Where You Go I Will Go:

A Halakhic & Symbolic Consideration of Ruth's Oath as a Wedding Vow

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Let every day be our wedding day
Let us marry each other in the grocery store and in the garden, pulling weeds together
And in the car, at every stoplight, let's renew our vows
And when night falls, let's step under the chupah of stars

Alison Luterman

This *t'shuvah* is dedicated to the memory of Rabbi Daniel Leifer z"l (1936-1996), who went out on many limbs to help bring queer people into Jewish belonging.

And, of course, to my husband, Oren Slozberg. *Where you go, I will go.*

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Introduction

My friend and colleague, Rabbi Sarah Tauber, z"l, once said to me that every halakhic question is a secret pastoral question.

This has proven to be a profound and helpful insight, begging the question of the purpose for which we engage in halakhic exploration. Who is our client? Is it the law as it has come down to us, or the person standing before us? On some levels it is both. But where we place our emphasis will guide the steps we take, the solutions we propose, and whether we are offering something dynamic (the "going" that is implied in the Hebrew word *halakhah*) or something static (the "stopping" that sits inside the word *p'sak,* or "legal ruling"*)*.[1]

Our tradition of halakhic responsa literature does care about people's experience. Talmud itself repeatedly imagines people's lives and limitations and the incentives inherent in them. Often these are expressed as a limiting factor for halakhic positions – e.g. if a *halakhah* is too difficult or impracticable for people to fulfill, they will not fulfill it, and the result will be an abrogation of Torah. And so human lives can have the effect of inspiring exceptions or overall change to established *halakhot.*

But where responsa literature is often silent is in examining people's motivations in wanting to fulfill a *halakhah.* Perhaps historically, when most Jews lived in communities of observant practice, such an inquiry was beside the point. You followed *halakhah* because it was the will and requirement of the community and of God; you sought exceptions when the *halakhah* became too burdensome or would produce hardship. The motivation of the individual to abide by *halakhah* was assumed.

But in an era and in communities in which many Jews do not see themselves as obligated by *halakhah,* we must look at their questions about how to do things Jewishly with an expanded eye. What are the pastoral dimensions of the question brought? What is the request for belonging, historic connection, or spiritual richness that stands before us? How does that shift the nature of our inquiry and the array of solutions that might present themselves? How do we say yes?

In this *t'shuvah,* I hope to bring some of this value set – not only our responsibility as heirs of a tradition who hold *halakhah* with honor, but also as creative transmitters of Judaism's riches to Jews who are expressing their yearning and asking for those riches to grace the holiest moments of their lives. These are the people I serve; people who have felt marginalized and who desire to be at the center of their Judaism. It is my desire and holy task to provide the tools to make that happen.

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1. This insight – distinguishing between *halakhah* and *p'sak* comes to me from Rabbi Simcha Daniel Burstyn in the name of Rabbi Daniel Siegel.

Background: Locked Out of the Chapel of Love

In an earlier draft of this *t'shuvah,* I created a fictional same-sex couple asking a question about the words they would speak at their wedding. But in truth, the question arises not out of a question from others, but from my own experience at a younger age. It now feels important to me as a matter of integrity to speak the question from the actualities of my own life instead of fictionalizing it.

My husband, Oren, and I have been a couple for almost 27 years. We both grew up in a time when legal civil marriage was not possible for same-sex couples; it was unthinkable in fact. When I came out as a gay person in 1981, part of that burden was resigning myself to the certainty that I would never be a husband in any legal sense, and probably never a parent. For a family-oriented Jewish boy this represented a tremendous, tremendous loss.

I grew up in a Reform Jewish family in a Chicago suburb. My Jewish education was strong and buoyant. I had fine teachers. My learning was supported by powerful summer camp experiences. In high school I spent a weekend at the Lubavitcher House in Milwaukee, which permanently enriched my sense of what a Jewishly immersive life could be. In college I studied at the Hebrew University of Jerusalem. My life was thoroughly Jewishly engaged. I was on track to apply to rabbinical school alongside my friends and peers in 1982. But this was a time before any seminary accepted openly gay applicants. It suddenly became obvious that coming out not only entailed the loss of a dream of marriage and parenthood, but of the rabbinate and perhaps even of a deeply Jewish life.

Oren, born in the U.S., grew up in Israel. He is fully bilingual, and like all Israelis, grew up with a ready foundation of Jewish learning and awareness of Jewish time. Like many secular Israelis, he developed a strong resentment toward the Orthodox religious establishment in Israel and a grudge concerning the Ultra-Orthodox exemption from military service when he himself had experienced the death and serious wounding of friends and family members. His parents belonged to a Conservative synagogue in Haifa, made up of mostly anglophone transplants. That synagogue experience did not speak to Oren's spiritual needs. When he came out of the closet in the mid-1980s, he chose to leave Israel to have a fuller, more integrated life. He came to California for college and ended up in the Bay Area. He found a spiritual home in

the Radical Faerie movement, and through that found his way into a Queer Minyan whose practices were a playful mix of Jewish Renewal and neo-paganism.

Oren and I met in 1994 at a *Seder Pesach,* where we discovered that we had each studied linguistics, and both of us had envisioned dissertations on the same Jewish dialect of Neo-Aramaic. It was an uncanny, auspicious, and highly Jewishly-infused beginning.

When Oren and I met, family formation was back on the table. Queer families were being created in many ways; children were being raised by couples or singles or teams of couples, with armies of eager aunties and uncles standing at the ready. But marriage itself was still unthinkable – it lived at the fringe of the LGBTQI movement's agenda. "Maybe, but certainly not in my lifetime," was my own take on it, and I was someone involved in the queer legal and political world!

Locked out of the chapel of love, it was also natural for gay people to have a skeptical take on marriage. The crutch of gender roles, inequality between partners, the easy, sexist habits and language that could and did take root – the fingerprints of these were all over the institution of traditional marriage. Many queer activists felt that the abolition of marriage would serve the world better than the expansion of it.

But somehow a movement began and caught fire. Perhaps it was because of the increased visibility, bravery, and – ultimately – political power brought about by the *churban,* the catastophe of the AIDS epidemic, that suddenly made marriage a possibility or at least a worthy objective. Perhaps it had to do with the private injustices demonstrated so publicly during the worst of those years – gay men unable to be with their partners in ICUs; denied access, inheritance, recognition; having their decision-making authority usurped by families-of-origin who had long since abandoned their gay children. Maybe the ultimate wins in the quest for same-sex marriage were, in part, a kind of reckoning, a cultural *tikkun.* While it might not be necessary for our purposes in this *t'shuvah* to wonder about what brought same-sex civil marriage into being, it is important to note that the price for achieving it was more than half a million lives. The right to marry was dearly bought, and what we do to honor and uphold same-sex marriage must reflect this sacrifice, and embody what we would have wanted to bring into the world for those who did not survive to see it. In writing these words now, I welcome these ancestors of my tribe and pray that these words do them honor.

Oren and I considered holding a union ceremony of some sort early in our relationship. But we had an ambivalence about it that kept us from making it happen. We knew our families and friends would celebrate with us. But it felt to us like we couldn't get ourselves out of the marriage rut – either we were imitating the forms of a traditional heterosexual marriage or we were pointedly deviating from the forms of a traditional heterosexual marriage. Either way, we would be invoking an institution that didn't want us and wouldn't have us. We found no way to divorce ourselves from marriage in a culture in which marriage is the ultimate expression of love and

commitment.

And so years went by. In 2004, San Francisco Mayor Gavin Newsom announced that San Francisco would begin issuing marriage licenses to same-sex couples. He had no legal authority to do so, but San Francisco – and the world – embraced this remarkable act of civil disobedience.

Oren and I were at first resistant, knowing these unions would not be upheld by any court. But the spectacle of love visible every day on the news, as couples stood in line for hours or days in the rain for the chance to marry – this spectacle affected us deeply, as it did the whole country.

We did marry in that wave, on the last day of it, in fact. The Court shut down the operation less than an hour after of our City Hall wedding.[2] Several months later our marriage was invalidated. Even though that was the anticipated outcome, it was surprisingly painful. For some months we had understood what marriage meant from the inside. We had experienced an unprecedented level of enthusiasm and support for our relationship. We had grown accustomed to speaking the word "husband" without irony. We experienced a kind of cultural belonging that was deep and unprecedented in our lives. Our desire for marriage became desperately important and personal.

In May of 2008, the California Supreme Court read the right to marry into the California Constitution[3], making same-sex marriage legal at the state level. In reaction, a referendum was placed on the November ballot to amend the Constitution to prohibit same-sex marriage. The initiative, called Proposition 8, looked certain to win.

And so on October 11, 2008, the day after Yom Kippur, when our families were all gathered here anyway from Chicago and Los Angeles and Tel Aviv and Haifa, Oren and I married again, on the back deck of our house, with our siblings and children holding the *chupah*. It was, like in 2004, a quick decision. We did not have months to work with our friend, Rabbi Eli Cohen, to develop a well thought-out liturgy that pleased us and passed some sort of halakhic muster. Instead, Oren and I requested the same language we had tacked onto our 2004 City Hall stock vows, the words of Ruth to Naomi in the Book of Ruth 1:16-17.

We loved this language for many reasons which I will discuss later in this *t'shuvah*. It represented an unconventional love. It was spoken by someone on the margin as she began of a journey toward the center. It had ramifications for family formation. Its words of promise were simple and direct and true, pledging a lifetime commitment. The formula was queer in the sense that it emerged authentically and spontaneously from women who were without power, rather than being language mandated by official, normative, authorized forms of the day. It was beautiful, and it was deeply and

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2. The story of our 2004 San Francisco marriage was the subject of a TedX talk I gave in 2017. It can be found on the homepage at irwinkeller.com.

3. *In re Marriage Cases,* 43 Cal. 4th 757 (2008).

anciently Jewish. Although I was not yet a rabbinical student, I had maintained my academic and personal engagement with Judaism throughout my adulthood. I had read Rabbi Dr. Rachel Adler's *Engendering Judaism* years earlier; I was versed in the legal and symbolic difficulties of the traditional Jewish marriage construct called *kiddushin,* and its ritual mechanism of *kinyan,* a form of acquisition. I had no interest in bringing these troublesome forms into the formation of my marriage.

And so we sat under the *chupah* on that October night – National Coming Out Day coincidentally – and recited the words which, when modified for grammatical gender, create for male couples a beautiful layer of internal rhyme that almost feels intentional:

כִּי אֶל-אֲשֶׁר תֵּלֵךְ אֵלֵךְ וּבַאֲשֶׁר תָּלִין אָלִין

Ki el asher telekh elekh; *uva'asher talin alin*.

"Where you go I shall go; where you lodge I shall lodge."

Three weeks after our wedding, Prop 8 passed. After initial uncertainty, our marriage and others like it were held valid, even while subsequent same-sex California couples lost their right to marry. We continued in that special status for seven years, not knowing whether our marriage would ultimately be upheld. This uncertainty was finally resolved just in 2015, when the US Supreme Court recognized same-sex marriage as constitutionally protected.[4]

I tell this story in its fullness to help bring about an understanding of how slow, frought, hard-fought and recent the ability of same-sex couples to marry is. In a consideration of halakhic forms pertaining to same-sex marriages, it is crucial to understand the personal and political weight brought to the question. The request, or perhaps demand, brought by same-sex couples to Jewish ritualists is one that carries inside of it history, loss, sacrifice, hope, joy and determination. Our Jewish response needs to mirror that level of seriousness. It cannot, I believe, be limited to a small tinkering with forms that have excluded queers for the entire history of our people. Any expansion of Jewish marriage to same-sex couples will obviously have significant effect; nonetheless, it cannot feel like a token gesture or a grudging accommodation.

This is the demand that my past self brings here to my present self. It is the demand that marriage equality brings to all of us. What would a wider welcome and inclusion look and feel like, and are the words of Ruth a natural, indigenous, and halakhically supportable way of supplying it?

4. *Obergefell v. Hodges*, 576 US 644 (2015).

The Sh'eylah: Where You Go I Will Go

In this *t'shuvah* we will look at this bonding language spoken by Ruth to Naomi in Ruth 1:16-17, set forth here in full:

כִּי אֶל-אֲשֶׁר תֵּלְכִי אֵלֵךְ
וּבַאֲשֶׁר תָּלִינִי אָלִין
עַמֵּךְ עַמִּי וֵאלֹהַיִךְ אֱלֹהָי׃
בַּאֲשֶׁר תָּמוּתִי אָמוּת וְשָׁם אֶקָּבֵר
כֹּה יַעֲשֶׂה יְיָ לִי וְכֹה יֹסִיף
כִּי הַמָּוֶת יַפְרִיד בֵּינִי וּבֵינֵךְ׃

Where you go, I will go;
And where you lodge, I will lodge;
Your people shall be my people, and your God my God;
Where you die, will I die, and there will I be buried.
Adonai do so to me, and more also,
if even death parts me from you.

This language, in the context of the Book of Ruth, was not intended to effectuate what rabbinic Judaism would call a marriage. Key *kiddushin* elements are simply not present. Nonetheless, on its face it seeks to create a lasting interpersonal and familial bond between individuals who are deeply attached but lack a recognized legal relationship. While rabbinic tradition has not analyzed the contours of any legal relationship established between Ruth and Naomi, it has repeatedly viewed this moment as Ruth's conversion to Judaism. These are therefore words that our tradition sees as having, all by themselves, transformative effect. They constitute a kind of speech act, even if we haven't yet looked at all that speech act's ripples.

So we ask this question: what are the halakhic effects and symbolic import of these words? For myself and my husband, and for any other same-sex couples who choose to voice this language under the *chupah,* what are the legal, social and spiritual ramifications?

Ruth's words, spoken and witnessed, are certainly sufficient to effectuate a civil marriage, whose definition and requirements are not nearly as exacting as traditional *kiddushin* marriage within halakhic Judaism. But beyond their secular effect, what do those words mean Jewishly? Do they constitute a vow (*neder*) or an oath (*sh'vuah*) or something else? Are they binding? Do they "establish a household in Israel" in some fashion? Do they establish *kiddushin* even without the usual *kiddushin* markers? What is the effect of these words being offered reciprocally? And how are these words undone should a couple wish or need to divorce?

And finally, a question that we do not need to solve here: if we establish that Ruth's words have meaningful *halakhic* effect, would they – could they – have similar *halakhic* effect for differently-gendered couples?

Premises and Process

It needs to be said that the project of this *t'shuvah* is somewhat different from that of *t'shuvot* historically. The question in this *t'shuvah* is not brought by halakhically observant Jews looking for a leniency or a new development in the *halakhah*. It is brought by progressive Jews who have not seen themselves as subject to *halakhah's* authority,[5] but who are seeking connection, rooting, deepening, belonging.

