a person who had made a vow/oath could petition a sage, court, or panel of lay leaders to be “released” from the vow or oath when necessary. On the surface, therefore, the use of vows/oaths as a form of marital commitment between partners is quite straightforward; each party articulates a vow and/or oath of commitment to the other, encompassing at least sexual (and emotional) exclusivity, and most likely other obligations and responsibilities that we typically associate with marriage, such as sharing financial resources and obligations, participating in domestic tasks such as child-rearing, keeping Jewish practices in the home, and showing each other various forms of respect, support, and love. If at any point one or both of the parties feel that the relationship can no longer be maintained, he/she/they could then be released through the given halakhic process under the supervision of a rabbi and/or *beit din*.

That said, the making and releasing of vows and oaths has, on the whole, fallen out of Jewish practice in the modern period (if not before), and thus is not well studied or known by most rabbis and scholars today. Indeed, I myself will not claim to be an expert in any way on this topic, except to note that the law in this area is quite complex, and to observe that from even a beginning examination of this topic, it seems to me that there are several potential (though I think not insurmountable) areas of
challenge/concern that would need to be considered by those interested in reviving this model in practice. These relate both to the making of vows or oaths that can be effectively binding as a marital commitment, and, even more significantly for this work, with how such vows or oaths would be released, or in other words, how a divorce would be effected ritually and legally for a couple marrying in this way:

*The “public” vow/oath.* First, the sources distinguish a particularly binding form of vow/oath – one taken “on the understanding of the public” – that may be difficult or impossible to release. Maimonides (*Hilkhot Shevuot* 6:8) rules categorically that a vow made publicly (usually defined as the presence of three or more persons) and explicitly using the language of “on the understanding of the public” may not be released except in a case in which the vow is preventing the vower from observing a commandment. To be clear, the making of the vows or oaths in a public setting – as at a public wedding ceremony – does not in and of itself mean that the act is done “on the understanding of the public.” Nonetheless, if a couple want to be sure that they are not invoking this stricture, they may need to make this clear explicitly in some way.

What are valid grounds for releasing either a vow or an oath? According to halakhic sources, the potential grounds for releasing a vow or an oath may fall into the categories of either *haratah* (regret), or *petah* (literally, an “opening”). There is a great deal of discussion in the sources on how exactly to define the boundaries of these two categories, and how they relate to each other. In short, however, “regret” comes from the person who made the vow/oath, and may derive from either to the content of the vow/oath, or the state of mind in which it was originally made (that is, the person might claim that s/he took the vow/oath in a state of anger or agitation, and now having calmed down, regrets having done so). An “opening,” by contrast, emerges from a process of questioning and examination by the sage/panel who have been approached to grant the release, and has the sense of finding a possible consequence of the vow/oath which thereby leads the person to the conclusion that “had I known this would be the possible outcome, I would not have made the vow/oath.”

What is important to note is that in either case, it is necessary to find grounds on which the vow/oath taker wishes that the vow/oath had not ever been made, *from the very outset*. If one regrets a current effect of a vow/oath, but not having made the vow/oath to begin with, this is not sufficient to
release the vow/oath (see, for example, S.A., Y.D. 228:7). This also means that certain new circumstances (often referred to as nolad, “newly born”) can be problematic as a source of either regret or an opening, because it may be more difficult for a person to claim that s/he would not have made the vow from the outset when the current change in conditions was not expected and not something that could/should have been readily anticipated. There is, halakhically, a difference between regretting the vow altogether, and regretting it in the moment when circumstances change and make what was originally a reasonable vow/oath into a problematic obligation or restriction. It seems to me that there are therefore some obvious possible complications for releasing the vow or oath that established a marital relationship. That is, those being asked to release the vow would have to consider quite carefully whether the petitioner regrets having taken the vow at all, or whether s/he is experiencing a current desire to end the relationship now while still recognizing and accepting the reasons and motivations for having entered it at the outset. One can readily imagine, for instance, a person expressing regret now over a vow or oath to a partner who subsequently had an affair, but also being actually of the mindset that s/he wishes the partner had not cheated and that the original vow/oath (and the relationship) could have remained.

