

## ***Kiddushin: An Equal Opportunity Covenant, Not Only for Heterosexuals***<sup>1</sup>

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The international debate on same-sex marriage requires an authentic Jewish response from the Reform Movement. It should be in keeping with the criteria set out by Prof. Mark Washofsky:

We are Jews. We are the latest generation of that national, cultural and religious enterprise known as *yisrael*. Our religion is therefore inextricably bound up with the historical religious experience of the Jewish people. We, too, stood at Sinai. We do not and cannot understand ourselves as separate and distinct from the ongoing tradition that, for millennia, we have called Torah. Yes, we are modern, able to look critically at our imperfect tradition. But we are not radically separated *from* tradition. We hold it, not at arm's length, but in a powerful embrace close to our heart. Thus, we seek to explain ourselves by constant recourse to our sacred sources; we justify our religious choices by means of argument that is constructed from, expressed through and energized by the texts of our tradition. Our discourse is not chiefly the discourse of science and philosophy, but rather that of Torah and text. We strive to build a religious life that, though it speaks to us as moderns, is unmistakably Jewish in form and content.<sup>2</sup>

Our position on same gender marriage, to be authentic, must be rooted in a reading of sacred texts. All readings of sacred literature are selective. The texts we lift up as central determine our understanding of the nature of humankind and of our intimate relationships.

A primary ethical and meta-*halachic* principle in Reform Judaism is the egalitarian principle. Rooting itself in the first creation narrative, *adam* (humankind) is created in the image of God; both male and female are identified

as *adam*. If there is one agreed upon principle in Reform Judaism, which is beyond compromise, it is the egalitarian principle. In marriage it means that husband and wife have equal worth and equal responsibility. At least in theory there are no predetermined role expectations or limitations.<sup>4</sup> The *halachah* must be changed to reflect this commitment to male/female equality.<sup>5</sup>

The same verse from Genesis upholds the uniqueness and preciousness of each person, regardless of sexual orientation.

In Judaism, sanctification is an act of separation that causes one to be in God's presence and/or to live in relationship to God. *Imitateodei* (the imitation of God) is a major mode of sanctification. It is a reciprocal process.

You shall sanctify yourselves and be holy for I am the Eternal your God. You shall faithfully observe My laws. I the Eternal make you holy.<sup>6</sup>

In Reform Judaism, *kedushah* (holiness) is primarily but not exclusively an ethical category.<sup>7</sup> For example, in Gen 2:2–3, God rests, blesses, and hallows the seventh day, thereby creating Shabbat. Each week the Jew does the same thing in order to create Shabbat. Without human action Shabbat does not come. The time remains in the category of *chol* (ordinary) rather than *kodesh* (holy). If the Jew does not do what God does, Shabbat does not come. It remains only *in potentia* (unrealized). The primary rationale for Shabbat observance is provided for by the Torah itself as a reminder of Creation and Redemption. These theological concepts have important ethical implications, and in relationship to marriage, Creation and Redemption are the basic themes of the *Sheva Berachot* (Seven

Wedding Blessings). In Lev 19:1ff., our imitation of God as the means of achieving holiness is escribed in great detail. An analysis of the passage demonstrates that the emphasis is verwhelmingly on ethical behavior, but there are also acts that distinguish a Jewish society from others. The hermeneutic of a Reform Judaism is an ethical critique of *kedushah* (holiness). But to identify the holy only with the ethical is a grievous error. Holiness means living a life in relationship to and in the presence of God. Marriage is the sanctified relationship *par excellence* that sets the parameters of all other relationships. *Kedushah* is acquired through fulfilling the *mitzvot*.”<sup>8</sup>

Reform Judaism, in its quasi-*halachic* guide to Jewish living, *Gates of Mitzvah*<sup>9</sup> asserts that marriage is a *mitzvah* incumbent upon every Jew.