Marriage equality is now *dina d'malkhuta* – the law of the land. Same-sex couples who reach out to us for wisdom and ceremony will marry regardless of whether there is any halakhic framework within which to hold their union. But if they come to us, it means that placing the holiness of their union in a Jewish ritual context is important to them. It is for them a means of establishing an ongoing, living, life-enhancing relationship with our dynamic tradition.

This *t'shuvah* therefore represents an attempt to reach into our textual and ritual repositories to see if we can derive and develop a *halakhah* through which the Ruth language takes on new life, meaning and impact. We will explore what Reb Zalman's ideas of "integral *halakhah*" might have to say about both the process and the product. We will look at the Ruth Vow's metaphoric and symbolic value for LGBTQI people[6] and for any adults in the exercise of personal sovereignty. How do the symbolism and mythos of this language reflect and enliven a couple's experience in all Four Worlds?[7] And we will look at the arguable *halakhic* consequences of using this language as the mechanism for effectuating a lifetime bond within Judaism.

We begin this inquiry with a couple foundational premises. One premise is that love between consenting adults is good. It is to be honored and celebrated and seen as a source of joy and a vessel of *kedushah,* of holiness. We will not be arguing whether

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5. According to the research of law professor Roberta Kwall, "Generally speaking non-Orthodox Jews do not believe that Jewish law represents binding authority. For liberal Jews, the idea of observance based on any sort of command is foreign. As a result, the concept of faithfully following Jewish law in its entirety, because God commanded that we do so, just does not resonate with most non-Orthodox Jews, even those who profess a strong faith in God." From "American Orthodox Jews Can and Should Care About Whether Liberal Judaism Thrives," *Lehrhaus,* (October 24, 2019), found at https://thelehrhaus.com/timely-thoughts/american-orthodox-jews-can-and-should-care-about-whether-liberal-judaism-thrives/.

6. LGBTQI stands for "Lesbian, Gay, Bisexual, Transgender, Queer/Questioning and Intersex." This long *hishtalshelut* – outpouring – of initials represents decades of work of real people to give voice to their experience and to have that experience named and heard. I will sometimes use the word "queer" synonymously, even though it can have a charge to unaccustomed ears, since it is a reclaiming of an obviously disparaging term, and even though not every LGBTQI person identifies as queer. I am also aware that this *t'shuvah* addresses a specific question raised by two gay men, just as the marriage equality movement has focused narrowly on same-sex couples of a traditionally recognized gender. Applicability to other queer people might vary. Transgender people, including non-binary people, might or might not marry someone of the same legal or social gender. Bisexual people might identify as queer even when they live in what from the outside looks like a traditionally-gendered marriage. Ultimately, the next generation of queer Jews will have to do their own imagining and their own thinking about this. Stay tuned; it is just down the road.

7. By "all Four Worlds" I am referring to the kabbalistic notion of four dimensions of reality – physical, emotional, intellectual and spiritual – in which we all dwell simultaneously, with varying degrees of awareness

same-sex love is good. We will simply accept same-sex love as the undeniable and widely lived fact that it is.

Another premise is that our embrace of same-sex couples and other queer people needs to be unstinting, non-provisional, supportive, collaborative and celebratory. Queer people represent a substantial and growing proportion of our communities. LGBTQI voices must lead in considering these questions, and the storehouses of Jewish text, reasoning, ritual and imagination must be thrown open.

Another premise is that the prohibitions on male-male sexuality found in Leviticus 18:22 and 20:13 do not play a role in our discussion, except to the extent that they have been raised in other movements' positions that will be explored here.

I hold this line for several reasons. One is that the turf has been covered. Those for whom the words of Leviticus are still speaking loudly can turn to the work of scholars who have spent time re-interpreting, limiting or distinguishing them.[8]

Secondly, I do not think *mishkav zakhar* (the Hebrew term for the Levitical prohibition on sex between men) is relevant to our inquiry about love and marriage. It is a particular cultural habit, which one might identify as homophobic, that makes it impossible for some to talk about gay people's love or gay people's families without first talking about how they have sex.

And third, I want to challenge the heterosexist privilege that permits rabbis and scholars who have written about same-sex marriage to see the discussion of *mishkav zakhar* as academic and neutral. In fact, revisiting Leviticus every time a queer person seeks greater enfranchisement within Jewish life has a sharp shaming effect. Those verses have been used to silence, judge and punish gay people (including lesbians, *who are not in fact mentioned in them*) within Judaism and throughout the world, including death penalties in some countries. They are the source of a cascade of misery. Whatever *kedushah*-effectuating intent was once in them has long since ceased to be expressed through them. Instead, raising them in a discussion of love and marriage and family formation places an impediment in the path of seeing the universality of love and the ways we are all touched and molded by it. In a sense, bringing Leviticus into the room obscures the *tzelem Elohim* – the image of God – that queer people also represent, diminishing God in the process. I will therefore choose not to wound in

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of them. The idea here is that we need our *halakhah* not just to create a definable legal construct, which might exist somewhere in the physical dimension, but also to enliven us in the other dimensions. *See* discussion on p. 47.

8. See, e.g., Steve Greenberg, *Wrestling with God & Men: Homosexuality in the Jewish Tradition* (2004) or Jay Michaelson, *God vs. Gay: The Religious Case for Equality* (2011). Another summary of scholarly reinterpretations is included in the prologue to Orrin Wolpert's "Traditional Same-Sex Jewish Wedding" (2009), downloadable on ritualwell.org. Reb Zalman Schachter-Shalomi, *z"l,* re-reads the *mishkav zakhar* prohibition as referring to sexual exploitation of men by other (presumably heterosexual) men. His analysis is from the hip, but reflects his commitment not to allow *mishkav zakhar* to impede embracing the fullness of gay life and love. See Rabbi Zalman Schachter-Shalomi and Rabbi Daniel Siegel, *Integral Halachah: Transcending and Including* (2007), 150.

this *t'shuvah* by having an additional conversation about *mishkav zakhar*.[9]

What I do intend to do in this *t'shuvah* is to examine the difficulty that deeply gendered, traditional Jewish marriage – *kiddushin* – poses for same-sex couples. I will review and critique responsa from several denominational bodies, as well as an influential student *t'shuvah* arising out of the Renewal Movement, all of which seek to reckon with the same-sex *kiddushin* difficulty. I will look at the work of Rabbi Dr. Rachel Adler and the *Brit Ahuvim* she developed, and the doors she opens for reimagining how our relationships might sit within Jewish law.

Mostly I will encourage us all to imagine. What are the halakhic forms in which relationships could exist that we haven't thought of yet? What structures does Ruth's oath bring into being, what are its risks, and how joyfully will we assume them?

Kiddushin and the Problem of Egalitarian Marriage

1. *Kiddushin* and *Kinyan*

While Jewish texts – most notably *Shir Hashirim* – contain imagery of heterosexual love between equals, the institution of heterosexual marriage has been consistently constituted within Judaism as a relationship of unequal power. In biblical law, women's autonomy is subject to their husbands' authority; their promises provisional, based on their husbands' ratification.[10] He is called, repeatedly in Torah, *ba'al* – master; he "masters" her.[11]

Talmud, in *Masekhet Kiddushin,* launches its discussion of marital law by simultaneously introducing two linked marital concepts: *kinyan* and *kiddushin.*

The former, *kinyan,* "acquisition," from the verb *kanah,* is a legal mechanism derived from the verses of Torah narrating Abraham's purchase – *miknah* – of the Cave of Makhpelah as a burial ground.[12]

The Hebrew verb *lakach*, "to take," which is also used in the story of the acquistion of the Cave, is used biblically both for a "taking" of property[13] and a man's "taking" of a wife.[14] Because *lakach* holds both meanings, the rabbis, by analogy, give the verb *kanah* – "acquire" – both meanings as well – expanding it from the Abrahamic real estate transaction into the marital realm. In Talmud, *kanah* comes to be the common technical term for a man acquiring a woman as a wife, as well as for a woman re-ac-

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9. Some readers might gain a sense of how it feels to constantly have *mishkav zachar* lead any discussion of queer inclusion by imagining what it might feel like to women for every conversation about egalitarianism in Judaism to begin with a review (primarily by men) of the laws of *niddah* – menstruation and ritual purity.
10. See Numbers 30:4-17, as just one example.
11. See, e.g. Genesis 20:3, Deuteronomy 21:13, Malachi 2:11, Isaiah 62:5, *inter alia.*
12. Genesis 23:18.
13. Genesis 23:13.
14. Deuteronomy 24:1.

quiring her independence through widowhood or divorce, at which point she at last becomes the subject of the verb *kanah* rather than its object.[15]

In addition to this biblically-sourced acquisition language, Talmud introduces a layer of rabbinic language onto the marital bond through the use of the word *kiddushin,* "consecration." While our modern eyes instinctively search for the spiritual layer of *kedushah* or "holiness" in the concept of *kiddushin,* we cannot look away from the meaning of *kiddushin* as a restriction on the use of property. When a man "consecrates" a woman through *kiddushin*, he renders her forbidden to others. This seems to be an analogy to the limitations placed on property that is designated for holy use in the Temple, called *hekdesh.* So while *kiddushin* might imply, in part, an ultimately holy purpose, it is, in its most technical sense, a status that describes a restrictedness – which one might understand as restriction of a woman's sexuality, autonomy, or independent personhood.[16]

This is not to say that as the *halakhah* of marriage unfolded over time, *kinyan* and *kiddushin* were exclusively understood as kinds of commodity exchanges. Culture uses the exchange of goods as symbolic of exchange of loyalties. From Native American *potlatch* ceremonies to lavish Jewish weddings, generous giving of gifts creates community bonds. *Kinyan* in the marriage context might connote something in this direction. Perhaps the "brideprice" – whether goods, cash or a valuable ring – was understood not quite so much as the acquistion of an individual but as an investment in the marital household, the marital union and the joining of clans. If so, *kinyan* could be seen as an economic and symbolic act of generosity that creates the marriage and the new "house in Israel." After all, *kanah* doesn't *solely* mean "to acquire." In Mishnah Avot, we are not meant to read *uk'neh l'kha chaver* as a literal instruction to buy a friend,[17] but as an instruction to form a friendship, with an awareness that true friendship is a thing of value.[18] In this sense, *kanah* can be read with an additional meaning along the lines of "establish" or "create."

So arguably it is reductive to understand *kinyan* in marriage as being the same concept as an acquisition of land or commodities. And yet, Talmud and Tosafot keep returning to the mercantile nature of the marital transaction.[19] So while I do not mean to reduce *kinyan* and *kiddushin* to *merely* economic transactions of acquisition, they are

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15. BT Kiddushin 2a.

16. The words *kiddushin* and *kinyan* are often used interchangeably in discussions of Jewish marriage. But *kiddushin* describes a legal status and *kinyan* the mechanism that brings that status about. By analogy, "home ownership" is a status achieved by the mechanism of "home purchase." When we say, "I bought a home," we are describing the mechanism but implying the status.

17. Pirkei Avot 1:6.

18. I am grateful to Rabbi Natan Margalit for reminding me that our modern experience of these terms might not be the final word on how they felt to our forebears – men *and* women – and how these metaphors functioned in their native contexts.

19. *See* BT Ketubot 56a and commentaries thereon.

nonetheless *also* economic transactions of acquisition, and cannot be divorced from those meanings.

Eventually the acquisition elements of the wedding ceremony became more widely understood and practiced in a symbolic way. The "purchase" of the bride could be a sum as low as one *perutah*. Some have argued that this implies that the rabbinic imagination no longer treated marriage as an acquisition in earnest, and should not be experienced as such. But, as Rachel Adler keenly asks, "If purchase was no longer literal, why should even a symbolic purchase be necessary?"[20]

Put differently, I would say we are responsible for the metaphors we use and perpetuate. As spiritual activist Caroline Casey says, "Metaphors are the incarnational garb by which powers enter the world."[21] Alternatively, we might express it this way: in the world of *Asiyah* there is no actual acquisition taking place anymore. But in the worlds of *Yetzirah* and *Beriah,* where we experience the emotional and conceptual dimensions of our words and actions, an unfortunate impression has been made.

In any event, even if the rabbis come to speak of the purchase price as symbolic, Adler points out that they do not abandon the model of acquisition, because the other models of partnership available to them were bilateral, and that reciprocity (and equality) was something that they sought to avoid:

> Comparing marital *kinyan* to transactional modes rejected by the rabbis clarifies why the rabbis chose to formalize and etherealize *kinyan* rather than discarding it altogether. What all the legally acceptable transactions have in common is that they are *unilateral* acts. Marriage cannot be initiated by the woman (Kiddushin 4b), nor can it result from mutual exchange (Kiddushin 3a, 6b). The man . . . cannot bestow himself upon the woman; he must declare "you are mine" and not "I am yours" (Kiddushin 6b). *Processes in which both parties are active participants are explicitly rejected.* The man must take, and the woman must be taken.[22]

A unilateral act by the groom remains essential in Orthodox weddings. A reciprocal declaration of *kiddushin* or gift of a ring offered by the bride risks nullifying the *kiddushin*. In some communities an appearance of reciprocity is created by the groom speaking the traditional *harei at m'kudeshet* ("behold you are consecrated to me")[23] formula, while the bride responds with *ani l'dodi v'dodi li* – "I am my beloved's and my beloved is mine."[24] These words from Song of Songs are beautiful; nonetheless they

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20. Rachel Adler, *Egendering Judaism* (Jewish Publication Society 1998), 175.

21. Caroline Casey at the Commonweal Fall Gathering, November 7, 2020.

22. Adler, 176.

23. *Harei at m'kudeshet li b'taba'at zu k'dat Moshe v'Yisrael.* "Behond you are consecrated to me with this ring according to the laws of Moses and Israel."

24. An entire blog devoted to brainstorming alternatives to *kiddushin* and creating reciprocal options can be found at https://alternativestokiddushin.wordpress.com.

have no *halakhic* weight; they are essentially decorative. They bring in the bride's voice but not her authority.

The unilateral formation of the marriage is mirrored in the unilateral nature of its dissolution. In the same way that a woman is necessarily "taken" in marriage by her husband, she must also be released from marriage *by him*. A *get,* or bill of divorce, may only be rendered by the husband; his refusal to do so leaves his wife in a perpetual state of marriage, depriving her of the ability to remarry. This has provided no shortage of woe as unscrupulous men use this exclusive power to force concessions from their wives.[25]

This risk is not limited to women marrying in Orthodox environments. For a woman who marries, say, in the Reform Movement, which allows mutual *kiddushin* language and honors the validity of civil divorce, there remains a *safek kiddushin* – a shadow of risk that if she divorces and later finds herself subject to Orthodox authority – in Israel or in an Orthodox community in the Diaspora – her first marriage could be read as halakhic *kiddushin*. If she seeks to remarry in that context, religious authorities could withhold that marriage until she receives a *get* from her first husband. If she remarries in a civil or non-Orthodox ceremony, the so-called legitimacy of her future children could be called into question.