What happens when a vow/oath is released? There is some debate in the sources as to what happens legally to a vow or oath when a sage releases it – notably did it or did it not hold prior to the release? As the sources surveyed above regarding the grounds for overturning a vow/oath would suggest, the most commonly accepted view is that when a vow is released, it is released retroactively, as if it had never been made in the first place; in fact, this principle is already expressed in both the Yerushalmi (PT Ket. 7:7, 31c) and Bavli (BT Ket. 74b). In truth, there are also contradictory (and self-contradictory) indications in some of the sources, but if we accept the common understanding that vows and oaths are altogether nullified retroactively by the process of release by a sage, a few final issues of note arise. The most significant of these (at least from my perspective) is structural. When marriages are enacted through vows and/or oaths, and the process of divorce is thus ritually and legally based on the release of those vow/oaths, and the release of vows/oaths is accomplished by declaring them as if they had never been made, then what, if anything, remains of the marriage afterwards? The partners would indeed be legally free of each other without need for a get, but at the cost of never, legally, having had a binding
relationship between them to begin with. Indeed, any and all couples who choose to no longer be married would in effect have never been married. For both legal reasons and reasons relating to the subjective emotional repercussions for the couple themselves, a solution which recognizes the existence of the marriage while it was in force, even after the couple chooses to end it, would seem to be far preferable.  

To reiterate my claim at the outset of this piece: how one marries and how one divorces are intertwined. The origins of kiddushin in a polygynous and androcentric legal framework mean that its unilateral nature is difficult to uproot or alter, and so too the unilateral nature of Jewish divorce by means of the get process follows suit. The latter in particular has been repeatedly shown to put women in particular at a serious material disadvantage when a marriage fails, making them vulnerable to extortion in exchange for their release or even allowing for them to be held prisoner to a dead relationship. Measures may be taken to ameliorate both the ritual and legal inequities of kiddushin – such as giving women more of a voice in the ritual if not the legal act of kiddushin, and/or taking legal measures to attempt to limit the husband’s ability to abuse the divorce process – but none have yet been able to uproot the fundamental, underlying cause of the problem. We may have to face the possibility that kiddushin and get as the means of effecting and severing Jewish marriage are not redeemable as such.

It is not surprising then, that modern Jewish legal thinkers have begun to mine the halakhic sources for alternate means of effecting and validating a binding legal marital commitment between two Jewish persons, and have begun crafting ceremonies out of the resources they unearth and reinterpret. A means of committing to each other that recognizes and protects the personhood and equality of each of the participants at the outset is a good in and of itself, but also is far more likely to produce a fair and equitable result in the unfortunate circumstances when a relationship must be later severed by divorce. Although I have clearly expressed some of my own thoughts on the strengths of and challenges to various alternatives to kiddushin above, it is not my intent here to personally endorse one particular option over any others for the Jewish community at large – or at least for that segment of the community interested in and open to halakhic innovations of the sorts discussed above – even were it in my power to do so. Once again, let me emphasize that I do not even wish to claim that I have presented and exhaustive list of
possible options, either those that have already been proposed and/or tried, or those that might yet be imagined by a creative Jewish thinker who is both committed to egalitarian relations between men and women and a knowledgeable halakhic innovator. To my mind, at this moment in time the process is as necessary as the outcome. I only hope that this survey will serve as a small contribution to the discussion and an impetus to see it continue to grow and flourish.


2. This is a legacy of Judaism’s polygynous roots in the Bible and (at least in theory) early rabbinic halakhic literature. Technically, in fact, this remains the case despite the ban on polygyny – which was, in any case, adopted originally only by Ashkenazi communities – attributed to Rabbenu Gershom, Maor ha-Golah (Germany, turn of the first millenium of the common era), so that, for example, if an already married man were to enact kiddushin with another woman (who was unmarried and otherwise permitted to this man) in violation of the ban, the act would nonetheless be legally binding: see Darkhei Moshe (Rabbi Moshe Isserles, Poland, 16\(^{th}\) century) to Tur E.H. 44 and Beit Shmuel (Rabbi Shmu’el be Uri Shraga Phoebus, Poland, 17\(^{th}\) century) to Shulhan Arukh E.H. 44:7. Similarly the legal penalties and potential consequences of sexual contact outside the marriage fall mostly if not entirely on the woman and not the man.

3. At the core of the legal language of a get is the statement “You are hereby permitted to any man.” See Mishnah Gittin 9:3.
4. It should be noted that in addition to the inequities between the male and female participants in *kiddushin*, this legal model is also built on heteronormative assumptions. Although not the primary focus of this piece, much of what will be discussed here (particularly some of the alternate ceremonies that will be presented below) also has implications for creating more equitable marriage regardless of the gender(s) of the participants.

