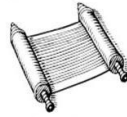


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"Taking Responsibility for Torah"

DO HALAKHIC HUSBANDS OWN THEIR WIVES? A PRE-WWII CHAREIDI VIEW

Rabbi Aryeh Klapper, Dean

The kinyan kiddushin does not effect a one-way acquisition, but rather a unification of husband and wife, a blending of identity. The High Priest needs to be married, not to possess a wife. Only someone who is part of a private relationship of mutual obligation and shared identity—and perhaps, only someone who understands marriage in those terms—can properly stand as the public religious representative of the Jewish nation.

Some Jews have the custom of preparing for repentance by praying at ancestral or rabbinic graves; others fear that this custom borders on idolatrous ancestor worship. Perhaps a reasonable compromise, and one I enjoy, is to seek merit by studying the Torah of late great scholars whose Torah currently languishes in obscurity, thereby causing their “lips to move in the grave”; indeed I have rescued many their books from imminent burial in a graveyard *genizah*.

The argument I will share here is from R. Yitzchak Isaac Milikovsky. According to his son-in-law Rabbi Yosef Leib Arnest, a longtime Rosh Yeshiva at RIETS (d. 1982), Rabbi Milikovsky was an intimate of Rav Elchonon Wasserman in Baronovich and had great influence on the top students who passed through Rav Wasserman’s yeshiva there. He was also a creative and broad-ranging scholar who lacked the means to publish, and only this one segment of what was apparently a longer treatment of halakhic marriage survived his death in the Holocaust. Rabbi Arnest published it toward the end of his own collection [Torat Eretz Tzvi](#).

A brief introductory comment on intellectual history seems fitting. Moderns often presume falsely that their ideas and sympathies are unprecedented. Sometimes this leads to

the resurrection of long-rejected heresies in sublime ignorance of harsh past experience; sometimes it leads to the wholesale rejection of tradition in equal ignorance of halakhic and hashkafic precedent; sometimes that same ignorance leads to the rejection of perfectly traditional ideas as heresy.

One of my goals in presenting Rabbi Milikovsky’s thoughts here is to challenge the notions, prevalent on both the Right and Left, albeit to very different ends, that the *kinyan*-act which effects marriage involves the acquisition of the wife by the husband, and that attempts to explain *kiddushin* otherwise within Orthodoxy are marginal feminist apologetics. Rabbi Milikovsky predates feminism, and exercised his influence in a perfectly mainstream Orthodox institution with the favor of a perfectly mainstream Torah great. Yet he too was unwilling to conceive of marriage as the *kinyan* of the wife by the husband. This should put the lie to both those who see such sexism as demanded by tradition, and to those who justify their rejection of *kiddushin* by claiming that it necessarily sanctifies subordination.

So here at long last is the argument.

1.a. On *Kiddushin* 6b, the Talmud assumes that a man who lends money to a woman on condition that she marry him does not thereby violate the prohibition against taking interest. Why not? Rashba explains that this is because the husband does not “actually acquire her body.”

b. *Avnei Miluim* 42:1, citing the above Rashba, suggests that even according to those who hold that a coerced purchase is invalid, a coerced marriage may be valid, because

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marriage is not the acquisition of the wife's body by the husband.

c. Therefore it is clear that *kinyan* in the context of *kiddushin* does not involve the husband's acquisition of the wife's physical being.

2.a. Talmud *Kiddushin* 67b asks how we know that one cannot perform *kiddushin* with an already-married woman, and answers that there is a general rule that *kiddushin* cannot take effect when consummating the relationship would make the couple liable for *keret*. *Arnei Miluim* concludes from this that when *kiddushin* does not generate a *keret* liability for adultery, a second *kiddushin* can be effective. An example is the case of a non-Jewish maidservant in relation with a Jewish slave,

b. *Terumat haDeshen* 2:102 rules that the wives of men who ascend to Heaven while still alive are permitted to remarry. Why, if death has not broken the original *kinyan*?

c. It follows that *kinyan kiddushin* does not generate the prohibition of adultery by giving the husband rights over the wife, as there are cases when the *kinyan* is valid and yet the prohibition is not in force.

3. If the *kinyan kiddushin* does not generate physical or legal ownership, what is its nature?

a. The original Adam says that the end of marriage is that man and woman "become one flesh," and the Rabbis say that literally "his wife is like his body." This means, for example, that women married to *kobanim* are not only

permitted to eat *terumah*, they have a *mitzvah* to do so, and should make a blessing when doing so.

b. It also means that when sacred rituals may be performed naked, they may also be performed in the presence of one's naked spouse.

c. Therefore, we must say that the *kinyan kiddushin* does not effect a one-way acquisition, but rather a unification of husband and wife, a blending of identity.

I want to emphasize that my point in no way depends on Rabbi Milikovsky's argument being convincing (and indeed Rabbi Arnest points out some cogent weaknesses, and offers an admirably ingenious and creative resolution). My argument's strength is inversely proportional to the strength of his, as the weaknesses of his argument demonstrate the congeniality with which he regarded its implications.

Rabbi Milikovsky concludes by noting the requirement that the High Priest on Yom Kippur be married. This requirement is not satisfied by a relationship with a concubine, which might well be conceived of as acquisition; the High Priest needs to *be married*, not to possess a wife. Only someone who is part of a private relationship of mutual obligation and shared identity—and perhaps, only someone who understands marriage in those terms—can properly stand as the public religious representative of the Jewish nation. *Gmar Chatimah Tovah and Shabbat Shalom!*

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