These complexities haunt the institution of *kiddushin*. In a technical sense they might not apply to same-sex couples (see Section 2. below). Nonetheless they are part of the history, evolution, and baggage of the *kiddushin*.

2. *Kiddushin-Kinyan* in Same-Sex Marriages

Determining the relevance and applicability of *kinyan* and *kiddushin* concepts for same-sex or other unusually gendered couples is a difficult matter. The unilateral acquisition inherent in heterosexual *kiddushin* is understood to be gendered: a man acquires a woman. For for same-sex couples, *kinyan* cannot be enacted in a gendered way. It must either be dropped as a mechanism or reinterpreted entirely.[26]

Many same-sex couples do in fact desire to adapt *kiddushin*. I believe the impulse arises from a cultural connection between Jewish marriage and the familiar words *harei at mekudeshet li* – "behold you are consecrated unto me" – the instrumental language of the *kinyan* and *kiddushin*. Jews are accustomed to hearing this language even if they don't know what it means or what its halakhic significance is, in the same way Jews

25. Astonishingly, *ketubot* found in the Cairo Genizah indicate that marital language and terms were more reciprocal in marriages undertaken under the authority of the Jerusalem Talmud. These Palestinian *ketubbot* use explicit language of *shutafut* – partnership. And some include stipulations that either party can initiate a divorce. See Adler, 179-180.

26. Eyal Levinson, in his senior *t'shuvah*, makes the interesting move of salvaging *kinyan*. He does so by redefining it as a kind of transformative or inter-formative experience rather than an acquisition, leaning into other biblical uses of the verb *kanah*. See discussion below, page 18.

expect the heartbeat rhythm of *kaddish* at a funeral, even if they have no notion of its meaning or theology.

Familiarity is not the only factor; there is also an element of "we want what they've got." The right to *kiddushin* feels essential to equality. It is a demand for equal access to Jewish ritual language and symbolism.

The truth is that for the time being same-sex couples can use *kiddushin* language with abandon – it would not currently endanger their future ability to divorce and remarry someone of another gender in an Orthodox context. Any Orthodox authority that would require a *get* from a previous same-sex marriage would be acknowledging the validity of that previous marriage – something they currently would not do. So as a matter of practice, the pitfalls that egalitarian heterosexual couples risk in using *kiddushin* language do not currently land for same-sex couples.

So without skin in the *kiddushin* game, why does it matter what language or forms same-sex couples employ? Why not just exchange *harei at m'kudeshet* sorts of words for custom's sake and be done with it?

For same-sex couples, the *kiddushin* formula's origins as acquisition language, once discovered, will be enough to eliminate it from the menu, no matter how much it is reinterpreted. If it is understood as an historical enforcement mechanism for inequality, or understood as the commodification of another human, the warm familiarity of the language may cease being quite so warm. And sometimes we must give up the warm and familiar. In Adler's words: "[For] Judaism's future to be rescued, something will have to die. We must consent to be bereaved in order to be renewed."[27] Or to state this in Bratzlaver terms, עת לעשות לה' הפרו תורתך. "It is time to do God's will, so smash your Torah."[28]

Ultimately, there is a bigger question: does *kiddushin* language in any form express a same-sex couple's truth? It may imitate historical heterosexual marriage, but not capture the ways in which queer experience, identity and relationships differ from those of their differently-gendered counterparts. In a moment of novelty, where *chiddush* (innovation) of some sort is necessitated no matter what, there is an invitation to see what arises organically, and that is what we will explore here.

The Thinking to Date

We continue our analysis by looking at the positions on same-sex marriage articulated within the Reform, Renewal, Conservative and Reconstructionist movements.[29] We

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27. Adler at 170.

28. This is Rebbe Nachman's purposeful re-reading of Psalm 119:126 to mean that sometimes Torah, i.e. established practice, must be nullified in order to achieve God's actual desire.

29. The Orthodox Union spoke out as well in 2006, indicating that there would be no halakhic movement to expand marriage ritual to same-sex couples: "The position of traditional Judaism on homosexual behavior is clear and unambiguous, terse and absolute. . . . To argue that same-sex marriage is consistent with the

do this to identify why, even when marriage is expanded and new ritual created, such ritual still might not be the best fit for real, live same-sex couples, either because of problematic reasoning or because their solutions fail to fully and joyfully resonate.

1. Reform Movement: Rewriting Kiddushin

The Reform Movement's most recent word on same-sex marriage was a 2014 responsum called "Same-Sex Marriage as Kiddushin."[30] Rabbis of the Reform Movement had been officiating at same-sex marriages with the approval of their governing body, the CCAR, since 2000. This 2014 *t'shuvah* from the CCAR Responsa Committee entertained the question of whether a same-sex union was to be considered *kiddushin.*

In the responsum, the authors do the historically necessary if still shaming work of gathering psychological data about sexual orientation so they can declare homosexuality neither *cheit* ("sin") nor *to'evah* ("abomination"). They go on to articulate an ethical imperative to recognize the full humanity and equality of gay people, ruling that by virtue of the principle of *k'vod habriyot* – human dignity – a same-sex couple that otherwise meets the criteria (e.g. desire to establish a Jewish home and raise Jewish children, *inter alia*), deserve their marriage not only to be permitted but to be considered *kiddushin*.

What they mean by *kiddushin* is specific to the Reform Movement, which had already in 1869 (!) decoupled *kiddushin* from the concept of *kinyan*. Instead, *kiddushin* language (*harei at m'kudeshet li*) is understood exclusively in terms of sacred relationship formation. *Kiddushin* is:

> [A] relationship of equality and of love, one that promises emotional as well as sexual fulfillment, one which allows them to build a home that expresses Jewish values. This, in its essence, is what we mean when we call our marriages by the name *kiddushin*.

It has been common practice in the Reform world for *kiddushin* language to be offered reciprocally by bride and groom. And with this understanding of *kiddushin*, it is unproblematic to extend the ritual and legal framework to include same-sex couples.

It is worth noting the the Reform *t'shuvah* justifies this extension of *kiddushin* by articulating the ways same-sex couples are like traditional heterosexual couples. This has long been the case in all struggles for equal rights – that the argument is made that the newcomers deserve these rights because "they're just like us." This might be a reasonable political strategy, but it has an unfortunate rhetorical effect. In this case, for instance, the responsum specifically identifies sexual exclusivity as a requirement of Reform *kiddushin,* and therefore extends *kiddushin* to same-sex couples whose rela-

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traditions of Judaism is intellectually dishonest at best and blasphemous at worst." https://advocacy.ou.org/orthodox-response-to-same-sex-marriage/

30. https://ccarnet.org/responsa/same-sex-marriage-kiddushin/

tionships are organized that way. Same-sex couples whose relationships are organized differently – and there is in fact a greater culture of flexibility around sexual exclusivity in the gay community – are rendered invisible here. A deeply committed but non-monogamous gay couple would not be considered to embody a state of *kiddushin*. That is, they would be considered unworthy of it.

2. Renewal: Adapting Kinyan

The Jewish Renewal Movement is less centralized than the traditional denominations. ALEPH Alliance for Jewish Renewal is the most prominent body speaking on behalf of principles of Jewish renewal, but has not spoken officially to a halakhic basis for same-sex marriage. However, in an influential senior *t'shuvah* from 2000, "A Covenant of Same-Sex *Nisuim v'Kiddushin*,"[31] ALEPH *musmakh* Eyal Levinson brings Jewish Renewal creativity to bear.

In his responsum, Levinson reanalyzes the verb *kanah* to mean, *inter alia,* the acquisition of wisdom through acceptance, citing the uses of the verb in Proverbs 16:16 and 23:23. Through the meaning derived from those verses, Levinson arrives at a similar position to where the Reform Movement ended up. He posits *kinyan* not as an act but as a quality of relationship – a mutual acceptance. Unlike traditional views, for him *kinyan* in this sense is inherently mutual. This is his basis for allowing same-sex couples a *kinyan hadadi* – mutual *kinyan* – using something like traditional *kinyan* language, expressed reciprocally.

The specific revised *kinyan* language proposed by Levinson goes like this:

הרי אני מתקדש לך בטבעת זו כהבנתנו את דת משה, מרים וישראל.

Harei ani mitkadesh l'kha b'taba'at zu k'havanetenu et dat Moshe, Miryam, v'Yisrael.

"Behold I consecrate myself to you with this ring, according to our understanding of the law of Moses, Miriam and Israel."

In this formulation, Levinson does several things. He attempts to undo the feel of acquisition by using the reflexive *mitkadesh* rather than the passive *m'kudash/ m'kudeshet*. In this way each partner is volunteering and consenting, instead of conferring a status change on the other. The *hitpael*-style reflexive verb makes it so that no one is exerting power *over* the other, but is instead entering into a voluntary state of dedication. "I consecrate myself to you."

Levinson also expands the authority relied on by changing *k'dat Moshe* – "by the law of Moses" – to mention of Miriam. This is a beautiful addition, indicating something about our holding the lineage we know, i.e. Moses, and the lineage that is only now revealing itself. I am unsatisfied, though, with his addition of *k'havanatenu* – "according to our understanding of the law. . . ." This may be honest but is unnecessarily

31. https://www.keshetonline.org/resource/a-covenant-of-same-sex-nisuin-and-kiddushin/

apologetic. All halakhic stances are necessariliy *k'havanatenu;* our understanding of law is inherently interpretive. If one has arrived at this *torah,* that the word *mitkadesh*, along with the reciprocal recitation of it, is halakhically significant, then it is fair and right to assert that one is doing it *k'dat Moshe,* and not *k'havanatenu.*

3. Conservative Movement: Welcome. But Not.

The most intense and rancorous debates have been within the Conservative Movement. This is to be expected, being a denomination that sees itself as bound by halakhic precedent but which also, on a sociopolitical level, currently wants to welcome LGBTQI people into full participation. It is not surprising that the Conservative responsum is deeply torn and problematic.

The most recent official word from the Conservative Movement was released in December, 2006. The *t'shuvah,* "Homosexuality, Human Dignity & Halakhah: A Combined Responsum for the Committee on Jewish Law and Standards,"[32] addresses same-sex marriage within a larger framework of overall guidance on what acts are permitted to gay Jews, and how the Conservative Movement should relate to them.

The *t'shuvah* begins with the old mainstays of gay rights debates: science and Leviticus. It first runs through data on the relative immutability of sexual orientation. The idea here is that if gay people can't change, then demanding lifelong celibacy would be unconscionable. Therefore *k'vod habriyot* – human dignity – requires that accommodation be made, so that an entire class of people is not denied the fulfillment of love and intimate relationship. Although some LGBTQI people might be tired at this point of being afforded rights and dignity on the basis of inability to change (as opposed to affirmative values of love, community, happiness), this is nonetheless a promising beginning.

But then the *t'shuvah* goes on to address *mishkav zakhar,* the biblical edict that "man shall not lie with man as with a woman."[33] They determine that these two verses of Torah, as reinforced in Talmud and beyond ("the unquestioned interpretation of these passages throughout the ages"), clearly constitute a prohibition on male-male anal sex. The authors, through many pages of footnotes, reject efforts to limit the scope of the prohibition, such as seeing *mishkav zakhar* as a prohibition on certain kinds of pagan ritual sexuality or sex for the purpose of domination or acquisition. The placement of the prohibition in Torah among the laws of *ervah* (sexual purity) serves for them to reinforce how absolute the prohibition is. They intimate that they could overturn this Torah law through the mechanism of *takkanah,* but determine that that would be unavailable to them since it requires the consent of the majority of the population, which they define as the observant Jewish community, not as the

32. http://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/20052010/dorff_nevins_reisner_dignity.pdf

33. Leviticus 18:22 and 20:13.

Conservative-affiliated Jews over whom they hold authority and in whose name they are attempting to rule.

Having painted themselves into this corner, they are forced to reissue an explicit ban on anal sex between men, even in the context of a loving and committed relationship of equals. Reissuing this prohibition afresh in 2006, three years after the U.S. Supreme Court final put sodomy laws to rest,[34] famously admitting that they should have done so twenty years earlier in *Bowers v. Hardwick*,[35] has a particularly gratuitous and heartless quality to it, no matter how halakhically justified.[36]

The authors of the *t'shuvah* are themselves aware that gay men (and others) might find this shocking, but they rationalize their ruling in the name of observant gay men:

> Some may object to our proposal by predicting that gay men will find our limited permission unacceptable. We, however, believe that those motivated to live within the framework of halakhah are necessarily willing to accept limits on personal autonomy – as long as they are feasible – for the sake of pursuing a life of holiness.

This comment reveals an important weakness in their halakhic process. The authors are projecting what those subject to their decision will find acceptable. But the voices of gay men – including gay men who wish to live within a halakhic framework – are not even registered. Instead, the authors' *beliefs* about what people unlike them would want and would find acceptable are offered as justification of a ruling that is harsh, shaming, and unenforceable.

The *t'shuvah,* after limiting gay men's permitted sex lives, turns to limiting the ability of Jewish bisexuals to marry for love:

> Regarding bisexuals, we understand that some people experience sexual attraction to both men and women. Because the heterosexual ideal is enshrined in over three millennia of Jewish texts, because heterosexual marriages alone are recognized by established Jewish law, and because bisexuals do have a permissible avenue for sexual and romantic intimacy, we instruct any Jew who has sexual longings for someone of the opposite sex to marry a Jew of the opposite sex and to maintain complete fidelity to his or her spouse. While this may involve the sacrifice of some sexual satisfaction, this is a common consequence of marital fi-

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34. *Lawrence v. Texas,* 539 US 558 (2003)

35. *"Bowers* was not correct when it was decided, and it is not correct today. It ought not to remain binding precedent. *Bowers* v. *Hardwick* should be and now is overruled." *Lawrence,* 539 US 558 @ 578.

36. At the Chicago Conference on Sexual Orientation and the Law, April 1987, civil rights attorney Mary Dunlap, z"l, asked, in reference to *Bowers v. Hardwick*: "The question is not, 'What was Michael Hardwick doing in his bedroom?' The question is, 'What was the state of Georgia doing in his bedroom?'" Similarly here: the question is not, "What are Conservative Jewish gay men doing in their bedroom?" The question is, "What is the Committee on Jewish Law and Standards doing in their bedroom?"

> delity, which gives greater priority to stable relationships than to the erotic desires of each individual.

Here the Committee shamefully railroads bisexuals into heterosexual marriages, since it imagines bisexual Jews can just choose. It also implicitly equates heterosexual marriage with "stable relationship" and same-sex relationships as "erotic desires."

