

A Jewish View of Marriage and Divorce

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What It Means To Be A Jew
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“It is not good for the man to be alone. I shall make a fitting partner for him” (*GN 2:18*). So begins Jewish tradition’s encounter with one of its most enduring values: Marriage. For Jews, marriage, as Eugene Mihaly once wrote, “is both the norm and the ideal.” Our tradition has always frowned upon celibacy.

In a famous Midrash (*Leviticus Rabbah 8:1*) a Roman matron approaches Rabbi Jose bar Halafta and taunts him: “This God of yours that you say created the world in six days? What has he been doing since then?”

Without hesitating, the rabbi responded. “Since the Holy One completed the work of creating the world, He has been busy arranging marriages.”

“Arranging marriages,” the matron sneered. “Anyone can do that. I’ll show you.” With that she took the rabbi to her vast estate and began randomly matching up her male and female slaves. The next day they returned and there was such a tumult from the anguished cries of the couples she had paired together, that she turned to the rabbi with chagrin. “Now I see what you mean. Arranging a good marriage is indeed a worthy task for God.”

“Indeed,” the rabbi concluded the discussion. “And each union that the Eternal One creates is as great a miracle as dividing the Red Sea.”

From this story we derive several points. First, marriage is God’s gift to and desire for humanity. Second, the idea that God arranges marriages underlies the common expression that Jewish men and women use when they refer to their partners as their *Bashert*—that is the one that God intended for them to marry.

“God waits impatiently for a man to marry. One who has no wife is without joy, blessing, goodness or peace.” (*B. Yev. 63a*) Rather than an indictment of those who for whatever reason are unmarried, the purpose of this Midrash is to extol a loving marriage as the highest ideal for which humans can strive.

As I explain to the couples whom I prepare for marriage and at whose ceremonies I officiate, it is hard to overstate the significance of this concept. I do not intend to argue over whether God literally arranges marriages. God’s workings are a mystery to me. That is the reason we come to worship God and do not expect God to worship us.

But I do know that for many centuries Jewish family life has been the envy of surrounding cultures. The root of that coherence and sanctity is clear: when one acts as if the person with whom one lives is not just someone they happened to meet, or, as in the olden days someone their parents selected for them, but as if that person were the one person on earth that God created for them to be with, they will treat that person differently than if they just happened to find one another. As one Midrash puts it, “Forty days before the formation of a child, a Voice proclaims in heaven, ‘So and so’s daughter is to marry so and so’s son.’” (*B. Sotah 2A*)

From a Jewish perspective nothing is more important and nothing more determines the quality of a person’s life than the marital relationship that he or she contracts. As the 14th century Spanish thinker Israel ibn Al-Nakawa wrote: “If a man is so fortunate as to have found a good wife, he shall never miss anything. Though he may be poor, he may regard himself as rich...Where there is love and trust between husband and wife, there will be riches and contentment; but if they hate each other, the contrary must happen.”

According to another Midrash (*B. Sanhedrin 39a*) a visiting Roman dignitary dining at the home of Rabban Gamliel, called the Almighty a thief, saying, “It says in your own Torah that He stole a rib from Adam.”

The rabbi’s daughter gave her father a look that said: “Let me handle this one, Dad.”

She then said to the official: “Since you mention thievery, we have been plagued by a thief ourselves.”

“Tell me about it,” the Roman asked, assuming his official demeanor.

“Well,” the daughter continued, “each night the thief comes and steals a silver goblet from us.”

Is there anything else that I should know,” the Roman asked.

“Yes,” the daughter responded, “Each time he steals a silver goblet, he replaces it with a gold one.”

The Roman looked at the father and daughter with amazement. “Tell that thief to come to my house every single night,” he replied.

Well, the daughter concluded, “That is exactly the type of thief our God is. He may have “stolen” Adam’s rib. But he replaced it with something much more sacred, a partner with whom to share all of life’s joys and sorrows.”

The Jewish view of marriage, though, bases itself on much more than midrashic fantasies. The institution of the Jewish marriage contract, traced back to the time of R. Shimon ben Shetach in the first pre-Christian century (although many scholars date it from an even earlier time) represents one of the greatest steps forward for women in all of legal history.

Put simply, the *Ketubah* placed a lien—in a time when women rarely had the means or opportunity for independent economic sustenance—on the husband’s property for a substantial settlement upon the dissolution of the marriage through either his death or divorce.

In addition to the all-important property lien, some of the provisions of the *Ketubah* as Louis Epstein describes them (*The Jewish Marriage Contract*, pp. 53-54) were:

1. A promise by the groom to pay the bride price and promised gifts to the bride.
2. The enumeration of the bride’s dowry.
3. A legal clause dealing with the penalty for the husband’s mistreatment of his wife.
4. The husband’s promise to support the wife economically and emotionally including the obligation to try to satisfy her sexually.

Even in the days when the *Ketubah* was a strictly legal document—which because the property lien was for more money than most husbands had on hand served as a major deterrent to divorce—it was the custom (as it remains) to decorate the *Ketubah* with beautiful symbols of love and warmth.