It is a *mitzvah* for a Jew to marry and to live together with his/her spouse in a manner worthy of the traditional Hebrew designation for marriage, *kiddushin*.<sup>10</sup>

It is the meaning of the term *kiddushin* which is essential to our understanding of Jewish marriage. Only when we understand the values that define the word will we be able to ask the appropriate *halachic* questions. One of the best descriptions of the meaning of marriage as *kiddushin* in Reform Judaism is found in an essay by Rabbi Herbert Bronstein in *Gates of Mitzvah*. The essay is both definitional and emblematic. It does not define the *halachah* of marriage but it describes the theology and ethics that must be represented by the *halachah*.<sup>11</sup>

Nothing clarifies the Jewish attitude toward marriage quite as well as the traditional name for the wedding ceremony, *kiddushin*, derived from the Hebrew *kadosh-holy*. As we come to understand the deeper meaning of *kadosh*, we may begin to appreciate why Jewish tradition reserved the word *kiddushin* for marriage.

In the outlook of Judaism, all existence is derived originally from God and is, therefore, potentially holy. Time and space, God-given, are sacred but can also be desecrated by idolatry—the worship of things or of self. In consequence, we set special times and places aside for respect, for reverence, so that they may be kept apart from the realm of the profane, from exploitation for material gain and utilitarian usage.

Humanity lives, however, not only in the dimensions of time and space, but also, from birth, in the dimension of relationships. And while all relationships, like all time and space, should be considered essentially sacred, certain relationships are especially exalted. In Judaism, the Holy of Holies of all relationships to which the poetic genius of the Hebraic spirit turned most often for the paradigm of the covenant between God and Israel, was and is the covenant between husband and wife (see, for example, Hosea 1 and 2). A sacred entity comes into being in Jewish marriage. As in the Kiddush of Shabbat we set apart a period of time as holy, in *kiddushin* husband and wife set each other apart. Jewish tradition considered the woman who married as *mekudeshet* “made holy,” set aside and apart for her husband, consecrated and thus inviolate. In the view of Reform, this “setting aside” is mutual; both husband and wife are consecrated to each other.<sup>12</sup> They create a sacred entity in the act of *kiddushin*, consecration.

In the Jewish marriage service, in the very act of consecrating a particular relationship as holy, the potential sanctity of all relationships is asserted. Husband and wife represent the bond between God and humanity, the ideal toward which all human relationships should strive. *Kiddushin* is the rooting of the human in the realm of the sacred, with the goal that all our relationships become holy, bearing the blossom and fruit of life.

The word *Kiddushin* is derived from the Hebrew root *q-d-sh*, meaning to set apart as distinct, unique, sacred. Midrashically *matan Torah* is understood as a marriage ceremony between God and the Jewish people, in which God the groom presents Israel the bride with a *ketubah*, namely the Torah. Each Jewish marriage

is a replication of this moment. Jewish marriage is undergirded by a sacred contract, a *brit*. The text is read and studied and lived. While this description must be adjusted for our current understanding of the equality of men and women, and adjusted to eliminate its inherent heterosexism, the concept of a sacred contractual partnership between two people is a good starting point. Rooting *Kiddushin* in partnership law rather than in property law reflects the new reality of a world that strives for gender equality. Sanctity involves both separateness and morality. Acts and objects possess holiness when they relate humans to God. The purpose of *kiddushin* is to define family beyond the biological parameters of descent. Its goal is the perpetuation of the human species as well as the Jewish people. It is rooted in the universal, i.e., the story of Adam and Eve, and in the particular, i.e., the story of Abraham and Sarah.

Maurice Lamm, in his book *The Jewish Way in Love and Marriage*,<sup>13</sup> offers seven axioms for sexual conduct in Judaism: (1) The human being is not an animal, (2) the human being is not an angel, (3) human sexuality is clean and neutral, (4) sexuality cannot be separated from character, (5) human sexuality has meaning only in the context of relationships, (6) sexuality has value only in a permanent relationship, (7) sexuality needs to be sanctified. While Lamm would be scandalized by my use of these criteria to justify same-sex marriage, he sets forth a description of sexual conduct that can describe both heterosexual and homosexual relationships.