What is lost here – again, I think, through the absence of the viewpoint of the person whose life is being considered and ruled on – is that people do not make love decisions in the abstract. A bisexual person may choose to live in a marriage with someone of another gender but, hopefully, only if that person is their *bashert*. If, however, they find their *bashert* in someone of the same sex, they are expected – no, *instructed* – to abandon that relation`ship and try again. While *k'vod habriyot* – the principle of human dignity – was applied to gay men, it is withheld from bisexuals. Dignity is only afforded bisexuals if a heterosexual life is chosen. Besides being unfair to bisexual Jews, this element of the ruling clarifies, if there was any doubt, that same-sex relationships remain, in the eyes of the Conservative movement, explicitly unequal and lesser than.

The *t'shuvah* then decides not to afford *kiddushin* to same-sex couples; the halakhic issues are too difficult to sort through: "We have no objection to informal rituals of celebration for gay couples, including [blessings over wine and *shehecheyanu*, with psalms and other readings to be developed by local authorities], but we are not able in this responsum to address the many halakhic questions surrounding gay marriage."

The *t'shuvah* ends by inviting gay, lesbian and bisexual Jews to take full part in the Judaism of the Conservative Movement, including in the rabbinate. This invitation rings hollow, however. The *t'shuvah* says, early on:

> It is difficult to imagine a group of Jews whose dignity is more undermined than that of homosexuals, who have to date been told to hide and suppress their sexual orientation, and whose desire to establish a long-term relationship with a beloved friend have been lightly dismissed by Jewish and general society. They have, in effect, been told to walk alone, while the great majority of Jews are expected to walk in pairs and as families. In such a context, where is the dignity of homosexual Jews? How can we hide from their humiliation? What halakhic recourse is available to integrate gay and lesbian Jews into the observant community with full dignity?

Ultimately, the authors do virtually nothing to improve the situation they describe. "Where is the dignity of homosexual Jews?" Certainly not in this *t'shuvah*.

4. Conservative Movement Dissents

In fairness it must be said that the *t'shuvah* issued on December 2006 squeaked through with the smallest possible majority, and numerous dissents were released on

the same day. Mostly these review the same turf, mounting arguments for why *mishkav zakhar* should be read differently. But the most interesting dissent addresses the nature of the halakhic process itself.

In "Halakhic and Metahalakhic Arguments Concerning Judaism and Homosexuality,"[37] Rabbi Gordon Tucker addresses the fact that the voices of actual people affected by the ruling were conspicuously absent from the exposition and the reasoning. He argues for the juridical weight of *aggadah,* i.e. material drawn from life stories and not just from legal texts. Specifically, he objects to the—

> restrictive view of halakhah based on the idea that only texts that formulate rules are genuine legal texts, and that both classical and emerging narrative (*aggadah*) are mere adornments to Jewish thought with no normative force. This represents a halakhic method that is impoverished in scope, that produces the anomalous results of having to slam the door in the face of those whom our deepest sympathies tell us should be entering the door, and that ultimately divorces what is treated as an autonomous halakhah from the religious convictions that it was created to serve.

He allows that use of such material will be disorienting to halakhists:

> The idea that halakhic method needs to be opened up to a receptivity to the potential normative force of *aggadah* is, to be sure, unsettling. It is unsettling because, as Cover put it,[38] there is no "official, privileged canon of narratives," and thus the presumed and cherished "objectivity" of halakhic method is put in jeopardy. But Cover also noted that although narrative in the modern world has a "diffuse and unprivileged character" we mustn't fail to take into account "the indispensability of narrative to the quest for meaning." And if we fail to make meaningful halakhah, we will all be called to account for how we will have failed generations of Jews to come, generations that we are charged with leading with greater loyalty to religious law.

In a way, what Tucker is asking is a question of perspective. If the only starting point for change is established *halakhah* and established methods, then there is a risk that changing needs will never be satisfactorily met. Certainly the 2006 *t'shuvah* demonstrates this point.

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37. http://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/20052010/tucker_homosexuality.pdf

38. Cover, Robert, "Nomos and Narrative", in 97 *Harvard Law Review* 4 (1983), cited in the *takkanah.*

5. Subsequent Guidance within the Conservative Movement

The Committee on Jewish Laws and Standards subsequently offered more guidance on same-sex marriages. In a unanimously-approved 2012 *t'shuvah,* "Rituals and Documents of Marriage and Divorce for Same-Sex Couples,"[39] considered an appendix to the 2006 decision, the Conservative Movement lets stand the prohibition on *mishkav zakhar,* and maintains it as the source of their inability to grant same-sex couples *kiddushin* – i.e. since male-male anal sex, in their view, violates *dat Moshe v'Yisrael* – the law of Moses and Israel. Nonetheless the *t'shuvah* expresses the desire to sanctify same-sex relationships*:*

> We acknowledge that these partnerships are distinct from those discussed in the Talmud as "according to the law of Moses and Israel," but we celebrate them with the same sense of holiness and joy as that expressed in heterosexual marriages.

The *t'shuvah* offers two templates for ceremonies that may be used to celebrate and sanctify a same-sex couple's relationship. The first is a *Brit Ahuvim,* a term they borrow from Rachel Adler, *infra,* p. 25. Their formulation of the ceremony is different from hers, although still beholden to her work. The ceremony takes place under a *chupah*. There is an exchange of rings and this covenantal language is spoken by each:

הֱיֵה-נָא לִי לְבֶן-זוּג בְּאַהֲבָה וּבְאַחֲוָה, בְּשָׁלוֹם וּבְרֵעוּת, בְּעֵינֵי אֱלֹהִים וְאָדָם.

"Please be my partner in love and fellowship, peace and friendship,
in the eyes of God and humanity."

The Hebrew studiously avoids any form of the word *kadosh* so as not to suggest that *kiddushin* has been entered into. A pre-nuptial document is read, after which a symbolic item is held and raised by the couple, as proposed by Adler in her work. The *t'shuvah* calls this ritual *Kinyan M'sudar.* The Seven Blessings are then recited, as are additional blessings incorporating biblical text, such as the Priestly Blessing, and a glass is broken.

The second ceremony offered in the *t'shuvah* is more abbreviated. Instead of a *chupah,* the couple wraps itself in a *tallit.* They recite this language:

הֱיֵה-נָא לִי שׁוּתַף-חַיַּי, אֲהוּבִי וּמְיוּדָעִי בְּעֵינֵי אֱלֹהִים וְאָדָם.

"Please be my life partner, my beloved and my intimate,
in the eyes of God and humanity"

There is no *kinyan m'sudar* in this ceremony. Three blessings, rather than seven, are recited, and a glass is broken.

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39. https://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/2011-2020/same-sex-marriage-and-divorce-appendix.pdf

This "appendix" is a tremendous step forward for the Conservative Movement, even though it never acknowledges in print how damaging the 2006 *t'shuvah* was. And while *kiddushin* is still withheld because of these halakhists' inability to see gay men without imagining them having sex, and to imagine gay life and love as substantially more encompassing than sex, there is nonetheless an air of apology to it.

Efforts to remove the *mishkav zakhar* prohibition and the 2006 responsum's language about bisexuality continue.[40]

6. Values First: The Reconstructionist Movement

In 1992, the Reconstructionist Movement issued a report in which it reviewed the denominational positions as of that point and moved on to make their own determination of the status of gay Jews within Reconstructionism.[41] The paper leads with a far-ranging discussion of important values speaking to the inclusion of gay people. Only after solidly establishing this value-based framework does the paper consider traditional prohibitions. It points out the seeming hypocrisy of some people's focus on Leviticus:

> Many who reject Jewish law in other areas assert the binding nature of the biblical condemnation of same-gender sexual acts, and therefore homosexuality in general. We reject the act of justifying injustice which is achieved, too often, by citing biblical law. This approach is in conflict with the intellectual and religious integrity that Reconstructionists demand.[42]

The Report emerged just before the marriage equality movement took hold in the U.S. It does not take up the question of the applicability of *kiddushin* as a halakhic frame. However it expresses this value:

> As we celebrate the love between heterosexual couples, so too do we celebrate the love between gay and lesbian Jews. As we affirm that heterosexual marriages embody *kedushah*, so do we affirm that *kedushah* resides in committed relationships between gay or lesbian Jews."[43]

The yielding here of traditional *halachah* to modern values is in keeping with Reconstructionism's understanding of Judaism as an "evolving civilization." In other words,

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40. http://forward.com/news/371280/how-rabbis-are-trying-to-make-the-conservative-movement-more-gay-friendly/

41. "Homosexuality and Judaism: The Reconstructionist Position." (The Report of the Reconstructionist Commission on Homosexuality, 1992). Not available on line. Gratitude to Rabbi Jacob Staub for unearthing it for me. A full account of the movement's process to allow gay rabbis can be found in Rebecca Alpert and Jacob Staub, "The Making of Gay and Lesbian Rabbis in Reconstructionist Judaism, 1979-1992," in Frank, Moreton & White, eds., *Devotions and Desires: Histories of Sexuality and Religion in the Twentieth-Century United States* (2018).

42. Report, 36.

43. Report, 36.

the embrace of LGBTQI people is not a break in tradition but an affirmative continuation of its unfolding. And the bright energy of this report seems, to my eyes, to reflect the inclusion of LGBTQI people's stories and voices in the process.

7. Alternative to Kiddushin: Brit Ahuvim

The most important alternative to traditional *kiddushin* to arise was developed by HUC theologian, Rabbi Dr. Rachel Adler, not in response to same-sex marriage *per se,* but in order to meet the the desire of modern women to marry in a way that does not place them in object position with respect to their husbands, and does not subject them to the risk of being trapped in a marriage which they have no legal right to dissolve.

In her book-length *t'shuvah, Engendering Judaism: An Inclusive Theology and Ethics*,[44] Adler provides the basis for an alternative legal framework for a kind of Jewish marriage, which she calls *Brit Ahuvim* – a covenant of beloveds. After citing the problems of *kiddushin* and *kinyan,* she offers this framework based on *halakhah* surrounding the formation of business partnerships. In doing so, she is able to let go of the legal forms of *kinyan* ("acquisition"), replacing them with those of *shutafut* ("partnership"). It is ingenious work; it holds together philosophically and many couples have experimented with it. Adler provides language for a *Brit Ahuvim* document to replace a traditional *ketubah*, and offers a ceremony in which the members of the couple each contribute an item of economic or symbolic value into a pouch, which they then raise up together, in an echo of Talmudic business partnership formation ritual.

The same-sex *Brit Ahuvim* ceremony offered by the Conservative Movement in 2014 is heavily reliant on Adler's work, although the changes they make in it are unexplained.

Adler moves in her work from concepts of acquisition to those of "covenanting:"

> Like all covenants, a marriage agreement must embody some of the characteristics of contracts, articulating standards for an ethical relation and laying out some of what the partners most need and want. The marriage agreement must specify the obligations that will form the fabric of the marriage. The partners must be able to make some promises to one another, even though promises are sometimes broken. And if a marriage loses its qualities as a *shutafut,* a partnership, people must be free to dissolve it.[45]

By reaching into the *halakhot* of *shutafut* for ritual forms and guiding principles, Adler moves the relationship from the realm of marriage to the realm of partnership, legal-

44. Adler, *Engendering Judaism: An Inclusive Theology and Ethics.* (1998).

45. Adler, 192.

ly speaking. No partner belongs to the other, but the partnership belongs to them both, with all its economic and ethical dimensions.

The ritual element of placing items of value in a pouch and raising it up is a kind of *kinyan* – acquisition – of partnership. Adler warns, however, of the risk of giving and accepting a ring in addition, in that it might be seen to manifest a marital *kinyan,* bringing about inadvertent *kiddushin*. "In *kiddushin,* the woman's acceptance of a ring from the man signifies that she consents to be purchased symbolically from herself by him. There is reason to be concerned, therefore, that giving and accepting a ring in the context of a wedding ceremony could be taken as evidence that, despite the lack of any supporting declaration, the couple actually intended *kiddushin.*"[46]

Despite this warning, she recognizes that ritual is inherently conservative, and people are not likely to be talked out of rings. However, instead of exchanging them and placing them on each other's fingers, Adler proposes they be placed, alone or with other objects, in the shared partnership pouch. Each ring is a gift to the collective. The pouch is raised, the covenantal *zokher habrit* blessing is made, and it all becomes community property. The new partners may now remove the rings from the pouch and wear them without a powerful risk of enacting *kiddushin.*

Adler's solution of replacing *kiddushin* with a *Brit Ahuvim* is elegant, and holds up well 22 years later. In addition to the specific solution of the *Brit Ahuvim,* she has gifted us with the invitation and authority to think outside the marriage box. It is only custom that requires us to organize our relationships in the legal framework of *kiddushin.* But other relationships, such as partnership, can be modified and made available as structural alternatives. This opens the door to substantial imagination, creativity and study.

And this brings us at last to Ruth's words to Naomi. What is their legal and symbolic weight? Do they provide yet another alternative to the *kiddushin* framework that is worth our attention?

Ruth's Vow: Legal Impact

The words that Ruth speaks to Naomi come early in the Book of Ruth, but after both characters have experienced tremendous loss and hardship. Naomi, along with her husband and two sons, had left Bethlehem due to famine, becoming refugees in Moab. There her sons, Machlon and Chilyon, married Moabite women – Ruth and Orpah. A plague took all three men, leaving the three widows without legal status and without legal relationship to each other. Naomi decides to return to Bethlehem alone and releases her daughters-in-law from any perceived moral or familial obligation to her.

But Ruth clings tenaciously to Naomi, and offers the words under discussion:

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46. Adler, 195.

Where you go, I will go;	כִּי אֶל-אֲשֶׁר תֵּלְכִי אֵלֵךְ
And where you lodge, I will lodge;	וּבַאֲשֶׁר תָּלִינִי אָלִין
Your people shall be my people,	עַמֵּךְ עַמִּי וֵאלֹהַיִךְ אֱלֹהָי׃
And your God my God;	
Where you die, will I die, and there will I be buried.	בַּאֲשֶׁר תָּמוּתִי אָמוּת וְשָׁם אֶקָּבֵר
Adonai do so to me, and more also,	כֹּה יַעֲשֶׂה יְיָ לִי וְכֹה יֹסִיף
if even death parts me from you.[47]	כִּי הַמָּוֶת יַפְרִיד בֵּינִי וּבֵינֵךְ׃

This speech comprises a series of direct, first-person promises, all of which can be understood both literally and figuratively:

> (1) "Where you go I will go." We will share a journey, both the road from here to Bethlehem and beyond, but also life's journey itself.
>
> (2) "Where you lodge I will lodge." We will share a home. We will build a home. We will be home for each other.
>
> (3) "Your people will be my people." I will share your family and community and their ways. I will let your heritage suffuse my own identity.
>
> (4) "Your God will be my God." I will adopt your worship. We will share our spiritual life and God will play a role in it.
>
> (5) "Where you die, I will die, and there I will be buried." Not only will I share your place of death and burial, but I promise that the duration of all these promises will be until death do us part.

