

ARTICLE

**MAKING MARRIAGES STRONGER:
A MULTI-TIERED APPROACH BASED ON
TRADITIONAL JEWISH UNDERSTANDINGS
OF MARRIAGE**

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A discussion of the best methods to accomplish anything should begin with the goals we are trying to accomplish in the first place. What, then, do we as individuals and as a society want out of marriage? The answers are not hard to delineate. Adults want companionship, children, sexual and other forms of personal intimacy, and someone who can help them cope

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with the sad times and trials of life as well as enjoy its pleasures and triumphs. Children want and need a stable home in which they are nurtured, taught and prepared to be adults. Society as a whole depends on stable marriages to satisfy many of the needs of both adults and children so that the social structure does not have to do so.

The realities of modern American marital life are very different from these ideals. For several reasons, many young adults are simply not getting married—because they can enjoy the pleasures of sex without being married, because they want to establish themselves in their careers before getting married and because they cannot find a suitable spouse. Further, about half of all marriages in America end in divorce. Under these circumstances, adults are clearly not getting the long-term companionship that they dreamed of when they got married. Worse, the negative effects of divorce on children are both long-term and extensive. American society finds itself burdened with taking care of many foster children, families in poverty, children who are not encouraged and helped to learn at home, and ultimately, more people per capita in prison than any other Western nation. Thus, none of the three interested parties—adults, children and society as a whole—is getting what it needs or wants.

At the same time, although divorce is always sad, involving at least the need for each member of the couple to mourn their dreams of a lifetime of love together and often complications with housing, money, and especially children, in the Jewish tradition it is not a sin. In fact, as we all know, sometimes it is the best thing to do for all concerned.

How, though, do we strengthen marriages so that young people are encouraged to marry, have children and give them what they need, and avoid divorce unless it is really necessary? In the book that I wrote in 1988 with Arthur Rosett, *A Living Tree: The Roots and Growth of Jewish Law*,¹ we identified three elements in the way that traditional Judaism has structured marriage: the personal, the social and the religious. My thesis in this essay is that in order to strengthen marriage in America, we should attack the problem on all three levels and in multiple ways on each level. Changing either Jewish law or American law will be only a minor part of my suggestions, for I think that buttressing the non-legal aspects of marriage will take us much further toward our goals.

I. THE PERSONAL ELEMENTS OF MARRIAGE

Marriage is personal in a variety of ways. In fact, marriage may be the most personal arrangement we ever make with anyone else. We develop sexually during our teenage years, long before we are ready to marry, and so part of our preparation for marriage involves learning how to satisfy our

1. ELLIOT N. DORFF & ARTHUR ROSETT, *A LIVING TREE: THE ROOTS AND GROWTH OF JEWISH LAW* (1988) [hereinafter DORFF & ROSETT].

sexual urges in a healthy way—one that preserves our safety and does not harm others. One also needs to learn the ethics of sex. As important as sex is within marriage, marriage involves many other parts of our personal being, including how we interact with our spouse in day-to-day tasks as well as in intimate settings. Preparation for marriage must include attention to these aspects of our being as well. Our expectations for our marriage can be unrealistic and thus set us up for failure, so part of establishing a strong ground for marriage is to learn what is reasonable to expect in the first place. Finally, the couple needs to work out a number of practical arrangements for their marriage to succeed, including how they will handle their finances, careers and children. Love is clearly important in marriage, but it does not conquer all. Here, then, is a more detailed treatment of how the Jewish tradition would have us prepare for these personal aspects of marriage.

A. *Sex*

In the last two years of the Clinton Administration (1999–2000), I was a member of the Surgeon General’s Task Force to create a Call to Action for responsible sexual behavior. There I learned that the evidence already showed that sexual education demanding abstinence until marriage does not work. At best, it convinces teenagers to delay their first sexual intercourse for a year or two, but then, because they have been taught only to abstain from sex until marriage, they do not know how to prevent pregnancy or the spread of sexually transmitted infections. Despite 94.5 million dollars in federal and state funding spent on abstinence-only programs since Congress appropriated up to 250 million dollars for such programs in 1996, the evidence now indicates conclusively that they do not work.² The rate of teenagers engaged in sexual intercourse (in contrast to other forms of sexual activity, including oral sex) has actually gone down in recent years, but we still need to face the fact that most teenagers have had sexual intercourse by the time they finish high school, and a significant percentage have done so three or four years before then. By the end of college, that number rises to over ninety percent.³ This means that we must provide to middle school, high school and college students frank and honest education about how to prevent pregnancy and sexually transmitted infections.