5. See also Gail Labovitz, “Behold You Are [Fill in the Blank] to Me: Contemporary Legal and Ritual Approaches to *Qiddushin*,” in *Love, Marriage, and Jewish Families Today: Paradoxes of the Gender Revolution*, ed. Sylvia Barack Fishman (Waltham, MA: Brandeis University Press/University Press of New England, 2015), 221–39; this article is, to an extent, an expansion of some of my work in that earlier piece. The other key source for my analysis here is the first draft of a *teshuvah*, a legal opinion, that I have submitted for consideration to the Committee on Jewish Law and Standards (which debates issues of Jewish law for the Conservative Movement, and of which I am a member) on creating more egalitarian options for Jewish marriage between differing sex partners.

6. And also *mamzerim*, children born to relationships that are technically adulterous, as for example when the mother’s previous marriage to a Jewish man was not terminated by a valid *get*. Meir Simha Feldblum, “The Problem of *Agunot* and *Mamzerim*: A Proposal for a General and Comprehensive Solution” [Hebrew], *Dine Yisrael* 19 (5757–58/1998): 203–16.

7. He claims that this has the further result of calling into question whether most women are in fact consenting to *kiddushin*, as legally required, with the result that the validity of the *kiddushin* in such cases should be doubtful: “there is a presumption, moreover an evident presumption, and moreover explicit statements from their mouths, that they consent only and solely to a commitment of faithfulness, and not to something like this from which they cannot be freed without the will of the husband...Therefore, there is great doubt if their *kiddushin* are valid according to the Torah or even rabbinically.” Feldblum, “The Problem of *Agunot* and *Mamzerim*,” 210, emphasis added.
See also (Rabbi) Danya Ruttenberg’s summary and discussion at https://alternativestokiddushin.wordpress.com/2006/07/31/the-daat-factor/.

8. See, for example, Mishnah Yev. 13:2 and Ket. 6:6; Tosefta Ket. 6:8; GenR 60:12. This is presented in rabbinic sources as an enactment for the protection of the girl; in the absence of a father, (having) a husband will ensure that other men do not “treat her in the manner of ownerless property,” that she is not vulnerable to sexual exploitation (BT Yev. 112b).

9. See, for example, Tosafot, B’ferush amar mar..., to BT Kid. 45b (who cite the She’iltot as a source, but see Feldblum, “The Problem of Agunot and Mamzerim,” 208, n7), and Tur/S.A., E.H. 37 (seif 14), who each start with this ruling, but also cite the contrary opinion (see next note).

10. In the words of the Rosh, Kid. chapter 2:8:

Therefore it seems that she does not have (valid) nissuin, even rabbinically; (but) in any case one should not forbid her (to enter the marriage) because she might be thought of as an unattached woman and [therefore] standing before him in licentiousness. For since she is with him in the manner of kiddushin and nissuin, this is not licentiousness. (And see also the Tur/S.A. passages already referenced in the note just above.)

11. Or, for various reasons, the couple cannot marry by means of kiddushin.

12. That it may create doubtful kiddushin – which would then demand a get m’safek, a divorce out of doubt (or “just in case”) – is, however, a source of critique to Feldblum’s proposal. See Monique Susskind Goldberg and Diana Villa, Za’akat Dolot: Halakhic Solutions for the Agunot of Our Time [Hebrew] (Jerusalem: The Schechter Institute of Jewish Studies, 2006), 247 (and particularly n517); Bernard S. Jackson, Agunah: The Manchester Analysis, Agunah Research Unit (Liverpool: Deborah Charles Publications, 2011), 281 (6.47). Note that the alternate formula suggested in the latter as preferable is similar to that of David Greenstein, discussed just below.

It is also worth noting that the ceremony, as Feldblum imagines it, is still hardly an egalitarian one, and hews almost exactly in its ritual structure to a “traditional” Jewish wedding.