Steven Greenberg, in his new book *Wrestling with God and Man*:

*Homosexuality and Jewish Tradition*, offers a very interesting and, as far as I can tell, novel interpretation of Lev 18:22.

<i>Ve'et zakhar</i>	And a male
<i>Lo tishkav</i>	you shall not bed (sexually penetrate)
<i>Mishkeve ishah</i>	(engulfing one's penis) as in the lyings of a woman
<i>Toevah hi</i>	it is abhorrent. <sup>14</sup>

He points out that *mishkeve* is used once more in Jacob's curse of Reuven for raping Bilhah. He concludes that what is prohibited in Lev 18:22 is sexual intercourse that is violent or humiliating. He writes:

Sex for conquest, for shoring up the ego, for self-aggrandizement, or worse, for the perverse pleasure of demeaning another man is prohibited—this is an abomination. The verse now reads as follows:

<i>Ve'et zakhar</i>	And a male
<i>Lo tshkav</i>	shall not sexually penetrate
<i>Mishkeve ishah</i>	to humiliate
<i>Toevah hi</i>	it is abhorrent.

This reading of Leviticus 18:22 is a law against sexual domination and appropriation, and is a rather radical approach to the biblical verse. It is a reading that offers gay people a way to reconnect to God, Torah, and the Jewish people. While sources under girded this interpretation as traditional, talmudic and biblical have never before been used together in concert toward this end.<sup>14</sup>

Rabbi Greenberg then proceeds to describe a particular way of interpreting a text in which the particle *et* offers the rabbis an opportunity to open up a text to new meaning—to say what was left unsaid.

There is only one prohibition in Leviticus 18 that begins with the word *et*.

<i>Ve'et zakhar</i>	And ( <i>et</i> ) a male
<i>Lo tshkav</i>	you shall not sexually penetrate
<i>Mishkeve ishah</i>	to humiliate
<i>Toevah hi</i>	it is abhorrent.

The *et* adds a missing element—then the verse should be read: “You shall not penetrate either a ? or a male, to humiliate it is abhorrent.” The *et* adds an unspoken element of the text. There is an obvious candidate to suggest—a woman!

<i>V(nekeva o) zakhar</i>	And either (a female or) a male
<i>Lo tshkav</i>	shall not sexually penetrate
<i>Mishkeve ishah</i>	to humiliate
<i>Toevah hi</i>	it is abhorrent.

Until very recently only the sexual humiliation of men could be understood as important. However, as women become their own agents, as they approach equality with man, the verse cries out to be applied to women too. It could be argued that the superfluous word was ready and waiting for the moment when human equality would be fully extended to women, when as a culture we would be ready to interpret the verse to mean that the fusion of sex and power into a single act is abhorrent between any two people.<sup>15</sup>

Rabbi Greenberg’s interpretation is especially important from a progressive perspective, because it argues that the text is not about a sex act *per se* but about the use of the sex act as a form of humiliation. To now interpret it as rejecting the sexual humiliation of women is a great stride forward and promotes the concept that all intimate relationships worthy of the designation *kiddushin* must be egalitarian and nonexploitative.

Reform Judaism takes theology seriously, and when its liturgical formulae and ritual actions do not accurately reflect its ethico-theological underpinnings, the formulae and ritual actions are changed or re-interpreted.<sup>16</sup>

The primary metaphor for marriage, which dominates Jewish theology, is *brit*. The marriage metaphor is used to describe the covenant between God and the Jewish people. The wedding took place at Sinai with the Torah as the *ketubah*. It is this theme of covenant that dominates the thinking of Eugene Borowitz as Reform Judaism's leading contemporary thinker. He has described marriage as the most appropriate ethical context for sexual relations because it is the best vehicle for expressing intimacy and perpetuating the Jewish people, and because every Jewish marriage is a reflection of the covenantal marriage between God and the Jewish people.<sup>17</sup>