At the same time, we must educate teens that while the pleasures of sex are a great gift of God, there is more to both sex itself and to relationships than physical release and the pleasures that it brings. Parents can have a major role to play in this, but they often are too embarrassed or too inar-

2. For a good summary of the research, see Debra Hauser, *Five Years of Abstinence-Only-Until-Marriage Education: Assessing the Impact*, ADVOCATES FOR YOUTH (2004), available at www.advocatesforyouth.org/publications/stateevaluations/index.htm.

3. ROBERT T. MICHAEL, JOHN H. GAGNON, EDWARD O. LAUMANN, & GINA KOLATA, *SEX IN AMERICA: A DEFINITIVE SURVEY* 91 (Little, Brown & Co. 1994).

ticulate to talk about these things with their children. Therefore, schools, youth groups, religious organizations, summer camps and sports teams must all take a role in teaching young people how to develop mature and caring relationships.

B. Preparation for Marriage

In 1975, the American Jewish University,⁴ where I teach, developed a Preparation for Marriage Course. In 1994, it commissioned a study of the rate of divorce among the 854 couples who had taken the course between 1979 and 1990.⁵ With an 86 percent response rate, the researchers found that instead of the American divorce rate of about 50 percent, the rate of divorce in that population was 8.9 percent.⁶ As a result, I will not officiate at a marriage in Los Angeles unless the couple has gone through that program; I actually think that it is rabbinic malpractice to perform a wedding without requiring it or its equivalent. As I say to couples, you spend years preparing for your careers; you can spend ten sessions (and about 300 dollars) preparing for your marriage.

The curriculum that brings these benefits is not mysterious. Five sessions are with a marriage counselor, in which the ten couples in each group are led through a number of discussions and exercises to talk about such topics as how to handle their parents, how to deal with friends of one person in the couple who are not friends of the other, how to balance work and family and how to have a fight and still come out married. One session, with a financial planner, is devoted to how the couple handles their finances, because the stated reason for most divorces in the first years of marriage is disputes about money. Finally, four sessions with a rabbi focus on why and how to establish a Jewish home. In the course of these discussions, some couples decide that they are not ready for marriage, and it is frankly better that they determine this before marriage rather than afterward. The couples who go through with the program, however, have begun to discuss openly some really important parts of what it means to be married. At least as importantly, they have developed some tools of communication that they will need throughout their marriage. None of this guarantees that the marriage will last, but the survey confirms that this preparation before (or shortly after) marriage dramatically raises the probability that the couple will stay together through all the ups and downs of life.

4. Until May 2007, it was called the University of Judaism.

5. Sylvia Weishaus, Albert R. Martson & Bi-Long Shieh, *Long-Term Evaluation and Divorce Statistics for Making Marriage Work, A Jewish Marriage Preparation Program*, 70 J. OF JEWISH COMMUNAL SERV. 207 (Winter/Spring 1994).

6. *Id.* at 207, 209, 211.

C. *Expectations of Marriage*

Hollywood has duped young Americans into thinking that marriage is “Some Enchanted Evening”—indeed, a never-ending chain of enchanted evenings. Then, when they marry and discover that in a marriage some evenings are indeed enchanted, most are so-so and some are downright unenchanted, they realize that their marriage does not fit the dream, presume that they must have chosen the wrong partner, and divorce. Contrast this with the song in *Fiddler on the Roof*, “Do You Love Me?” in which Tevye and Goldie have been married for twenty-five years, producing and raising children and giving each other support in the day-to-day challenges of life and only then ask each other if they love each other. “After 25 years, it doesn’t change a thing, but it’s nice to know.” Through education within the family and in all the venues I mentioned earlier, we need to change the expectations that couples commonly have of marriage so that they know what and what not to expect. This factor alone will cut the rate of divorce significantly.