After making these 5 promises, Ruth invokes the Israelite God by name (YHWH, rendered above as "Adonai") as witness and enforcer of the promise.

Ruth's speech has a lovely completeness to it, and a great lyricism. It creates a frame of connectedness and family formation, without dwelling in details that can't yet be foreseen. It is aspirational and it is dead serious, as is evidenced by the invitation of Divine witnessing and enforcement. It is deeply moving when spoken to any beloved person; if spoken to one's *bashert,* it is earth-shakingly romantic.

So what is the legal effect of this language? Does it effect any kind of status change for Ruth? And could the legal effect be harnessed in the name of same-sex couples making lifelong commitments?

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47. Ruth 1:16-17.

Rabbinic tradition holds that Ruth's words effected a religious conversion. So moved was Ruth by Naomi's piety that she wanted to join her not only on her life's journey but in her religion. The Aramaic Targum makes this explicit by midrashically turning the speech into a dialogue, and playfully providing Naomi's side of it:

> Ruth said: "Do not coax me to leave you, to turn from following you, for I desire to become a proselyte."
>
> Said Naomi: "We are commanded to keep the Sabbaths and holidays, not to walk more than two thousand cubits."
>
> Said Ruth: "Wheresoever you go I shall go."
>
> Said Naomi: "We are commanded not to spend the night together with non-Jews."
>
> Said Ruth: "Wherever you lodge I shall lodge."
>
> Said Naomi: "We are commanded to keep 613 commandments."
>
> Said Ruth: "That which your people keep, that I shall keep, as though they had been my people before this."
>
> Said Naomi: "We are commanded not to worship idolatry."
>
> Said Ruth: "Your God is my God."
>
> Said Naomi: "We have four methods of capital punishment for the guilty – stoning, burning with fire, death by the sword, and hanging upon the gallows."
>
> Said Ruth: "To whatever death you are subject I shall be subject."
>
> Said Naomi: "We have two cemeteries."
>
> Said Ruth: "There shall I be buried. And do not continue to speak any further. May the Lord do thus unto me and more if [even] death will separate me from you."[48]

This same account is laid out in BT Yevamot 47b. In the Targum version, Ruth is explicit in her intention: *t'iva ana l'itgayara* – "I desire to convert." BT Yevamot does not include that explicit request. Rashi reiterates the Targum in his commentary and cites it as the source of the Jewish custom of discouraging would-be converts before accepting their sincere plea.

While the Targum makes the conversion intent and process fancifully explicit, the sages are willing to allow the text as presented in the Book of Ruth to stand as a conversion.[49] This should provide us with both optimism and caution about this lan-

48. Samson H. Levey, *Aramaic Targum to Ruth* (Hebrew Union College 1934).

49. It is worth noting that the language is very different from other seeming conversion language in

guage as a legal framework for same-sex couples. Optimism, because we already have rabbinic precedent that these words in and of themselves are sufficient to effectuate a change in status. No other acts were necessary – no written document, no exchange of goods. The words alone, offered in sincerity – *even offered in private* – were enough.

The caution here is that these words may inevitably be seen halakhically as having the power of religious conversion. Used as a wedding vow for a couple both of whom are Jewish and share similar religious points of view, this conversion element would likely not be problematic. It might suggest a mutual desire to explore the subtleties of each other's beliefs and to forge a shared spirituality. However, in the case of an interfaith couple wishing to use this language for a marriage, one should be cautious and thoughtful about inadvertent conversion or the appearance of it. Even though our modern Jewish conversions are lengthier and require a formal process, this passage has been held up for millennia as the quintessential example of conversion to Judaism, even if we don't agree that that was what Ruth was necessarily doing in the *peshat* – the plain text – of the story.[50] Interfaith couples who wish to use this language should consider removing the "your God is my God" language from the passage when using it as a marital vow, unless they mean something very specific (e.g. "I will honor your beliefs" or "your spiritual enlightenment will enliven me as well") and have articulated that understanding to each other and their officiant, perhaps penning it into whatever written document they create.

1. Oath or Vow

Ruth's language is obviously a strong declaration of intent, with an invitation of Divine enforcement. Do her words in fact constitute something legally binding: either a *neder* ("vow") or a *sh'vuah* ("oath") as those terms are used in *halakhah?*

We are first introduced to *nedarim* and *sh'vuot* in Torah. In Numbers 30:3 we are told:

אִישׁ֙ כִּֽי-יִדֹּ֣ר נֶ֔דֶר לַיהוָ֖ה אוֹ-הִשָּׁבַ֣ע שְׁבֻעָ֑ה לֶאְסֹ֥ר אִסָּ֖ר עַל-נַפְשׁ֑וֹ
לֹ֥א יַחֵ֖ל דְּבָר֔וֹ כְּכָל-הַיֹּצֵ֥א מִפִּ֖יו יַעֲשֶֽׂה׃

> "A man who vows a vow or swears an oath to deny himself something shall not break his word. He shall do whatever he articulated."

Tanakh pointed to by the rabbis. For instance, the words of Rahab in Joshua 2:11, which are primarily theological – "YHWH your God is God in heaven and below." Ruth, on the other hand, takes Naomi's God without theological wonderment, as an element of her personal commitment to Naomi.

50. Did Ruth really effectuate a full conversion within the terms of her own story? Ruth, upon arrival in Bethlehem and for the duration of the book is consistently referred to as a Moabite. Might one not have expected a true conversion to have effected a change in her tribal affiliation? Still, her Jewish authenticity as an ancestor of King David is of importance to the rabbis of old and the significance of the conversion reading in subsequent rabbinic thought undeniable.

The subsequent verses, Numbers 30:4-17, provisionalize the right of women to swear oaths and vows. If a woman is young and unmarried, her father may nullify her vows or let them stand. If she marries while her vow or oath is in force, her husband may nullify it or let it stand. If she makes a vow or oath while married, her husband may nullify it on the day he learns of it; otherwise it stands. In contrast, the oaths and vows of widows and divorced women are inviolable. In other words, only divorced and widowed women in Torah have the legal capacity to enter into a vow or oath that is equal to the capacity of an adult man.

The Torah text repeatedly says that if the relevant husband or father nullifies a woman's vow or oath, *God will forgive her*. The implication is that God is a party to the promise. The oath or vow is made to God, or with God as witness. It is to God that atonement (or sacrifice) is owed if an oath or vow is broken or nullified.

So what is the difference between a vow (*neder*) and an oath (*sh'vuah*)? The *peshat* of Numbers 30:3, above, could be read that *n'darim* are promises made to God to perform specific articulated affirmative acts (*neder Ladonai*), while *sh'vuot* are promises to refrain from specific acts (*sh'vuah le'esor*). But as *halakhah* unfolds in Talmud through tractates Nedarim and Shevuot and beyond into codes, the distinction morphs.

The distinction between *neder* and *sh'vuah* ceases being primarily about subject matter, but about where the obligation attaches. Both a vow (*neder*) and an oath (*sh'vuah*) might be about denying oneself something ("I will not eat meat today"), but the *neder* speech-act dedicates or consecrates the thing itself ("this meat is off-limits to me; it is reserved for someone in need"), while the *sh'vuah* is a promise that continues to reside in the actions and will-power of the speaker ("I won't go near it").[51]

Under the rubric of *neder,* the object of the vow may be dedicated or consecrated to the *hekdesh,* to the holy precint of the Temple for sacrifice. It is the object, not the speaker who is legally impacted. The *neder* utterance is an obligation that in Anglo-American law we would call *in rem* – attached to the thing itself. If one makes a *neder* to give a particular calf to the Temple, it is the calf that is restricted and obligated for that use. The calf must be put to that use, and if put to another use, the speaker of the *neder* may not profit – the intended use of the calf must be as closely as possible carried out.

In contrast, a *sh'vuah's* obligation is *in personam* – it obligates the speaker, and is reliant on the speaker's own continuing commitment and self-governance.

Using this as the salient distinction between the two forms, Ruth's words read as *sh'vuah.* There is no object that can be subject to a *neder,* unless we speak on a very abstract level – for instance, saying that she dedicates her autonomy to Naomi. But that is a stretch, when seeing her words as a simple *sh'vuah* works easily and clearly. So what are the impact of Ruth's words constituting an oath?

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51. BT Nedarim 2b.

3. The Ins and Outs of Oaths

In Maimonides' *Mishneh Torah, Sh'vuot,* Rambam categorizes oaths as follows:

(1) *Sh'vuat Bituy.* This category refers to an oral pledge either to do something or not do something, or to swear to have done something in the past or not to have done something in the past. The subject matter of the oath must be actually doable. Breaking such an oath is a violation of the very high *mitzvah* not to swear falsely by God's name found in Leviticus 19:12 and Exodus 20:7.

(2) *Sh'vuat Shav.* This is a vain oath, in which one swears to something that simply is not swearable. For instance, swearing that a known fact is not a fact; swearing that a known fact *is* a known fact; swearing to break a commandment; or swearing to do something not within one's power to do.[52] One who makes such an oath is guilty of transgressing the very high *mitzvah* not to take God's name in vain.

(3) *Sh'vuat Pikadon.* This is an oath not to return property rightly someone else's, in violation of the prohibition on dealing falsely with others in Leviticus 19:11.

(4) *Sh'vuat Ha'edut.* This is an oath stating that one has no testimony to offer in a court case. Taken falsely, such an oath violates the prohibition on declining to testify found in Leviticus 5:1.

Ruth's words seem intended as a *Sh'vuat Bituy* – a spoken oath. But are all the formal requirements of a *sh'vuah* met?

Talmud demonstrates a surprising level of flexibility on what might be considered a binding oath, perhaps in an effort to convey the importance of our words – i.e. anything that sounds like an oath will be treated as such, so mind your tongues.

In Tractate Nedarim 2a, we see the principle articulated:

כל כינויי נדרים כנדרים וחרימים כחרימים
ושבועות כשבועות ונזירות כנזירות

Words that are *like* vows are considered vows,
and words that are *like* oaths are considered oaths.
Words that are like bans and words that are like nazirite vows
are considered as if all the words were correct.[53]

Besides serving as an exhortation for people to watch their words, this policy also supports oath-takers to bring about their objectives because they can "say it in their own words." It also reduces uncertainty among anyone who might be subject to or connected with someone else's vow.

In the case of Ruth's pronouncement, her word choice and syntax, beautiful as they are, seem not to matter halakhically. Her intent of making a lifelong promise makes

52. This will become relevant later in the question of applicability of subsequent oaths.

53. BT Nedarim 2a.

her words a valid and binding oath regardless of whether she hit all the formalities, if formalities even existed.

Maimonides embraces the Talmudic flexibility on form, offering no specific form a *sh'vuah* must take. In fact, the person taking the oath can simply speak "Amen" or other consenting words to someone else's words, and the oath is binding.[54]

In a similar spirit of expansiveness, a *sh'vuah* is a *sh'vuah* whether or not God's name is invoked or one of God's many epithets are employed instead, such as saying. "I swear by the Gracious One (*chanun*) or the Compassionate One (*rachum*)."[55] If one does not invoke God at all, the *sh'vuah* still stands in force. However, if the oath-taker then breaks the oath, no sacrifice or other recompense to the Temple is owed.[56]

The oath-taker does not need to call the act a *sh'vuah* in order for their words to constitute one:

> וְלֹא הַשְּׁבוּעָה בִּלְבַד אֶלָּא כָּל כִּנּוּיֵי שְׁבוּעָה כִּשְׁבוּעָה. כְּגוֹן שֶׁהָיוּ אַנְשֵׁי אוֹתוֹ מָקוֹם עִלְּגִים וְהָיוּ קוֹרְאִים לִשְׁבוּעָה שְׁבוּתָה אוֹ שְׁקוּקָה. אוֹ שֶׁהָיוּ אֲרַמִּיִּים שֶׁלְּשׁוֹן שְׁבוּעָה בִּלְשׁוֹנָם מוֹמְתָא. וְהָעִלְּגִים מְכַנִּין אוֹתָהּ וְאוֹמְרִים מוֹהָא. כֵּיוָן שֶׁאָמַר לָשׁוֹן שֶׁמַּשְׁמָעוֹ וְעִנְיָנוֹ שְׁבוּעָה הֲרֵי זֶה חַיָּב כְּמִי שֶׁהוֹצִיא לְשׁוֹן שְׁבוּעָה׃
>
> It need not be called *sh'vuah;* all synonyms for *sh'vuah* are like a *sh'vuah.* For instance if there were people with impedimented speech who, instead of saying *sh'vuah* said *sh'vutah* or *sh'kukah.* Or if there were Arameans whose word for *sh'vuah* is *momtha.* And then if those with impedimented speech pronounced that word *moha.* The fact that they spoke words whose meaning and purpose was that of an oath makes them as accountable as one who clearly articulates the word *sh'vuah.*[57]

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54. Mishneh Torah, Sh'vuot 2:1.

55. Mishneh Torah, *Sh'vuot* 2:2. However, if one takes an oath "by the heaven and the earth," the oath is not valid even if the oath-taker meant "by the Creator of heaven and earth." Mishneh Torah, *Sh'vuot* 12:3.

56. Mishneh Torah, *Sh'vuot* 2:4.

57. Mishneh Torah, *Sh'vuot* 2:5. While it sounds like Rambam considers these to be mispronunciations of the word *sh'vuah,* his source in BT Nedarim 10a uses those variants without referencing speech impediments, suggesting to me that these were not mispronunciations but perhaps slang terms for oaths known to the Tannaim. They might have been subtitute coinages in response to a taboo on inadvertent oath-making; one would not even *say* the word *sh'vuah* lest one inadvertently enter into one. So you said *sh'kukah.* By the time of Maimonides these words were simply gibberish, hence his addition of the explanatory reference to *ilgim* – people with speech impediments.

4. The State of Oath-Bondedness

If we are proposing using Ruth's oath language to forge a marital bond, then we need to examine what is the state the oath-takers find themselves in after declaring it.

The primary effect of an oath is obligation. Rambam offers limited instances where an oath might not be in force because it was made mistakenly, or formulae by which an oath can be instantly retracted.[58] But for the most part oaths are binding; one is accountable to oneself, others, and God (if God was invoked) for the sanctity and certainty of the oath's fulfillment. One remains in an ongoing state of bondedness or accountability until the terms of the oath have been fulfilled and completed.

The oath's obligation remains with the oath-taker. One cannot legitimately make an oath controlling someone else's behavior. Their behavior is not in your domain, and an attempt to control their actions would be considered a *Sh'vuat Shav* – a vain oath.[59]

So a marrying couple could each take an oath pledging their own conduct, but cannot by doing so obligate each other. In a sense, this is the human reality of marriage: it relies on the continued volition of each individual partner. But here it is technically the case as well. The members of the couple would be "co-oathers." Their obligations under their oaths would be parallel but not interlinking. Any interlinking obligations (property ownership, parenting responsibilities, process for dissolution) would have to be undertaken in a separate document, or by the routine operation of civil marriage laws. The non-interlinking nature of the couple's oaths will have ramifications later in discussing the release of oaths in divorce.