The Jewish community has found no more central and significant form for the individual Jew to live in... than the personal covenant of marriage. In its exclusiveness and fidelity it has been the chief analogy to the oneness of the relationship with God as the source of personal worth and development. In marriage's intermixture of love and obligation the Jew has seen the model of faith in God permeating the heart and thence all one's actions. Through children, Jews have found the greatest personal joy while carrying out the ancient Jewish pledge to endure through history for God's sake.<sup>18</sup>

Contemporary Jewish marriage is ideally an I-Thou relationship between the lovers. For Buber the Eternal Thou (God) is present in every I-Thou relationship, and the rabbis believed that God was present in proper moments of sexual intimacy between wife and husband. Theologically, Borowitz struggles with an understanding of the relationship with God, who is superior and more powerful than humankind, and how the relationship to that deity is modeled in marriage. Ultimately, Borowitz maintains that human dignity depends on autonomy and freedom.<sup>19</sup> He writes:

We have an old-new model for such open, unsettled but mutually dignifying relations, namely covenant” now less a contract spelled from on high than a loving effort to live in reciprocal respect. As the pain of trying to create egalitarian marriages indicates we cannot know early on what forms and processes most people will find appropriate to such relationships. We can, however, accept covenantal relationship as a central ethical challenge of our time and pragmatically learn how we might sanctify ourselves by living it.<sup>20</sup>

It is important to note that Borowitz realizes that marriage is undergoing significant change. Central to the covenant of marriage as Borowitz describes it is its egalitarian nature. This, he indicates, represents a substantial shift from the past. The relationship’s intimacy and egalitarianism is reflected in contemporary readings of Song of Songs. One of the most frequently invoked wedding texts is from Song of Songs, *Ani ledodi v’ dodi li* (I am my beloved’s and my beloved is mine). The book, seen as a whole, is a description of an ideal mutual loving relationship in which both lovers initiate sex. The woman’s voice in the relationship is as prominent as the man’s voice. The rabbinic interpretation of Song of Songs, as an allegory about the relationship between God and Israel, only heightens the religious meaning of sexual intimacy. Love is the dominant emotion. The lovers freely choose one another. Feminist readings suggest that the book provides a model for a loving relationship in which neither partner is dominant.

The relationships between Jonathan and David and Ruth and Naomi are marked by covenantal promises.<sup>21</sup> Jonathan and David’s is described as *brit* and is

marked by a ceremonial gift. Although neither relationship is a marriage, both are illustrative of the transfer of primary loyalty from the family of origin to another family. Each has elements of risk and sacrifice. Fidelity is their primary characteristic. The sexual component distinguishes them from marriage. The love and friendship that they represent are paradigmatic for the ideal marriage. Human love is also the love of God. Proper marriage has a deep spiritual dimension. The *shekinah* is present in the partners' sexual intercourse. This is further reflected in Hosea 2:21-2222: "I will espouse you forever. I will espouse you with righteousness and justice and loving kindness and compassion. I will espouse you in faithfulness and you shall know God."<sup>23</sup>

It is the *Sheva Berachot* that expresses the essence of marriage and it is to this text that we must look if we are to understand marriage. As Adler says, "it is these blessings which make it 'respectable' and reframe *kiddushin* as acquisition as an archetype of redemptive union."<sup>24</sup> God is creator and humankind shares the divine image with God and, like God, is capable of creation. The couple's love participates in the perfection of the Garden of Eden and the first marriage of Adam and Eve, whose *m'sader kiddushin* was God, and its joy anticipates the messianic fulfillment promised by the prophets. Its symbols are a cup of blessing and the *chuppah*, the marital chamber, which is symbolic of the intimacy they will share and the sanctuary they will build. For the home is the replacement for the sanctuary. It is *mikdash me-at*, the Temple writ small.