D. *The Marriage Contract (ketubbah) and the Writ of Divorce (get)*

Traditional Judaism sees marriage as, in part, a contract between the parties—actually, between the husband and the father of the bride. Although there is a standard form for this contract (in Aramaic, although now some couples use a Hebrew version), within wide bounds they may change that text, adding to it or subtracting from it. This contractual element of marriage enables the couple to divorce simply for what we would now call “irreconcilable differences,” for the law follows the School of Hillel in this Mishnah:

The School of Shammai says: A man may not divorce his wife unless he has found something improper in her, as it is said, “because he finds something obnoxious about her.” But the School of Hillel says, even if she spoiled a dish for him, as it is said, “because he finds something obnoxious about her.” Rabbi Akiba says, even if he found another more beautiful than she, as it is said, “she fails to please him.”⁷

This feature of Jewish law eliminates the necessity for the couple to show grounds for divorce to a court. This makes divorce easier, especially if both members of the couple agree to separate. Even so, the Rabbis instituted requirements that the writ of divorce be executed in precise detail as a way of making sure that the procedure took some time, thus preventing divorce on a whim.

Although the contractual element of Jewish marriage makes divorce relatively easy, traditional Jewish law stipulates that only the husband can

7. M. Gittin 9:10 (quoting *Deuteronomy* 24:1).

initiate a writ of divorce,⁸ not the wife and not a court. As I shall describe below, that has led to many problems and some proposed solutions by people within the various movements of Judaism.

The idea of seeing marriage partially as a contract between the parties is, I think, very valuable. All American states have adopted this contractual concept of marriage since the 1970s, but clearly the American form of this is between the husband and wife and enables either party to move to dissolve it. Some people complain that legally constructing marriage as a contract between the man and woman diminishes the status of marriage because it enables people to marry and divorce too easily and that is a serious concern. I would deal with that, however, through the many non-legal ways of strengthening marriage that I am describing in this essay rather than changing American law, for imposing more stringent requirements than currently exist for either marriage or divorce is likely to have, in my view, much more detrimental consequences.

Depending on what the new requirements would be, they might dissuade more couples who are already living together from getting married in the first place. That is not good for either the couples or society. Although marriage before family and friends does not guarantee that there will be no adultery or divorce, it does raise the odds that the couple will do what they can to avoid both. Publicly taking on the responsibility to care for each other is good for the psychological development and maturity of each member of the couple as well as their happiness together. Furthermore, it provides more assurance that society can count on them to provide for each other services that society itself would otherwise have to furnish. Thus any deterrent to couples formalizing their relationship in marriage, including legal duties beyond what is already required, is, in my view, a bad public policy that discourages marriage.

Worse, such a step would force couples to invent false rationales for dissolving their unions. The Catholic Church has had centuries of experience in annulling what are sometimes decades-long marriages on the frankly specious grounds that there was something wrong with the state of mind of the couple or the wedding rites in the first place. With regard to civil law, Governor Nelson Rockefeller had to fly to Nevada to divorce his wife in 1968 because neither of them wanted to claim that the other was either insane or adulterous, the only two grounds for divorce recognized in New York law at the time. To avoid this kind of sham, the contractual nature of American marriage and divorce law should remain intact, and we should seek to strengthen marriages through the other measures I am describing.

On the Jewish side of this, traditional Jewish law speaks of a man “acquiring” a woman, analogizing the act to Abraham’s acquisition of the

8. Only the man can initiate a divorce: *Deuteronomy* 24:1–3; B. *Kiddushin* 5b.

cave of Makhpelah to bury his wife, Sarah.⁹ This traditional approach is why the marriage contract is between the husband and the bride's father, for the husband is understood to be acquiring her from the domain of her father. Although Orthodox and most Conservative marriage ceremonies still use this terminology, much has been written in this last generation arguing that a change in language is necessary in our more egalitarian society. If the language of "acquiring" is to be used at all, some say, each partner should acquire the other, presumably from each other's parents or perhaps from each other's state of single freedom. Most modern commentators, however, argue that the entire language of acquisition must change because that language diminishes marriage as analogous to buying chattel.¹⁰ Consequently, the Conservative, Reconstructionist, and Reform movements have created a number of alternative, egalitarian forms of the *ketubbah* that eliminate this language and instead speak of the mutual duties that the couple are accepting in marriage as well as the joy of recognizing and marking their love for each other.¹¹