16. These laws are derived, in turn, from Tosefta Kid. 1:1 and BT Kiddushin 5b (see also Rashi, *Ein kan beit mihush*).

17. Greenstein, “Equality and Sanctity,” 27. Further down on the same page, Greenstein writes that an additional advantage of this method is that it can be used for a same-sex pairing: “The trivial truism that traditional qiddushin has never applied to gay couples contributes nothing toward determining the essential nature of qiddushin as we value it…this approach recognizes that gender roles are not determinative in defining a sacred relationship.” For the wedding of a same-sex couple who did actually put together a ceremony with language similar to that suggested by Greenstein – with different/additional reasoning for grounding this language halakhically – see Orrin Walpert, “A Traditional Same-Sex Jewish Wedding,” available on-line at http://ritualwell.org/sites/default/files/Wolpert%20Ceremony%20for%20Public%20Distribution%20with%20images.pdf.


I discuss this concept/legal category of concubinage (*pilagshut* in Hebrew), and its relevance to this topic, at length in the full version of this work, “I Will Betroth You to Me with Righteousness and with Justice: To Create Equitable Jewish Divorce, Created Equitable Jewish Marriage,” forthcoming, *Nashim*. Note also Michael J. Broyde’s suggestion of the translation “faithful sexual companion” rather than “concubine”: “Jewish Law and the Abandonment of Marriage: Diverse Models of Sexuality and Reproduction in the Jewish View, and the Return to Monogamy in the Modern Era,” in
19. Greenstein, “Equality and Sanctity,” 26. On the following page (27), however, he redefines this claim, arguing that marriage and halakhah more broadly are dynamic and socially constructed institutions that grow and develop over time and as social norms and ideas change, and that it is the rabbinic leaders of the Jewish people who determine what “marriage” is, what the halakhah of marriage is; that is, it is within their powers to make such a change as the one he proposes, and this would, by definition, be “halakhic.”


22. Note that both items that will be discussed in this section are meant to encompass couples of any gender combination.


24. Adler, Engendering Judaism, 191. Note that although I am presenting Adler’s work after Greenstein’s here, his article appeared chronologically after her book, and some of his comments about ownership and marriage (and the distinction between taking possession of someone else vs. giving oneself freely to another) are expressly presented as a critique of her position.


26. Note that there are already hints of the use of this term, if not the full legal concept, in reference to marriage in the Yerushalmi (PT Ket 7:6 - or 7 in some versions - 31c; on the correct reading of the word here as “shutafut,” see Saul Lieberman, Hilkhot ha-Yerushalmi [New York: The Jewish Theological Seminary, 1947], 61) and the marriage documents found in the Cairo Genizah (see n28 below).

28. Adler, *Engendering Judaism*, 192. On how *b’rit ahuvim* is dissolved, see below. For the moment, it may be additionally worthy of note that the terminology of “partnership” for a marital relationship is also mentioned in several of the marriage contracts found in the Cairo Geniza and studied in depth particularly by Mordechai Akiva Friedman, and that especially intriguingly, the term appears in each instance in a clause detailing circumstances in which *either* member of the couple no longer wishes to be part of the marriage (does not want the “partnership” of the other) and has the right to initiate the divorce process. To be sure, this clause does not likely mean that the wife can leave the marriage entirely of her own volition (i.e., she could not divorce him), nor that a court could end the marriage on her behalf, but rather that the court would intervene at the wife’s request to compel the husband to grant a divorce (and she might forfeit certain rights regarding the collection of her *ketubbah*). Nonetheless, Friedman writes, “This felicitous term is particularly befitting in a stipulation which describes man and wife as equal partners in the business of marriage, each of whom can withdraw from the partnership at will.” See especially Mordechai Akiva Friedman, *Jewish Marriage in Palestine: A Cairo Geniza Study*, vol. 1 (Tel Aviv and New York: Tel Aviv University, The Jewish Theological Seminary of America, 1980), 329–30, and the documents listed in n56 there (and 312–46 more generally).

29. “An extension of the principle of...barter. When two articles are exchanged one for another, the formal acquisition of one of the articles automatically transfers ownership of the second article as well. Since there is no formal requirement for the objects exchanged in this way to be of equal value, the symbolic transfer of a handkerchief or some other small article from one party to another formalizes any agreements made between them.” Adin Steinsaltz, *The Talmud: A Reference Guide* (New York: Random House, 1989), 254.


Among the stipulations Adler recommends are sexual exclusivity, joint responsibility for children, and a commitment to care for one another towards the end of life, but the provisions that the couple make to each other are also negotiable (both at the outset and over the course of the marriage), as with any partnership agreement, and she also encourages couples to add or vary the stipulations in accordance with their individual circumstances. Adler, *Engendering Judaism*, 194.