Rabbinic teaching considers celibacy unnatural. “It is not he who marries who sins. The sinner is the unmarried man who ‘spends all his days in sinful thoughts.’”<sup>25</sup>

The great revolution of the Torah in the realm of sexuality is to insist that sexual expression is legitimate only within the confines of a commitment to the sexual partner as a complete person. Sexuality outside of these bounds devolves into a form of objectification, in which a human being—a reflection of the image of God—is reduced to a useful (even if voluntary) object for sexual release. The Torah and subsequent rabbinic tradition, in defiance of the devaluation of the human being so prevalent in the world, insist that sexuality ought to further human dignity by embracing the entire person, not take advantage of their willingness or their utility. From the perspective of the Jewish tradition sexual intercourse is an expression of and an outcome of commitment and responsibility toward another person.<sup>26</sup>

The major concern of the rabbis seems to be that homosexual activity will be nonprocreative, and it will prevent men from marrying and women from marrying and producing children. Some of the most tragic family circumstances created by forcing gays or lesbians to live straight lives and marry have been the pain caused to spouses and children when gays and lesbians can no longer pretend to be heterosexual. In a society that accepts gays and lesbians, they will not feel compelled to be what they are not. The *mitzvah* of *p’ru ur’vu* (procreation) is considered extremely important. In the Talmud, the failure to propagate is compared to murder.<sup>27</sup> In rabbinic tradition the *mitzvah* is limited to males.<sup>28</sup> In Reform Judaism the *mitzvah* would be equally applicable to males and females. We have also come to recognize that some people genuinely ought not to be parents and, therefore, we have limited the *mitzvah* to those who are physically

and psychologically capable of performing it. The issue of procreation is complex. The biological preservation of the Jewish people remains an obligation. However, new reproductive techniques are being used with increasing success to overcome the problems of infertility. Artificial insemination has become a relatively common technique. For males, surrogate motherhood<sup>29</sup> and adoption are possibilities to fulfill the *mitzvah* of procreation. We might also consider mentoring of children or children's advocacy as substitutes to procreation. There are also issues of gestational, genetic, patrilineal, and matrilineal parenthood.<sup>30</sup> They are complex but not insurmountable issues.

The Ad Hoc Committee on Homosexuality in the rabbinate asserted "In Jewish tradition heterosexual, monogamous, procreative marriage is the ideal human relationship for the propagation of the species, covenantal fulfillment, and the preservation of the Jewish people." It then acknowledged that the ideal was not possible for some individuals either because they were homosexual or because they were psychologically, physically, or situationally unsuited to fulfill all the elements of the ideal, but such people still could have valuable and important relationships. It would not occur to us to refuse to marry a heterosexual couple that was nonprocreative.<sup>31</sup> "While acknowledging that there are other human relationships that possess ethical and spiritual value and that there are some people for whom heterosexual, monogamous, procreative marriage is not a viable option or possibility, the majority of the committee reaffirms unequivocally the centrality of this ideal and its special status as *kiddushin*."

Gay and lesbian relationships potentially lack only one characteristic of the ideal as set out in the report of the Ad Hoc Committee, namely heterosexuality. Since homosexuality is neither a sin nor an illness it should not be considered to be in the category of *to'eivah*. The new information that we possess justifies our understanding that we are warranted by the concept *shinui ha-itim* to say that same gender sex for individuals who are gay or lesbian is permitted under the same circumstances as heterosexual intercourse. Homosexuals are bound by the same *mitzvot*, *asei* and *lo ta-asei*, that are obligatory for heterosexuals.