As Epstein puts it: “The form of marriage is one thing, its content quite another. The Jewish marriage is in content all that romance and union imply...If marriage is romance in content, it is purchase (only) in form.” (Epstein, p. 59)

A woman was never expected to renounce her independence in marriage. The famed Medieval commentator Rashi comments on the use of the Hebrew word *K’negdo* (“against him”) and its connotation of opposition in the first Biblical pronouncement on marriage in *Genesis 2:18*: “It is not good for man to be alone; I will make a fitting partner (literally translated) against him. Rashi (based on *Genesis Rabbah 17:3 and B. Yev 63a*) interprets the statement this way. “If the man is worthy, she will be his partner; if not she must be ‘against him.’”

In summary, then, a happy marriage is God’s ideal for men and women. As we all know though, things don’t always work out as God hopes. That is why the rabbis developed a thoroughly modern perspective on divorce.

Divorce

The basis for rabbinic discussion of divorce is found in Deuteronomy 24:1.

“A man takes a wife and possess her. She fails to please him because he finds (*ervat davar*) something obnoxious about her, and he writes her a Bill of Divorcement, hand it to her and sends her away from his hour.”

Before the institution of the *Ketubah*, there were no stipulations made regarding the conditions of divorce. As Solomon Zeitlin (*The Rise and Fall of the Judean State* (Volume I, p. 415) wrote: “In the case of his death or of a divorce, she (the wife) immediately lost any economic right deriving from her marriage.”

After the institution of the *Ketubah*, however, divorce became much less common because (with certain exceptions involving extreme behavior on the part of the wife) the husband upon divorce had to pay the wife the value of her *Ketubah*.

The *Ketubah* value for a first time bride was 200 *Zuz*, about enough to buy a small home. The *Ketubah* value of a widow or divorced woman who married was 100 *Zuz*.

In the *Mishnah* (the first post-biblical code of Jewish law) the question of proper grounds for divorce was debated by the respective schools of Hillel and Shammai. The Shammaites favored granting divorce only on grounds of adultery (similar to standards mentioned in the New Testament Gospel of Matthew 19:9). .” Shammai interpreted the term *ervat davar in DT 24:1* as a reference to the woman’s

center of sexuality and based his ruling that adultery was the only permissible grounds for divorce on that interpretation.

Hillel, whose view was accepted as Jewish law, gave the man the power to divorce his wife almost at will, subject to her *Ketubah* claims. Hillel and his followers understood *ervat davar* in a more general sense, simply as “something obnoxious.” Therefore he states that he could divorce his wife “even if she spoiled a dish (to annoy him.)” A few decades later Rabbi Akiba interpreted the phrase to allow a man to divorce his wife even if “he found another woman who pleased him more.” (*Mishnah Gittin* 9:10)

At first reading, the statement of Hillel and Akiba seem degrading to the women’s status but properly understood they represent a significant step forward. According to Solomon Zeitlin, (Volume I, p. 418) Hillel and his followers merely wanted to insure an expeditious way to terminate a loveless union. According to Menachem M. Brayer (see Jacob Freid, ed., *Jews and Divorce*, pp.37-38) Akiba’s statement means, “Give her a break, and give her a chance to get out in any possible way, not only on adultery.”

In other words the rabbis were way ahead of their time. As late as the mid-twentieth century in many of the United States couples who wished to divorce had to concoct and provide proof of grounds—such as adultery—for divorce. They often had to hire models to photograph in compromising positions with one of the spouses to provide evidence for courts to grant a divorce.

Hillel and Akiba were simply accepting the reality that sometimes marriages just do not work. In such cases, let the couple be divorced, let the woman receive the economic protection to which the *Ketubah* entitles her, and let each be at liberty to marry again if they choose and find fulfillment in the future.

Now the Mishnah and subsequent Jewish law only speak of the man’s right to divorce the woman, but not (some feminist point out almost with glee) of the woman’s right to divorce the man. Technically, they are right, but not in reality.

The *Ketubah* stipulates the conditions under which the marriage takes place. If the man changes the conditions of the marriage and the woman does not agree to the changes, she can take the husband to a rabbinic court which would find for the woman, and force the husband to divorce her and pay her *Ketubah* settlement.

For example, let’s say a man marries his wife and he works as a baker. Later he decides he can make more money as a tanner so he switches occupations. Let us further assume that wife objects to the change and says to her husband: “When you smelled like a bakery, I loved it, but now that you smell like a tannery, I can’t stand it, so please go back to being a baker.” If he refuses, she can take him to court for changing the conditions under which he contracted their marriage. If he persists, the court would find for the woman and force the man to divorce her and pay her *Ketubah* claim.

Similarly, if a man wished to move from a big city to a rural area or vice versa without his wife’s consent, the court would force him to divorce her and pay the *Ketubah*. The same standard would apply to a husband who refused to allow his wife to visit her family or who moved from one region in the land of Israel to another without his wife’s agreement.