The oath would have a limiting effect on subsequent oaths the individual may wish to enter into. An oath currently in operation has near Torah-like effect; it may not be superseded, a principle both Rambam and the Shulchan Arukh summarize this way:

אֵין שְׁבוּעָה חָלָה עַל שְׁבוּעָה.

An oath may not weaken another oath.[60]

This principle would prevent one of the marital partners from declaring in a subsequent oath, "as of now, where you go I will go – if convenient" unless the initial oath is first released. Similarly, a partner could not make an identical Ruth Oath to another person, because it would inevitably impinge on the oath taken under the *chupah* – again, unless they were already released from the first oath.

To restate this, entering into a Ruth-like oath for marital purposes limits the sphere of available oath-taking in the future, as one would hope and expect. Taking a second oath that contradicts the first one would be considered a *sh'vuat shav* and could be

58. Mishneh Torah, *Sh'vuot* 2:9-18.

59. Mishneh Torah, *Sh'vuot* 4:1-4.

60. Mishneh Torah, *Sh'vuot* 4:10; Shulchan Arukh, *Yoreh De'ah* 239:13.

considered unlawful and punishable.[61]

So we see that a couple who pledge their bond by reciting the Ruth Oath to each other are each bound individually to fulfill the oath; and they are each prevented from softening or dilluting the commitment through a subsequent oath. They live in a state of mutual pledge, of oath-bondedness. Neither owes the other any obligation beyond the words of the oath, unless they also signed a document or simultaneously (or separately) entered into a civil marriage with rights and responsibilities defined by law. In this respect, oath-bondedness is not substantially different from *kiddushin,* which effectuates one element of marital commitment (consecration or exclusivity or acquisition, depending on one's interpretation), but leaves the other elements to the written *t'naim* (contractual terms) or to *dina d'malkhuta* (the operation of civil law).

5. Ceremonial Considerations

The Ruth Oath does not necessitate any particular ritual forms – Ruth herself said the words spontaneously and with nor formalities. Besides the centerpiece of reciting the oath to each other, the couple marrying within a Ruth Oath framework may stand under a *chupah,* recite their written document, be blessed with the *Sheva Berakhot* (which speak to the joyful spiritual dimension of marriage without ever referencing *kiddushin)* and break a glass underfoot.[62] The officiant might also offer the *kahal* context for the Ruth Oath and say a few words about the binding nature of an oath in *halakhah* – that unless specifically released from it, the couple's oaths remain binding on them for the duration of their life together.

In crafting a ritual, Rachel Adler's concern about ring exchange could still be a caution. For a heterosexual couple, exchanging rings could create *safek kiddushin*, that is, an appearance of having consented to a *kiddushin*-based marital framework. As discussed above, Adler circumvents the problem in the *Brit Ahuvim* ceremony by having the partners first place the rings in the shared pouch. Once the rings become partnership property, then each can place a ring on the other's finger without it activating *kiddushin,* since they are in that moment both owners of both rings and there is no exchange of gifts between them.

In a Ruth Oath-based ceremony, we do not have the partnership mechanism for changing the rings' ownership and neutralizing their effect. I leave this as an open question to be resolved for differently-gendered couples. For same-sex couples, whose relationships are not currently recognized by the Orthodox world as *kiddushin,* there is no current issue of *safek kiddushin.* This permits the ritual freedom to exchange rings if they wish, even though we might prefer that equality impose the same

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61. Mishneh Torah, *Sh'vuot* 5:13-14; Shulchan Arukh, *Yoreh De'ah* 238:16.

62. Or against a high cornerstone of the synagogue, the *Hochzeitstein,* if they happen to live in the corner of rural southwestern Germany that my father's family came from.

troubling technical difficulties on them as on their heterosexual peers.

While *sh'vuot bituy* (spoken oaths) such as the Ruth Oath have no such requirement, certain types of court-imposed *sh'vuot* were historically administered while the person pledging held the holy word – a Torah scroll or a *t'fillin* or *m'zuzah* – in the way that witnesses in American courts are sworn in with a hand on the bible.[63] If the couple and their officiant (whom we might call the *m'sader/et sh'vuah*) are looking for a visual and tactile element to enhance the stream of words between the couple, they could consider having the couple jointly or sequentially hold a *mezuzah* or *tefillin* during the Ruth Oath. The shared holding of a sacred object might also make it easier to decentralize an exchange of rings.

6. *Heter Sh'vuot* – the Release of Oaths

All ends of relationships are hard. They represent the extinguishment of dreams and the withdrawal of plans. There might be children affected. There might be property. There are infinite interlaced branches connecting two people in what was once committed, loving relationship. The desire for the relationship to end might not be fully mutual; the feelings of the two members of a couple at the end of the relationship might be very different from each other's.

In many ways, divorce is the test of the soundness of marriage laws and customs. If marital laws themselves lead to acrimonious divorces in which partners feel misused or manipulated, then we have not conceived our marriage rituals and *halakhot* well. American civil law, for instance, requires that separating couples stand in an adversarial posture, whether they had entered the dissolution hostilely or not.[64] This affects outcomes, strategies and, inevitably, feelings.

In the case of a marriage built on the mutual sharing of oaths, the partners must be released from their oaths at the time the marriage is dissolved. If a civil marriage was also in effect, civil divorce will also be necessary. If they get their civil divorce but do not seek a release from their oaths, then they remain under *halakhic* and ethical obligation. A shared release ceremony in which they honor their oaths enough to request release from them can bring gentle closure and allow the former couple to move on with a sense of blessing. This is a chance to address not only the particulars in *Asiyah,* but gently honor and provide some care for all that is moving for them in the other realms. One could consider Reb Zalman's suggestions about karmic release, such as the couple writing to each other letters of gratitude, blessing and release, which would be read in the *heter sh'vuot* ceremony and then destroyed so they could not be

63. Mishneh Torah, *Sh'vuot* 11:7 and 11:11-13, on *sh'vuat haset.*

64. Clergy working with marrying couples of any gender should consult with them about what *kavod* – what respect –they would want from each other in the case of separation and divorce. One can assist them in setting intentions, including about requiring mediation or collaborative practice in case of divorce, and help them enshrine these requirements in their accompanying *t'naim* document.

used against each other later.[65]

The process for release from an oath is a relatively simple one. The formula comes from rabbinic law. There is no process for release of oaths in Torah, however the rabbis developed one in order to prevent the desecration that results when an oath-taker fails to fulfill an oath made in God's name.[66]

The grounds for release are straightforward and subjective. The person who took the oath comes to the realization that upholding the oath is causing or will cause suffering; or a change of circumstance makes upholding the oath no longer realistic or desirable. Rambam articulates it this way:

> מִי שֶׁנִּשְׁבַּע שְׁבוּעַת בִּטּוּי וְנִחַם עַל שְׁבוּעָתוֹ וְרָאָה שֶׁהוּא מִצְטַעֵר אִם יְקַיֵּם שְׁבוּעָה זוֹ וְנֶהְפְּכָה דַּעְתּוֹ לְדַעַת אַחֶרֶת. אוֹ שֶׁנּוֹלַד לוֹ דָּבָר שֶׁלֹּא הָיָה בְּדַעְתּוֹ בִּשְׁעַת הַשְּׁבוּעָה וְנִחַם בִּגְלָלוֹ. הֲרֵי זֶה נִשְׁאַל לְחָכָם אֶחָד אוֹ לִשְׁלֹשָׁה הֶדְיוֹטוֹת בְּמָקוֹם שֶׁאֵין שָׁם חָכָם וּמַתִּירִין לוֹ שְׁבוּעָתוֹ. וְיִהְיֶה מֻתָּר לַעֲשׂוֹת דָּבָר שֶׁנִּשְׁבַּע שֶׁלֹּא לַעֲשׂוֹתוֹ. אוֹ שֶׁלֹּא לַעֲשׂוֹת דָּבָר שֶׁנִּשְׁבַּע לַעֲשׂוֹתוֹ. וְזֶהוּ הַנִּקְרָא הֶתֵּר שְׁבוּעוֹת׃
>
> One who swore an oral oath (*sh'vuat bituy*) and regretted the oath and realized s/he would suffer if the oath were upheld, and changed his/her mind. Or a new circumstance arose that was not within the oath-taker's field of knowledge at the time and has caused him/her to regret the oath. This person approaches a sage, or three laypeople if there is no sage available, and they release the petitioner from the oath. Then it will be permitted to do whatever the petitioner had sworn not to do, or to cease doing whatever the petitioner had sworn to do. This is called *heter sh'vuot,* the release of oaths.[67]

The actual process of requesting and receiving release from the oath is simple in form:

> כֵּיצַד מַתִּירִין. יָבוֹא הַנִּשְׁבָּע לְחָכָם הַמֻּבְהָק אוֹ לִשְׁלֹשָׁה הֶדְיוֹטוֹת אִם אֵין שָׁם מֻמְחֶה. וְאוֹמֵר אֲנִי נִשְׁבַּעְתִּי עַל כָּךְ וְכָךְ וְנִחַמְתִּי. וְאִלּוּ הָיִיתִי יוֹדֵעַ שֶׁאֲנִי מִצְטַעֵר בְּדָבָר זֶה עַד כֹּה אוֹ שֶׁאֵרַע לִי כָּךְ וְכָךְ לֹא הָיִיתִי נִשְׁבַּע וְאִלּוּ הָיְתָה דַּעְתִּי בְּעֵת הַשְּׁבוּעָה כְּמוֹ עַתָּה לֹא הָיִיתִי נִשְׁבַּע. וְהֶחָכָם אוֹ גְּדוֹל הַשְּׁלֹשָׁה אוֹמֵר לוֹ וּכְבָר נִחַמְתָּ. וְהוּא אוֹמֵר לוֹ הֵן. חוֹזֵר וְאוֹמֵר לוֹ שָׁרוּי לְךָ אוֹ מֻתָּר לְךָ אוֹ מָחוּל לְךָ וְכָל כַּיּוֹצֵא בְּעִנְיָן זֶה בְּכָל לָשׁוֹן. אֲבָל

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65. Rabbi Zalman Schachter-Shalomi and Rabbi Daniel Siegel, *Integral Halachah: Transcending and Including* (2007), 145.

66. BT Chagigah 10a says היתר נדרים פורחין באויר ואין להם על מה שיסמכו. "The release of vows floats in the air and has nothing supporting it." However, in the rabbis' view, making release from oaths and vows possible balances the commitments of Numbers 30:3 (one who swears in God's name must uphold their oath) and Leviticus 19:12 (no swearing falsely by God's name). Consider *heter sh'vuot* – the release of oaths – a kind of sacred harm reduction policy, allowing release from the *mitzvah* in Numbers in order to uphold the greater *mitzvah* in Leviticus.

67. Mishneh Torah, *Sh'vuot* 6:1.

אִם אָמַר לוֹ מוּפָר לְךָ אוֹ נֶעֱקָרָה שְׁבוּעָתְךָ וְכָל כַּיּוֹצֵא בְּעִנְיָן זֶה לֹא אָמַר כְּלוּם. שֶׁאֵין מֵפֵר אֶלָּא הַבַּעַל אוֹ הָאָב אֲבָל הֶחָכָם אֵינוֹ אוֹמֵר אֶלָּא לְשׁוֹן הַתָּרָה וּמְחִילָה׃

How is a person released? The petitioner approaches one sage, or three laypeople if there is no expert. The petitioner says, "I took an oath on such and such. I would not have made the oath if at that time I had understood what I understand now, and I would not take it now." The sage or the eldest member of the triad asks, "Have you already regretted the oath?" The petitioner responds in the affirmative. The sage or elder responds, "You are released, you are freed, you are pardoned," or words to that effect. But if the sage or elder says, "Your oath is void or annulled," those words carry no weight. Only a husband or father can (*halakhically*) annul a vow as if it had not been entered into. The sage or elder can only offer release and pardon.[68]

This is the formula for release of an oath at its simplest. But more can be involved, and more would have to be involved in the case of release from a reciprocal Ruth Oath. In discussing the process, Rambam uses unexpected language. Instead of saying that the petioner inquires of a sage or three laypeople, as we'd expect to see, using the active verb *sho'el* ("inquire") –

הֲרֵי זֶה שׁוֹאֵל לְחָכָם אֶחָד אוֹ לִשְׁלֹשָׁה הֶדְיוֹטוֹת

Rambam instead uses the passive form *nish'al*:

הֲרֵי זֶה נִשְׁאַל לְחָכָם אֶחָד אוֹ לִשְׁלֹשָׁה הֶדְיוֹטוֹת

which literally means that the petitioner "*is asked* of a sage or three laypeople." It has been suggested in commentary that this means that the release from the oath is only granted after the petitioner is asked many questions by the sage or the *beit din:*

לפי שהנדר המותר ע"י חכם צריך חקירה על החרטה אם היא מעיקרא ועל הפתח אם פותחין בה לכך תני נשאלין שהחכם שואל בהן

The release of a vow requires investigation, whether the regret was from the start or whether the petitioner opened up the doors of regret; so we learn from the verb *nish'al* that the sage questions them.[69]

What we might take from this is that even though a release from an oath *can* be done quickly and with little formality, it does not need to be devoid of conversation, counseling, and attempts to look for other options, just as the granting of a *get* to divorce in the *kiddushin* framework is, formally, a simple process, but is not required to be free of questioning and caregiving. In fact, *dayanim* are instructed to exhibit hesitance in

68. Mishneh Torah, *Sh'vuot* 6:5.

69. Tosafot Yom Tov, *Shabbat* 24:5.

releasing people from oaths.[70]

In the Ruth Oath context, an important question arises regarding the freedom of one party to be released from their oath unilaterally. The partner's oaths, as discussed above, are parallel and not interlocking. Is this subject to misuse? A partner could breach their partner's trust and seek to be released from the vow unilaterally. Or threaten to act unilaterally in order to coerce some concession out of their partner. On the other hand, it is unclear that withholding or threatening a release from the oath forms a meaningful threat. A future marriage does not hang in the balance here as it does with *kiddushin* and *get;* there is no obvious leverage.

It is also unlikely a sage or *beit din* would allow a release from the Ruth Oath without inquiring more deeply into the circumstances and calling the partner into the process. There is precedent for this. We see in the laws of *sh'vuot* that if one party adjures another, i.e. requires another's oath, then the pledging party cannot be released without either the consent or the awareness of the adjuror.[71] Some commentators indicate this is only required if the oath was undertaken in exchange for a favor. Others say that if release from the oath has financial consequences for another person, both must be present.