Is gay and lesbian marriage *kiddushin*? I have argued in my paper *Love and Marriage Reform Judaism and Qiddushin*<sup>32</sup> that Reform Judaism has so radically changed its understanding of marriage that it fits into a different *halachic* paradigm called *Brit Ahavah*. In spite of what I believe is a cogent *halachic* argument by Rachel Adler, we are unprepared to give up the term *kiddushin* for many reasons, the most important one being that we believe Reform Jewish marriages possess the same sanctity as marriages performed by other Jewish streams, and we own the tradition equally with them. However, gay and lesbian relationships give us a unique opportunity to indicate our changed understanding of marriage by using a new ceremony and symbolizing the partnership aspects of marriage, rather than the property transfer aspects of marriage, and encouraging all couples to use it.<sup>33</sup> I prefer the term *Kiddush Brit Ahava* to *Kiddushin* because it better reflects our concept of an egalitarian relationship that is rooted in partnership. It better mirrors our understanding of Israel's relationship to God.

The wedding ceremony is that moment of magical transformation when two individuals become a *bayit beyisrael*. These layers of meaning do not disappear when the individuals are homosexual. The ritual format by which Jewish tradition affirms this transformation is the wedding. Since we know that sexual orientation is both unalterable and irrelevant to the capacity of an individual to form a loving and stable relationship with another, and since it is our business and our calling to promote the formation of Jewish households which affirm Jewish values, we should offer wedding ceremonies to gay and lesbian Jewish couples. Some Reform rabbis will call these ceremonies *kiddushin*, while others may prefer a different term that carries less historical baggage. Some will structure a ceremony filled with the rituals and choreography of the traditional Jewish wedding (*chupah*, wine, the breaking of a glass, the reading of a *ketubah*, and so forth), others may prefer to create new ceremonies whose imagery does not so obviously mirror that of the traditional wedding of bride and groom. But in either case, we will be fulfilling our rabbinic responsibilities to Jewish people in our time, in the world, and in the culture in which we live.<sup>34</sup>

Depriving gays and lesbians of the opportunity for Jewish marriage forces them to live in relationships that are, at best, second class relationships Jewishly. Given

what we know about human beings as sexual beings and the need to express intimacy physically, celibacy is not a viable option. A serious *halachic* approach will require that we establish a table of consanguinity that defines adultery and incest for gay and lesbian relationships. In removing homosexual relationships from the category of *ervah* we do not eliminate the category, we extend its boundaries.<sup>35</sup>

Brad Artson writes:

By developing a public ceremony to mark the beginning and termination of an exclusive committed homosexual relationship, the traditional Jewish standards would be clear and enforceable. In fact by extending these standards to include responsible gay and lesbian love, we would simultaneously strengthen our resolve to place sexual expression within the confines of commitment and fidelity for heterosexuals as well—applying one clear and moral standard to all.<sup>36</sup>

Marriage is the primary institution for the perpetuation of Judaism. It must reflect our highest values. Judaism is an ethico-legal tradition that uses the best of the new and the best of the old to determine God's will. In my view, the time has come to unequivocally declare that gay and lesbian sacred relationships have the same sanctity as heterosexual sacred relationships. *Kiddushin* is a *brit* between two loving persons, each of whom is created *b'tzelem Elohim*, and this *brit* is sanctified through the words and symbols of Jewish tradition.

### Notes

1. This paper draws heavily on my previous published work on marriage and same-sex marriage, "Love and: Reform Marriage and Qiddushin" in *Marriage*

- and Its Obstacles in Jewish Law*, Walter Jacob and Moshe Zemer, eds. (Pittsburgh: Solomon B. Freehof Institute of Progressive Halacha, 1999), pp. 27–56, and “Reform Judaism and Same Sex Marriage, an Halakhic Inquiry” in *Gender Issues in Jewish Law*, Walter Jacob and Moshe Zemer, eds. (New York: Berghah Books, 2001), pp. 169–83.
2. Mark Washofsky, “Reinforcing Our Jewish Identity: Issues of Personal Status,” *Central Conference of American Rabbis Yearbook* (1994), p. 54. Although I am quoting him accurately, I am quoting him out of context and intend to use the citation to defend same-sex marriage, whereas in his original paper he uses it for the opposite purpose.
  3. Gen 1:27; 5:1–2.
  4. I say “in theory” because women still carry a disproportionate share of familial responsibilities. Marriage as an institution is still in a state of flux.
  5. Societal change constitutes *shinui ha-itim* (change in the times). New information justifies a change in the *halachah*.
  6. Lev 20:7–8.
  7. We do not believe that God commands the unethical. Therefore, if a particular law is deemed unjust, we exercise our authority using the principle *Ein lo la-dayyan ella mah she-einav ro’ot*. See Joel Roth, *Halakhic Process A Systemic Analysis* (New York: Jewish Theological Seminary 1986), pp. 85ff. We also would apply the concept attached to some of the laws in Leviticus and Deuteronomy, that anything that oppresses or exploits another is prohibited