In summary, although a woman could not legally divorce her husband there were many circumstances in which the court, upon her petition, would compel her husband to divorce her. In essence” commented Louis Epstein (p. 203), “Talmudic law recognizes the woman’s right to divorce her husband, or to be more exact, to institute divorce action.”

It has been popular for some Christian writers to emphasize Jesus’s pro-female inclinations and hold some of the Gospel anecdotes as evidence that Jesus was far more enthusiastic advocate for women’s rights than the Jewish world in which he grew up. A true understanding of the legal provisions of the *Ketubah* and of the case law regarding divorce that are extensively documented in the Mishnah testify against these claims.

While divorce laws in rabbinic times were liberal, community pressure against divorce was strong. As Louis Epstein (p. 195, based on *B. Nedarim 66b* and *B. Gittin 90a-b*) noted: “The rabbis repeatedly denounce divorce and declare the effort to bring about peace between husband and wife (*Shalom Bayit*) as among the loftiest of noble deeds.

Three Midrashic examples prove this vital point:

The first tells of the second century Sage R. Simeon bar Yohai. A couple approached him seeking to divorce and requesting that he prepare the appropriate documents. The rabbi knew the couple and their habits. He also knew that they should not be divorce. So he said: “I will prepare the

documents on one condition. Just as you celebrated when you married, so you must celebrate before your divorce.

The request seemed strange, but once upon a time, when the rabbi told you to do something you did it. So the couple held a party, and as the rabbi knew he would, the man began to drink. When he became merry, he said to his soon to be ex wife, "My dear, to show that I bear you no ill will, when you return to your father's house tomorrow, you may take as a token from this house, whatever is most precious to you." The man continued to drink and soon passed out.

Immediately the wife ordered the servants to place the husband's prone form on their bed. Then she requested that they carry the bed with her husband in it to her father's house. The next morning when the husband awoke, he demanded to know: "Where am I?"

His wife answered him tenderly: "Last night you said that I could take whatever was most precious to me to my father's house. And I have."

The couple was reconciled. (*Song of Songs Rabbah, Chapter 1*)

In a second example, a woman was so enamored of the preaching of the second century Sage Rabbi Meir that her husband became jealous. One day in a pique he told his wife not to come home until she spit in Rabbi Meir's eye. The rabbi heard about the quarrel and contrived to walk toward the woman. As she approached, he put his hand over his eye and began to shriek, "My eye, my eye! It hurts terribly."

The woman ran up to him and asked if she could help. The rabbi told her to look in his eye to see if she saw anything causing the pain. She said that she could see nothing. The rabbi shrieked louder and said, "Please spit in my eye so that whatever is in there will dislodge." Without thinking the woman spat.

"There," said Rabbi Meir. "Now go home and tell your husband that you have done what he asked, and let the two of you be reconciled." (*Numbers Rabbah 9:6*)

Finally there is the Talmudic reflection on the story of the "Jewish Annunciation" (as I call it) in *Genesis 18:1-15* when God told Abraham that Sarah although well past child bearing age (she was 90!) would have a son. Sarah laughed saying, "Shall I really bare a child as old as I am with my husband so old too?"

God asked Abraham, "Why did Sarah laugh saying shall I bear a child as old as I am?"

The Talmud (*B. Baba Metzia 87a*) points out that God—for the sake of *Shalom Bayit*—purposely refrains from telling Abraham that Sarah questioned his ability to father a child (or perhaps to engage in intercourse). The point of this story is that even God can fudge the truth for the sake of promoting harmony between a husband and a wife.

We see then that promoting marriage and preventing marital strife and dissolution were at the top of the rabbis's priority list. They saw arranging marriages as a worthy task for God, and the preservation and enhancement of marriage as the highest goal toward which humans can strive.

They actively encouraged free and loving sexual activity between husbands and wives. They saw sexual satisfaction as a woman's right just as much as a man's. (As an example of this ideal, see the discussion on marital sexuality in *B. Nedarim pp 20a-b.*)

They charged the man with direct responsibility for his wife's emotional and sexual fulfillment. Saying "A man must not cause his wife to weep, for God counts her tears." (*B. Baba Metzia 59a*)

The rabbis's idealism, though, was tempered by practical concern both for the man and the woman as a couple and as individuals. Rabbinic law understood that marriage often does not work out. If all efforts at reconciliation failed, the Sages did not wish the couple chained to one another against their will. They took strong legal steps to assure the dignity, freedom, and the economic well-being of the woman, both within the institution of marriage and in the case of divorce.

Yes, the rabbis were practical—sometimes brutally so. Yet they always upheld the ideal of marriage as a loving and equal partnership. "No man without a woman, no woman without a man, and neither the two of them without God (*Genesis Rabbah 8:9*).

The rabbis (e.g. *Genesis Rabbah 18:22*) ask why God took Eve from Adam's rib. The best answer I can give is that God did not take the woman from the man's head to be superior to him or from his foot to be beneath him but from his side to be his equal and from near his heart to be loved.

Amen.