Even though in our case, the members of the couple did not adjure each other, there is enough commentary and common sense here to support the idea that the couple should both be released from their oaths in a shared process. Their oaths to each other give rise to financial and familial entanglements that are serious. All this argues against a simple and *pro forma* granting of *heter sh'vuot.*

In practice, the couple will also be undergoing a civil divorce. It is unlikely one member of the couple will unilaterally seek or obtain a release of the Ruth Oath unless a civil divorce is already underway or completed. There is no advantage to be gained from doing otherwise. But the ability of the individuals to each seek their own *heter sh'vuot* may be useful if, after a divorce, one party has no interest in settling out the religious aspect of their marriage. In a heterosexual *kiddushin* situation, the husband's refusal to grant the *get* keeps the wife in a legal limbo. But in the Ruth Oath situation, when the divorce is done, even if her husband declines to be involved, a wife may still seek out a rabbi or assemble a *beit din*, explain the circumstances, and be released from her vow. She is not held thrall to his cooperation. Similarly for same-sex couples, the partners may miss an opportunity for loving closure without a shared *heter sh'vuot,* but if one partner refuses, it does not affect the other's ability to obtain the release and move on.

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70. Mishneh Torah, *Sh'vuot* 12:12.

71. Shulchan Arukh, *Yoreh De'ah* 228:20 says that the adjuror must be notified. Mishneh Torah, *Sh'vuot* 6:7 says the adjuror must be present. The Rema (Moshe Isserles, 1530-1572) goes as far as to say that the adjuror must consent (citation pending; reported in chabad.org commentary on Mishneh Torah).

As we see, the use of the Ruth Oath for same-sex couples (and possibly egalitarian, differently-gendered couples) avoids some of the risks and baggage of *kinyan/kiddushin*. But does it offer any advantages over Adler's *Brit Ahuvim* framework?

Where the Ruth Oath gives most generously is not in the realm of *Asiyah* at all, where the legal consequences live, but in its symbolic and spiritual dimensions. In those realms, the oath lifts up queer lives and experience in an astonishing way, imbuing the ritual moment and legal framework with deep meaning that is, arguably, more compelling than the business partnership laws tapped for the *Brit Ahuvim,* which have *halakhic* weight but arguably limited *aggadic* resonance.

Ruth's Vow: Symbolic and Aggadic Dimensions

The Ruth Oath comes with a context. It arises organically out of a story that speaks loudly to queer people and others who have felt on the margins. In the Book of Ruth we see the struggle of two disenfranchised individuals who find their own voice and agency.

The context is important. Formulaic language can never be entirely divorced from its context, nor should it.[72] We are responsible for the metaphors and symbols and texts we lift up. If we seek joy, fulfillment, consent, and agency in our relationships, then we are well advised to find our mythic forebears who manifested those qualities and draw their stories into our vision and practices. Ruth gives us this opportunity.

1. Covenant and Sovereign Alliance

It has been noted by Tikva Frymer-Kensky that Ruth's promise to Naomi bears striking similarities to covenantal language used elsewhere in Tanakh.[73] For instance,

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72. A troublesome example of ignoring context is the use of the verse וְאֵרַשְׂתִּיךְ לִי לְעוֹלָם וְאֵרַשְׂתִּיךְ לִי בְּצֶדֶק וּבְמִשְׁפָּט וּבְחֶסֶד וּבְרַחֲמִים וְאֵרַשְׂתִּיךְ לִי בֶּאֱמוּנָה וְיָדַעַתְּ אֶת-יְיָ. "I shall betroth you to me forever, betroth you to me in righteousness and justice and kindness and mercy; I will betroth you to me in faith, and you shall know YHWH" (Hoshea 2:21-22). This is language we use at engagement rituals and before laying *t'filin,* invoking what seems to be an effusively loving moment between God and the People of Israel. But the context in the Book of Hoshea is deeply troublesome. The marriage metaphor is developed in Hoshea not as a love story, but as a tale of betrayal and retribution. The prophet describes marriage and his own wife in vulgar and shaming terms. He imagines she is whoring and threatens to "strip her naked and set her as the day she was born, and make her a wilderness, and set her like a dry land, and kill her with thirst." Only after these threats does she return to him and the *v'erastikh li* language is spoken by him. Seen in the context of a story of unequal, abusive and jealous love, *v'erastikh li* loses its luster, and one can and *should* ask the question of whether to continue to bring the energy and metaphor set of Hoshea into our betrothal rituals or morning practice, no matter how glorious that verse of Tanakh is in isolation.

73. Tikva Frymer-Kensky, "Ruth on the Royal Way," in *Reading Women of the Bible: A New Interpretation of their Stories* (Schocken 2002).

in Jeremiah 31:33, God says:

> כִּי זֹאת הַבְּרִית אֲשֶׁר אֶכְרֹת אֶת-בֵּית יִשְׂרָאֵל אַחֲרֵי הַיָּמִים הָהֵם נְאֻם-יְהוָה נָתַתִּי אֶת-תּוֹרָתִי בְּקִרְבָּם וְעַל-לִבָּם אֶכְתֲּבֶנָּה וְהָיִיתִי לָהֶם לֵאלֹהִים וְהֵמָּה יִהְיוּ-לִי לְעָם׃
>
> This is the covenant I will make with the House of Israel after these days – thus says YHWH. I have given my Torah into their midst and have written it upon their hearts. *I will be their God and they will be my People.*

The last bit of this litany is reiterated in Jeremiah 32:38: "They shall be my People and I shall be their God."

Formulae even more reminiscent of Ruth's oath can be found in Tanakh to forge political covenants between kings. For instance, II Chronicles 18:3:

> וַיֹּאמֶר אַחְאָב מֶלֶךְ-יִשְׂרָאֵל אֶל-יְהוֹשָׁפָט מֶלֶךְ יְהוּדָה הֲתֵלֵךְ עִמִּי רָמֹת גִּלְעָד וַיֹּאמֶר לוֹ כָּמוֹנִי כָמוֹךָ וּכְעַמְּךָ עַמִּי וְעִמְּךָ בַּמִּלְחָמָה׃
>
> Ahab, King of Israel, said to Yehoshafat, King of Judah, "Will you go with me to Ramot Gil'ad?" And he answered him, "I am as you are; *my People are as your People,* and we are with you in war."

This story is initially told in I Kings 22:4, where Yehoshafat's response also includes "my horses shall be your horses." That formulation – I, my people, my horses – is again found at II Kings 3:7.[74]

A similar formula also figures in a statement of loyalty spoken to the ousted King David by his general, Itai HaGiti in II Samuel 15:21. As in the story of Ruth, Itai follows David into exile. Like Naomi, David tells him to go back and serve the new king. Itai who, like Ruth, is a foreigner, stands his ground and pledges his loyalty:

> וַיַּעַן אִתַּי אֶת-הַמֶּלֶךְ וַיֹּאמַר חַי-יְהוָה וְחֵי אֲדֹנִי הַמֶּלֶךְ כִּי אִם-בְּמָקוֹם אֲשֶׁר יִהְיֶה-שָּׁם אֲדֹנִי הַמֶּלֶךְ אִם-לְמָוֶת אִם-לְחַיִּים כִּי-שָׁם יִהְיֶה עַבְדֶּךָ׃
>
> Itai replied to the king saying, "As YHWH lives and as my lord the king lives, wherever my lord the king is, I shall be, whether for death or life, there your servant shall be."

In all these cases we see language similar to Ruth's promise, used as a declaration of political loyalty or military alliance – or personal loyalty expressing the informed will of sovereign nations. Similar formulae also appear in ancient Hittite and Ugaritic treaties.

This suggests that while Ruth's declaration might have been spontaneous and personal, it also invoked the language and spirit – and dire seriousness – of national

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74. See more discussion in Mark S. Smith, "Your People Shall Be My People: Family and Covenant in Ruth 1:16-17," *Catholic Biblical Quarterly* 69 (2007).

covenants,[75] thus suffusing her bond to Naomi with a transcendent and noble quality. This quality of covenant-makers using national-level symbolic language is indeed a feel that couples might want to activate in their marriage ceremonies. Such formulae allow a relationship that is humble and intimate to also be earth-shaking as we bring our sovereign selves to bear, and pledge or yield our sovereignty to each other.[76]

The fact that national covenantal language is being used by characters who are close to powerless is not to be overlooked. Naomi and Ruth are both widows, without the protection afforded by patriarchal familial structures. Naomi is currently in exile, and Ruth soon will be. And yet, despite their powerlessness and vulnerability, Ruth is inspired to speak like a king. She finds her power somewhere deep within her, or channels the authority of the Davidic dynasty that she will ultimately birth.

2. Speaking to Queer Lives

As discussed above in his *takkanah,* "Halakhic and Metahalakhic Arguments Concerning Judaism and Homosexuality,"[77] Rabbi Gordon Tucker encourages us to honor the juridical weight of *aggadah,* i.e. material drawn from life stories and not just from legal texts. The Book of Ruth is classical *aggadah*, i.e. not a legal text – at least not overtly so. It tells the story of two women at the margins, stateless and statusless, who forge a special bond that allows them to create a future on their own terms.

Modern queer people will inevitably see their own life stories and struggles reflected in the *aggadic* qualities of the Book of Ruth. LGBTQI people know what it is like to live on the margins. They know what it is like to form bonds of love or close alliance despite the absence of social forms for it. They know what it is like to form family in ways that might not be seen by others as family. They know what it is like to be at risk simply for being who they are. Queer people may feel very seen in the Book of Ruth, and that fullness of identification makes Ruth's Oath a meaningful choice for same-sex couples.

Ruth is clearly committed to being family with Naomi, and she goes ahead and effectuates it, without community or governmental sanction, without a long-rehearsed ritual, and without terminology to describe who they are to each other. Her words are spontaneous, humble, and agentive.

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75. N. Glover, "Your People, My People: An Exploration of Ethnicity in Ruth," *Journal for the Study of the Old Testament* 3 (2009).

76. A lovely vision of personal sovereignty has been proposed by spiritual teacher David Spangler in his thinking about what he called "Incarnational Spirituality." "[As] I go more deeply into the heart of what sovereignty is as a living force within me, I discover it as the living force within all creation, the presence of the Sacred, the "I am that I am," the identity that is manifesting in all of us." From Spangler, "The Many Dimensions of Sovereignty," online lecture (October, 2020).

77. http://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/20052010/tucker_homosexuality.pdf

Ruth's words are also effective. Ruth's Oath, and the lived truth of their story, create a family and, ultimately, a household in Israel, whether or not we have exact terminology to describe their relationships. So clearly is their primary bond to each other seen and understood by others (or at least by other women) that when Ruth, at the story's end, has a baby – the legacy that is the reward of her devotion – it is spoken of as Naomi's:

וַתִּקְרֶאנָהּ לוֹ הַשְּׁכֵנוֹת שֵׁם לֵאמֹר יֻלַּד-בֵּן לְנָעֳמִי וַתִּקְרֶאנָה שְׁמוֹ עוֹבֵד הוּא אֲבִי-יִשַׁי אֲבִי דָוִד׃

The neighbor women gave him a name, saying, "A son is born to Naomi!"
They named him Oved; he was the father of Jesse, father of David.[78]

The phrase "a son is born to Naomi" validates what many queer families struggle to achieve: to uplift their families and be held as family by others. It elevates *kinship* over *biology*.[79] The wise neighbor women knew the baby was Naomi's, even though Naomi had no genetic connection with Oved. She was nonetheless offered the honor due a parent.[80]

In fact, the whole Book of Ruth hovers around the question of kinship versus biology. Much of the action rests on Naomi's knowledge of the system of *yibum* or "levirate marriage," under which a younger brother is under obligation to marry his older brother's widow if they had not yet produced an heir.[81] In levirate marriage, a *social* category of lineage supplants a biological one. The child of *yibum* is the heir of a dead father, not of the person whose DNA they directly carry. The Book of Ruth expands the scope of *yibum* by creating an obligation in cousins, even distant cousins, to marry a childless widow. It is this [somewhat fictionalized] obligation that propels the story.

Even though Ruth's "redemption" by and marriage to Boaz is a legitimating factor at the story's conclusion, there remains a delicate dance about parentage and kinship. In the list of "begettings" at the end of the book that leads us to King David, we see

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78. Ruth 4:17.

79. It is commonplace for queer parents to be asked inappropriate questions about how their children were conceived, so that those inquiring can judge who the "real" parent is. Sometimes it is the children themselves who are asked these questions. In my own family, a fellow congregant once spent time with our older child at a synagogue camping trip; in questioning him she learned that he and his brother had different donors, and asserted to him that they were therefore not brothers but half-brothers. This was in contradiction to the kinship system within which our family lived and which we had articulated to our community. It took months before he referred to his brother as "brother" again. Parents of adoptive children face similar dishonoring of the truth of their family.

80. BT Sanhedrin 19b say this is because Naomi raised the child, which would also be a fine principle. But within the *p'shat* – the simple text – of the story, it is not clear that childrearing has even begun. The previous verse says Naomi became Oved's *omenet,* his nurse or governess or guardian. But in the telling, it does not seem like Naomi has had the time to *earn* her attribution of motherhood through childrearing; it seems rather that the neighbor women give the attribution because they understand the nature of Naomi's relationship to Ruth and thus to the child.

81. Deuteronomy 25:5-10.

that Boaz "begat" Oved.[82] And yet nowhere in the book is Boaz explicitly referred to as Oved's father, or Oved as Boaz's son. It seems that Boaz's genetic connection is acknowledged but his social role as father is being underplayed. Oved is also not referred to as the son of Machlon, which one would expect under the levirate laws. Boaz is identifed by the neighbor women as Naomi's *go'el,* or redeemer under the levirate laws, rather than Ruth's, and Naomi is identified as the baby's *omenet* – guardian or foster-parent, the same relationship Mordecai has with Esther.[83]

Especially interesting is that the neighbor women call Ruth Naomi's *kalah,* a word that can equally mean daughter-in-law or bride.[84] This is not to say that Ruth was Naomi's bride in any technical way. But there is a recognition here that Ruth and Naomi were in a relationship with each other for which words did not suffice; Ruth was daughter-like and bride-like to Naomi; she pledged her lifelong commitment to her[85] and gave her a child that was recognized as belonging to them both.[86]

This very conscious awareness of how kinship is produced and honored will resonate with the experience of queer people. Queer families make children in a range of ways – known donors, anonymous donors, surrogacy, and co-parenting arrangements in which, as arguably in the case of baby Oved, there are more than two people with the social role of parent, even if not all of them are legally recognized.[87]

This is a deep knowing in queer communities. It is also a piece of what makes the Ruth-Naomi story familiar. We may struggle with finding the terminology for Ruth and Naomi's bond in any language. But as a model of alternative family formation, it resonates deeply with queer people, whose relations and families are based on conscious family formation, and rarely on accident.

This *aggadic* affinity between queer people and the very queer story of Ruth and Nao-

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82. Ruth 4:21.