because we were strangers and slaves in Egypt. A hermeneutic of justice strictly and carefully applied is part of the Reform halachic process.

8. See Max Kadushin, *Worship and Ethics* (Evanston: Northwestern University Press, 1964), p. 223.
9. Simeon J. Maslin, ed., *Gates of Mitzvah* (New York: Central Conference of American Rabbis, 1979), p. 123. This slim but important volume is a guide to Reform Jewish religious living. It is designed to list and briefly describe the essential deeds, *mitzvot*, that constitute an observant Jewish life. The footnotes and essays were written to clarify the meaning of the *mitzvot* in a Reform context. In Reform Judaism, *taamei hamitzvot*, i.e., providing the rationale for a *mitzvah*, is an important aspect of the halachic process. It is used to defend or refine the meaning of an ancient practice or as a means to change that practice so that it conforms to contemporary understanding. In addressing an essentially minimally observant community, the rationale becomes part of the deed. This is especially important when societal changes or new knowledge require a break with the past. Rabbi Maslin, the editor of *Gates of the Mitzvah*, reminds us that the burden of proof remains upon the one who wishes to change a practice rather than on the one who wishes to maintain a practice. This is a fundamental principle of Reform Judaism's approach to the *halachah* for those in the Reform movement who claim that Reform Judaism is a halachic movement.

10. Ibid., pp. 123--24. The concept that marriage is the norm is problematic for those who are concerned about our sensitivity to single people, and also for those who believe marriage is an outmoded or incorrigible patriarchal institution. Marriage is understood as a *mitzvah* only for those who are physically and psychologically able. Reform Judaism reaffirms, even in the face of criticism and the high divorce rate, that marriage is a Jewish norm. In a similar vein, it affirms that procreation is a *mitzvah*. The assertion of norms or ideals that some cannot or will not abide by may cause pain, but this in and of itself is insufficient to cause us to abandon it.
11. Halachah is the crystallization of *aggadah*. This is most clear in Reform Judaism in which the tradition of *taamei mitzvah* is taken for granted as providing the rationale for observance. Reform has tended to reject or reformulate that which it cannot justify ethically, psychologically, or aesthetically.
12. The issue of mutual *kinyan* (acquisition) is discussed in detail below.
13. Maurice Lamm, *The Jewish Way in Love and Marriage* (New York: Harper and Row, 1982), pp. 23ff.
14. Steven Greenberg, *Wrestling with God and Man: Homosexuality and Jewish Tradition* (Madison: University of Wisconsin Press, 2004), p. 203.
15. Ibid., p. 208.

16. The double-ring ceremony and substitution of either a marriage certificate or an egalitarian *ketubah* for the traditional are among the most obvious examples in the wedding ceremony.
17. *Gates of Mitzvah*, p. 129.
18. Eugene Borowitz, *Exploring Jewish Ethics* (Detroit: Wayne State University Press, 1990), p. 256.
19. Eugene Borowitz, *Renewing the Covenant* (Philadelphia, The Jewish Publication Society, 1991).
20. Laura Levitt, *Jews and Feminism: The Ambivalent Search for Home* (New York: Routledge, 1997), p. 79.
21. See Ruth 1 and 1 Samuel 18.
22. For discussion of the this text, see Rachel Adler, *Engendering Judaism: An Inclusive Theology* (Philadelphia: Jewish Publication Society, 1998) pp. 156–67. The culmination of the passage, according to Adler, is nothing less than a prophecy of “a time when marriage will not be a relationship of master to subordinate, owner to property or omnipotent giver to extractive dependent. In a striking parallel to the hopes of contemporary ecofeminists, the prophesied resolution of the war between the sexes is to usher in a new covenant of universal harmony” (pp. 165–66).
23. This text often added or substituted for *Harei at mekedushet li be taba’at zo kedat Moshe ve Yisrael*. See David Polish, ed., *Maaglei Tzedek* Rabbi’s