In 2009, Dr. Adler’s son (now Rabbi) Amitai Adler and Rabbi Julie Pelc entered into *b’rit ahuvim*, and drafted the following language to include in their marriage document (e-mail correspondence, October 2009):

In the event, Heaven forbid, that the groom and the bride want or need to cancel this partnership, it will be cancelled by mutual consent between the two of them, by a document and by their signatures and those of two valid witnesses, before a rabbinic court; or, by the declaration of intent of one of them, in a document and by his/her signature and those of two valid witnesses, before a rabbinic court...And all of this is without the need for a *get* of divorce.

E-mail communication, November 3, 2015; private interview November 10, 2015. She in turn credited Rabbi Dr. Eliezer Diamond for providing halakhic guidance in crafting the wording of the vows, accompanying documentary language, and the structure of the ceremony. Additionally, I would like to thank Rabbi Daniel Nevins for putting Rabbi Andelman and myself in contact with each other.

Two additional examples of such ceremonies that I was able to locate on-line are:

Rabbi Dr. Haviva Ner-David, “How Gay Weddings May Influence Straight Weddings,”

Rabbi Dan Shevitz, “Ceremonies for the Commitment and Dissolution of Same Sex Unions,”
35. See especially Mishnah Nedarim chapter 8. Procedures were later codified in Mishneh Torah, *Hilkhot Shevuot* chapter 6 and *Hilkhot Nedarim* chapter 4:5-6; Tur/Shulhan Arukh, Y.D. *simanim* 228-230.

36. On the differences between vows and oaths – how they are made and how they function – see, for example, Maimonides *Hilkhot Nedarim*, chapter 3:1 (see also the commentary of David ben Solomon ibn Avi Zimra – Radbaz – Spain and North Africa, 15th-16th century) and 7; *Hilkhot Nedarim* 1:1. Awareness of these differences would be important for crafting a ceremony/legal binding commitment using one or the other form. As mentioned, Rabbi Andelman and Dr. Fishbane used vows; Rabbis Shevitz and Ner-David turned instead to oaths in their ceremonies.

Note also that in this discussion, “oath” refers to what the halakhic literature calls an “oath of expression” (based on the language of Lev. 5:4), that is, an oath making a factual claim that something has or has not occurred in the past, or (as is the most relevant case here) that the person taking the oath will or will not do something in the future. There are several other forms and usages of oaths in the halakhic system (for example, oaths regarding financial claims – such an oath that one did not steal an item given in trust, or an oath that one repaid a loan) – but any claims made here about the rules pertaining to oaths should be understood to pertain particularly to “oaths of expression.”

37. Biblical and halakhic texts from the earliest times and onward are at best ambivalent about whether it is acceptable to make vows and oaths if they are upheld, or whether the risks that vows and oaths will not be upheld outweighs any benefits and that the practice should be strongly discouraged. See, as just a few examples, Ecclesiastes 5:3-4; BT Nedarim 22a and 77b; Maimonides, *Hilkhot Shevuot* 12:12 and *Nedarim* 13:25.

38. For example, the entry just on *Hatarat nedarim* (the release of vows) alone (apart from the topic of making vows or oaths) in the *Encyclopedia Talmudit* (Volume 11) is 60 columns long (333–92).

39. Karo in S.A., Y.D. 228:21 notes differing opinions on the question; if the vow is made “on the understanding” of specific persons, then those specified persons may later release the oaths, but if made
open-ended (i.e., mentioning a general “public” but not specific persons), some say it may be released, while others rule that it is as if one specified those present and hence the vow could only be released with their agreement. The Rema records more stringent views. First he remarks that even when specific persons are named, “there are those who are stringent” and do not allow the release; further on he states that although there are those who at least after the fact accept the release of a vow originally made contingent on public understanding, “one should not rely on them.”

40. As both Maimonides (Nedarim 6:8) and Karo (Y.D. 228:23) state.

41. Thus, the ketubbah that Rabbi Andelman and Dr. Fishbane prepared to accompany and document their vows and oaths to each other opens with the statement that the commitment between them is made “...before trustworthy and upright witnesses and before relatives, friends, and honored teachers, but not on their understanding, the bride... and the groom... came and publicized that they are vowing and swearing...” (emphasis added).