83. Ruth 4:14; 4:16; Esther 2:7.

84. Ruth 4:15.

85. We do not know the effect of Ruth's marriage to Boaz on her pledge to Naomi. Boaz says: וְגַם אֶת-רוּת הַמֹּאֲבִיָּה אֵשֶׁת מַחְלוֹן קָנִיתִי לִי לְאִשָּׁה לְהָקִים שֵׁם-הַמֵּת עַל-נַחֲלָתוֹ וְלֹא-יִכָּרֵת שֵׁם-הַמֵּת מֵעִם אֶחָיו וּמִשַּׁעַר מְקוֹמוֹ עֵדִים אַתֶּם הַיּוֹם׃. "I am also acquiring – *kaniti* – Ruth the Moabite, the wife of Machlon, as a wife, in order to perpetuate the name of the deceased upon his estate, that the name of the deceased may not disappear from among his kin and from the gate of his home town." (Ruth 4:10.) Boaz uses our much-discussed acquisition verb, *kanah.* And he stipulates that it is for the purpose of preserving Machlon's legacy. Blessings and excitement ensue vis-a-vis this marriage; nonetheless we do not witness any process by which Ruth is released of her oath to Naomi. Have Ruth, Naomi and Boaz found a way for these commitments to co-exist?

86. I am aware that another stream of modern feminist interpretation is concerned here that Ruth's child was taken by Naomi; that Ruth was exploited here. This is indeed another reasonable interpretation of the story elements we're given. I think it is important and possible to see both possibilities in the text, and we do not need to decide which is "correct" in order for both to have *aggadic* relevance for our modern understandings.

87. These issues of kinship vs. biology come to play in other corners of our Jewish practices. There

mi set the stage for the Ruth Oath to manifest as a deeply validating and enlivening declaration when marrying and forming a family. On this symbolic level, it resonates true, and it invites in *midot* – qualities – of love, devotion, struggle, success, survival, family, renewal and legacy. A pretty good yield for an investment of 28 words.

In a Framework of Integral Halakhah

I think we have established that nothing in *halakhah* prevents the use of Ruth's Oath as a mechanism for establishing a lifelong bond with another person. We have seen how its operation might avoid the legal difficulties of *kiddushin* as well as the symbolic baggage many feel with it. But is being "good enough" enough?

Rabbi Zalman Schachter-Shalomi, of blessed memory, spoke proudly about innovations he undertook to invite greater enfranchisement among LGBTQI Jews, and spoke lovingly about the relationships of same-sex couples he knew. He argued for limiting the role of *mishkav zakhar* in halakhic conversation, and invited inquiry about whether same-sex marriages requires a commitment to childrearing in order to be considered marriage in a halakhic sense.[88] He also freely deployed queer-oriented mythic stories as a way of offering blessing in which queer people would feel included.[89]

Finding new halakhic frameworks for same-sex relationships was not, however, a task he undertook. Nonetheless, he left us with a fabric of values that he called "integral *halakhah*" which allows us to assess new or adapted ritual and legal forms to see how well they hold the promise of being true sources of renewal.

I have gathered some of the values Reb Zalman raised in his discussions of integral *halakhah* and reframe them here as a 8-point inquiry:

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are *mitzvot* that accrue to a father, such as *brit milah*. The father of the baby is halakhically required to perform the *milah* or to delegate someone else to do so. In the case of an anonymous donor, whose *mitzvah* is it? And in the case of a known but uninvolved or only partially involved donor, on what grounds does the duty fall to him instead of, say, to the individuals who will be the primary or exclusive social parents? We see similar difficulties in communities in which Jewishness is accounted for exclusively matrilineally. What if there are numerous social parents, raising a child as co-parents, and the birth mother is the one among them who is not Jewish? All of these questions are deserving of study and *t'shuvot* of their own. Let this serve as a reminder that in queer families (at least), parenthood asks to be honored as something different from paternity or maternity; biology can no longer be the sole halakhic determiner of kinship and duty.

88. Rabbi Zalman Schachter-Shalomi and Rabbi Daniel Siegel, *Integral Halachah: Transcending and Including* (2007). 152.

89. In 2004 he inscribed a copy of his book, *Wrapped in a Holy Flame,* to me, using words of specific, gay-intended blessing: "May the David and Jonathan warmth and light be yours for health and delight." He understood that I would draw sustenance from a text where I felt reflected.

(1) What is the new situation to be addressed?

(2) If there is a *mitzvah* or *halakhah* that is relevant to the situation, what is its intent? What is it meant to do emotionally, intellectually, spiritually?

(3) Is current practice making that *kavanah* manifest? If not, what practice might?

(4) Does a new paradigm offer suggestions? For instance, looking from a Gaia perspective, without being bound by the halakhic tools of previous generations, what *bat kol* rises up from the belly of the Earth?

(5) What does the "consensus of the committed" say? How are other people addressing this – and not just anybody, but people committed to an "upward striving?" (Not people whose primary investment is being *yotzei,* i.e. technically in compliance.)

(6) Do the new ideas have anchors in Torah and *mitzvot?* (This is the value called "backward compatability.")

(7) Are the new ideas anchored in a sense of what God wants from us?

(8) Will they have the effect of strengthening Judaism seven generations from now?

Let us step through this process and see where we land on the use of the Ruth Oath as a marriage declaration within same-sex couples.

(1) New Situation

Same-sex marriage is now *dina d'malkhuta* in the United States. Same-sex couples are getting married right and left, and seeking ritual recognition within the Jewish world. Can our current Jewish rituals provide adequate embrace?

(2) Halakhah in Place

Marriage within Judaism has been handled within the framework of *kiddushin* since antiquity. What it is "meant" to do is a tricky question. It is *meant* to form a lasting marital bond. Arguably it is meant to suffuse *kedushah*, holiness, into that bond. It is also meant as a means for a man to "acquire" a wife.

(3) Does Current Practice Make the Kavanah Manifest? What Might?

Built on a heteronormative model, and with a long legacy that reads to many modern eyes as a history of women's inequality within Judaism, *kiddushin* does not universally have the ability to bring the quality of *kedushah* into marriage. For some it is enough, particularly in communities where it is the unquestioned norm. For others, looking critically at the tricky operation of patriarchy, it is unacceptable (or would have been, had they understood its history and complexities at the time of their marriages). For same-sex couples who have struggled with not fitting into heteronormative models and who have worked to create relationships of true equality, *kiddushin* is not a clean

fit. We posit, though, that the Ruth Oath might form a lifelong bond, suffused with *kedushah*.

(5) Does a New Paradigm Offer Suggestions?

From a higher perspective, there seems to be an invitation to call in fresh, mythic energies to bring blessing into same-sex (and all) marriages. We are hearing a *bat kol* rising up saying that in this moment of paradigm shift and spiritual rebirth, it is time to relax the vicelike grip of gender.

Most of our ancient Jewish love myths, while being undeniably beautiful, are deeply gendered and heteronormative. They include stories of individual biblical characters, as well as more abstract mystical visions of unification as the coupling of God's male and female aspects. Inviting Ruth and Naomi into the room makes space for a model of love and commitment that is not gender-dependent.

(5) Consensus of the Committed

The "committed" are all over the map right now. As discussed above, the Conservative Movement is still barring the gates of *kiddushin*. The Reform Movement opened the doors of *kiddushin*, but didn't inquire if there might be something that speaks more dynamically to the experience of same-sex couples. Levinson suggests re-imagining what *kinyan* signifies, as does Wolpert.[90] Adler steps out of the *kiddushin* box and seeks other halakhic forms altogether. The Orthodox world declines to recognize same-sex unions and does not extend any ritual or halakhic frame. Within the progressive Jewish world it seems fair to say that a consensus now exists that inclusion of LGBTQI people is important. It is the mechanism of that inclusion that remains an open question. I have used Ruth's Oath for my own wedding and in several others – primarily but not exclusively same-sex couples. All the couples found the use of the language exciting and enlivening. For one intergenerational lesbian couple, it made the difference between choosing to make the ritual Jewish and not. We seem to be at a point where more experimentation and experience is necessary before a consensus of any group of the committed can evolve.

(6) Backward Compatibility

The Ruth Oath is lifted, verbatim, from Tanakh. It could not be more rooted in our ancient tradition. Admittedly, this is an "off-label use" of it. But as we discussed above, Ruth's language in turn resonates with other covenantal language seeded throughout Tanakh. The fact that the Book of Ruth is the annual reading for the holiday of Shavuot[91] keeps this story alive and operative in the hearts of Jewish people. It seems to me this is clear and resonant backward compatibility.

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90. Orrin Wolpert, "Traditional Same-Sex Jewish Wedding" (2009), downloadable on ritualwell.org.

91. The traditional Shavuot mythos is that the revelation at Sinai is a marriage between God and the Children of Israel. The fact that Ruth is the companion text for this *hieros gamos* is not irrelevant. I am grateful to my teacher Rabbi Eli Cohen for reminding me. (And might there be a *shavuot/sh'vuot* pun here?

(7) God's Desire

What is God's desire for us and for the good of all Creation? How can we tell? Our tradition holds a sense of a Divine intention that human beings find partners, expressed right from the beginning:

לֹא-טוֹב הֱיוֹת הָאָדָם לְבַדּוֹ

"It is not good for the human being to be alone."[92]

In my experience of the world, I might question this. Is couplehood truly the greatest fulfillment? Might singlehood, or singlehood in a web of supportive community, not offer its own set of unique and equally beautiful gifts? But with that caution, I will say that the finding of love is a fine and beautiful thing, and I accept the teaching of *Shir Hashirim* that love is a human experience that echoes God's delight at being in relationship with this Creation.

In my heart I hear no Divine voice saying that I should remain unloved rather than love a man. I hear no voice saying I should only marry using words that I experience as tainted by a history of inequality and commodification.

When I think of the words of Ruth's Oath, my heart opens. I feel love stirring in me. I feel an ability to pour forth my desire for love and life, and to do so without equivocation.

I am not the arbiter of God's will. But this is how the Divine stirs within me. I feel the breath of the Divine at my back urging me forward.

(8) Seven-Generation Test

We are in a precarious moment in this world; it is hard to imagine the needs and desires of our descendants in seven generations. But I can situate this vision of marriage within a larger vision of human relationship and dignity. In a world that I would like to see, partners come into marriages gently, as equals, and without so much importance attached to their genders. They journey together through life. And if circumstance or the vagaries of the human heart require them to end their journey together, they do so lovingly, still as equals, and release each other from obligation. This is a world in which mutual obligation is voluntary – neither imposed by society nor the terms of marriage language. This is a world in which individuals maintain their freedom – including the freedom to bind themselves to each other. I believe our descendants will be grateful to hold this freedom in a rich, Jewish container.

In a Four-Worlds Framework

I would like to take a moment and also look at the use of the Ruth Oath from a Four-Worlds perspective recently suggested to me by Rabbi Daniel Siegel, in re-

92. Genesis 2:18.

sponse to my opening statement of this *t'shuvah,* that every halakhic question is a secret pastoral care question. Reb Daniel thought that statement was an attempt to get at the emotional, intellectual and spiritual dimensions of the questions we are asked and the *halakhot* we enact.

As he and Reb Zalman have said, "[when] we develop a new practice or custom, the practice has to reflect what happens on the higher levels as well as what happens on the lower level."[93]

Reb Daniel has described a Four-World view of halakhic process this way:

> In *Asiyah,* halakhic questions are about the choices available, since in this world we can't choose two opposite courses of behavior at the same time.
>
> In *Yetzirah,* questions about practice and choices contain an implicit desire to hear a response which increases a sense of belonging.
>
> In *B'riah,* perhaps we can say that here the question is really about what God wants from me.
>
> And in *Atzilut,* you ask? In *Atzilut* there are no questions or answers.[94]

Moving through the worlds, we might say this. In *Asiyah,* the physical world of doing and embodied wordly engagement, we have already explored many of the ins-and-outs of Ruth's oath language and its legal consequences. We know we *can* effectuate a legal bond by using it. We know one can seek release from it if it becomes necessary.

In *Yetzirah,* I hear the hearts of queer people crying out to be seen and represented and rooted in our tradition, using ancient forms and mythic stories that resonate with present-day experience. The Ruth Oath does that.

In *B'riah* I can sense a Divine desire that we take love and relationship seriously. That we give ourselves over to love and stand by our word. That we make families born of connection and commitment. On a personal level, I have always felt called to explore how queer people can be at the center of Jewish practice and renewal, and to push back barriers. Lifting up Ruth's words feels to me like a *tikkun* – a step in healing the wounds that our tradition has inflicted on queer people. And my personal engagement with it has felt like a *yichud* – a unification – of many parts of me. Is this the Divine hand at work? Are we not the Divine hand?

And in *Atzilut?* Well, in *Atzilut* I let out a long breath. This is the place where we are not heterosexual or queer, we are not a gender, we are not empowered and powerless. This is the place before and beyond all those distinctions. This is the place of the unity that marriage tries to reenact. A long breath.

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93. *Integral Halachah* at 25.

94. Rabbi Daniel Siegel, personal email, Nov. 8, 2020.

Conclusion

Ruth's Oath is a singularly beautiful, romantic and forthright statement of commitment. Its two-beat "you-I" rhythm pumps the blood; its poignance brings tears to the eyes. It is free from the legacy of unequal marriage. It holds the possibility of building a life and allowing family to emerge, whether they fit into traditional patterns or not. It manifest values of sovereignty, endurance, commitment, agency, equality.

Unlike the *harei at m'kudeshet* – "you are consecrated unto me" – language of *kiddushin,* Ruth's Oath is not a "done deal" when the recitation is over. Instead, the oath remains alive and dynamic for the duration of a couple's life together. There is an inherent unfolding to it: there is always a going, always a lodging ahead. The oath is and must be reinvigorated in every moment. This requires the vigilance and wakefulness of both partners, recommiting every day. And what a joy and God-soaked blessing to do so. In the words of poet Alison Luterman:

> All our lives
> we were longing for each other.
> Even in the womb.
> Even before the womb.
> When we were protoplasm,
> When we were cells of dreaming dust
> When we were part of God and didn't know we were God
> We were dreaming of the day
> We'd come to earth again and meet each other
> And share a kitchen
> And fight over who knew the best way to make soup
> And say, I know you
> Heart of my heart
> Dream of my dream
> Let every day be our wedding day
> Let us marry each other in the grocery store and in the garden, pulling weeds together
> And in the car, at every stoplight, let's renew our vows
> And when night falls, let's step under the *chupah* of stars
> And when the alarm clock rings too early in the morning, let's remember to get married again and again to the day.
> For a moment between lifetimes we were separated and it seemed
> You had forsaken me
> Then I woke up and heard you humming in the bathroom
> Your shoes were under my bed
> Pointed in the direction
> We had agreed, long ago, to walk together.[95]

95. Alison Luterman, "For Holly and Mark," unpublished (1999).

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