- Manual (New York: Central Conference of American Rabbis, 1988), p. 54.
- See also Adler, *op. cit.*, pp. 165–66.
24. Adler, *op. cit.*, p. 181.
25. BT Kid. 29b.
26. Bradley Shavit Artson, “Enfranchising the Monogamous Homosexual,”  
*S’vara: A Journal of Philosophy, Law, and Judaism* 3/1 (1993): 24. For a  
complete discussion of marriage as the most appropriate Jewish context for  
sexual expression, see Eugene Borowitz, *Choosing a Sex Ethic—A Jewish  
Inquiry* (New York: Schocken, 1969), pp. 83–98.
27. It was taught: R. Eliezer stated, “He who does not engage in propagation of  
the race is as though he sheds blood; for it is said, ‘Whoso sheddeth man’s  
blood by man shall his blood be shed,’ and this is immediately followed by  
the text, ‘And you, be ye fruitful and multiply.’” R. Jacob said: “As though he  
has diminished the Divine Image; since it is said, ‘For in the image of God  
made he man,’ and this is immediately followed by, ‘And you, be ye fruitful  
etc.’” Ben ‘Azzai said: “As though he sheds blood and diminishes the Divine  
Image; since it is said, ‘And you, be ye fruitful and multiply.’” BT Yevamot  
63b.
28. BT Yevamot 65b; Qiddushin 34b–35a.
29. I have certain reservations about how women are recruited to be surrogate  
mothers, since it may lead to the exploitation of poor women. See “Surrogate

- Mother,” *American Reform Responsa*, Walter Jacob, ed. (New York: CCAR, 1980), pp. 505–7.
30. Noam J. Zohar *Alternatives in Jewish Bioethics* (New York: SUNY Press, 1997), pp. 69–84.
31. A more difficult case is the couple who on principle rejects the *mitzvah of peru urevu* (procreation).
32. See note 1.
33. I am aware that there is a debate among those who perform same-sex commitment or marriage ceremonies as to whether the ceremony ought to be the same or different from the standard Reform marriage ceremony.
34. CCAR Responsa Committee “On Homosexual Marriage” No. 5656.8 (New York: CCARNET.ORG), p. 25. This represents the minority view.
35. “Given that the function of *qiddushin* has always been to draw lines that separate us (i.e., “sanctify us”) from the *arayot*, it is implausible to suggest that this legal act can actually permit a sexual relationship which the Torah and all of tradition so define. Moreover, as we have noted, *qiddushin* effects a change in the legal status of the parties by making them subject to the laws of adultery and divorce and by expanding the range of the prohibited incestual *arayot*. Whatever the potential of homosexual couples to establish loving and stable relationships, these laws do not apply to them. The partners in a homosexual union cannot legally commit incest with each other’s relatives; they cannot legally commit adultery; and neither requires a divorce should he

or she desire to enter into a Jewish marriage. It therefore makes little sense to use the term *qiddushin* to describe a union which involves none of these matters and does not alter the legal status of its participants” (CCAR Responsa Committee on Homosexual Marriage, p. 26). The basic premise of my argument is that the same strictures that apply to heterosexual relationships apply to homosexual relationships. Therefore, I disagree with the statement of the Responsa Committee.

36. Artson, Enfranchising, p. 25.