Rabbis Shevitz and Ner-David take the opposite approach, each having the couple make their oath deliberately in the presence of a beit din and “on the understanding of this beit din” (Shevitz), or “on the understanding of the rabbis” followed by a listing of the names of the officiating rabbis (Ner-David). This is presumably in keeping with Karo’s view (see n39) that when particular persons are specified, then those particular persons may release the vow; indeed, Rabbi Shevitz explains his reasoning as follows: “the oath is taken al da’at bet din, which should leave no doubt regarding the power of the court to annul the oath in the case of a civil divorce.”

42. However, when the new circumstance is one that could be readily anticipated, then it may serve as a basis of regret or a reason why one would not have taken the vow.

43. This has some interesting parallels with the Catholic annulment process (see further discussion in n46 below), in which the declaration is given because from the very outset when the couple first “married” some aspect of the union “actually fell short of at least one of the essential elements required
for a binding union.” Subsequent events in the course of the marriage, in contrast, are only relevant if they can be understood as evidence reflecting back on the state in which the couple entered the marriage.

44. There are also a number of other technical points that might need to be taken into consideration, particularly regarding releasing vows. These include:

- One must make the request in person; since the process may involve probing and personal questions about the intent with which the vow/oath was taken, the content of the vow/oath, and/or the effects of the vow/oath, the petition cannot be delegated to an emissary.

- Since presumably both parties made vows or oaths to establish the binding relationship between them, similarly each would need to have their individual vows/oaths released.

- In S.A., Y.D. 228:20 and the commentaries thereto, there is an extended discussion regarding a case in which one made a vow or oath “on the understanding of his fellow,” which some understand to include a vow/oath made regarding the other, or to the other’s benefit. By this definition, vows of marital commitment and sexual and emotional exclusivity that one person makes to/regarding a specific other almost certainly fall into the category. In such a case and depending on the interpretation one follows, it may very well be that (unlike the giving of a get, for which either or both parties may be represented by an emissary and do not need to be present themselves, which can be of great benefit when the divorce is especially rancorous) for a release of the vow the parties must be face to face. According to the most stringent understanding, we may even require the active consent and participation of both parties in the release (meaning that while control over divorce/release is not restricted to only one party based on gender, now either party could hold up the release of the other).

45. For example, the question of whether and how to release a vow/oath for someone who has already violated their word (as, for example, would be the case for an unfaithful spouse in a marriage based on vows/oaths); the Shulhan Arukh, Y.D. 208:2, includes the suggestion that under certain circumstances the
punitive measure of making the offender return to observing the prohibition or obligation of the vow/oath for the same period of time for which s/he was in violation may be imposed before allowing a release.

46. Indeed, this is a substantive issue in Catholic discourse, given that a practicing Catholic may only enter a new marriage under the auspices of the Church while the first partner is still alive if s/he petitions for and is granted a “Declaration of Nullity” for the first “marriage.” As described by the United States Conference of Catholic Bishops: “a Church tribunal…declares that a marriage thought to be valid according to Church law actually fell short of at least one of the essential elements required for a binding union.” Yet the complications that flow from using this as the sole means for allowing remarriage when a prior marriage ends can be seen in the intense rhetorical energy also expended on distinguishing an annulment of the Catholic sacrament of marriage from a declaration that the marriage never existed:

“If a marriage is declared null, does it mean that the marriage never existed?”

No. It means that a marriage that was thought to be valid civilly and canonically was in fact not valid according to Church law. A declaration of nullity does not deny that a relationship existed. It simply states that the relationship was missing something that the Church requires for a valid marriage.”

(Citations from http://www.foryourmarriage.org/catholic-marriage/church-teachings/annulments/)

Similarly, see “12 myths about marriage annulments in the Catholic Church” (https://www.archbalt.org/about-us/marriage-tribunal/upload/Doc_12_myths_about_marriage_annulments_in_the_Catholic_Church.pdf), particularly “Myth Number Ten.”

For testimonies of practicing and committed Catholics who have been through the process and who have raised challenging questions about what it means to have their marriages declared null according to the Church (rather than once extant but now terminated), see, for example, Marian E. Crowe, “The Annulment Game: Let’s Pretend,” Commonweal, 123:15 (Sept. 13, 1996), 13–15, or some of the letters selected by Charles N. Davis in “Testimonies: Letters Sent to Catholics Speak Out,” in Catholic Divorce:
47. So too the heteronomative assumptions underlying *kiddushin* typically remain entrenched.