Creating more egalitarian forms of Jewish divorce has been much slower. There are several reasons for this. First, the Reform movement has long recognized divorce in civil law to be legally effective in Jewish law as well,¹² thus obviating the need for any new form of Jewish divorce. Since the 1980s, however, the dramatic rise in the divorce rate within the Jewish community has increasingly led Reform rabbis to fashion a Jewish ceremony of closure in addition to the civil procedures, and so in 1983 the Central Conference of Reform Rabbis (the professional organization of Reform rabbis) created an egalitarian "Document of Separation and Release: *Te'udat Preidah*."¹³ Reconstructionist rabbis are doing something similar.

The Conservative movement, committed as it is to traditional Jewish law, has been much more hesitant to change the traditional liturgy and writ of divorce (the *get*), even though it affirms as a general matter of principle that to be true to the history and methods of Jewish law, we must also be willing to make some changes in it. Marriage contracts can be changed more easily, both because the Rabbis specifically permitted conditions in-

9. B. *Kiddushin* 2a. See *Genesis* 23 for Abraham's acquisition of the cave.

10. See Judith Romney Wegner, *Chattel or Person? The Status of Women in the Mishnah* (1988); Rachel Adler, *Engendering Judaism: An Inclusive Theology and Ethics* (1998).

11. Possibly the first equalized wedding document (*ketubbah*) was published in *The First Jewish Catalog* 164–65 (Richard Siegel, Michael Strassfeld & Sharon Strassfeld eds., 1973). See also Anita Diamont, *The New Jewish Wedding* 72–73, 81 (1985). The Conservative Movement's Committee on Jewish Law and Standards has approved an equalized *ketubbah* in principle, based on a rabbinic ruling by Rabbi Ben Zion Bergman, but the exact text is now being formulated by the Rabbinical Assembly's Liturgy Committee. The Reform and Reconstructionist movements use an egalitarian wedding document.

12. See Solomon Freehof, *Reform Jewish Practice* 99–110 (Union of Am. Hebrew Congregations 1974), reprinted in Dorff & Rosett, *supra* note 1, at 539–45.

13. Central Conference for American Rabbis, <http://www.ccarpress.org> (last visited Sept. 1, 2008).

served in the marriage contract¹⁴ and also because even without a *ketubbah*, the couple is considered to be married in traditional Jewish law if the man has betrothed the woman with a ring or some other consideration—or even, retroactively, if they are publicly known to be living together as husband and wife.¹⁵ (The law, however, is that a man should not live with his wife “even one hour” without a *ketubbah*.¹⁶)

A Jewish couple is not considered by Jewish law to be divorced, however, until and unless they have satisfied the legal requirements of both civil law and Jewish law. If they fail to do that, and if the woman remarries and has children through a second marriage, her intercourse with her second husband is considered to be adultery and her children are illegitimate, because the first marriage has not been properly dissolved. These are serious consequences and hence the reticence in Conservative circles to change traditional Jewish divorce procedures. As a result, the non-egalitarian character of those rites and documents and the serious legal consequences of traditional Jewish law for both the adults and children involved have prompted the Conservative rabbinate to take steps to avoid these consequences, but not to change the traditional form itself.¹⁷

II. THE SOCIAL ELEMENTS OF MARRIAGE

Marriage is a social phenomenon as well as a personal one, and just as it is personal in a variety of ways, so too it is social in many meanings of the word “social.” First, it is the cause for celebration not only for the couple, but for their families, friends and indeed, society at large. Second, it is social in that one must get out of oneself to find a mate, and one must do so according to the norms accepted within one’s community. Third, it is social in that marriage often involves having and raising children, which is a crucial part of the couple’s lives, but also a matter of major import for

14. M. *Ketubbot* 5:1; M.T. *Laws of Marriage* 6:1, 2, 8–10.

15. M. *Ketubbot*, *supra* note 14, at 4:5–12; M. *Kiddushin* 1:1. By the Middle Ages, however, it was considered to be uncouth for a man to betroth a woman through sexual intercourse, and one who did so was subject to lashes. See M.T. *Laws of Marriage*, *supra* note 14, at 3:21.

16. In the Talmud, the Sages maintain that a couple is married even without a *ketubbah* (B. *Ketubbot* 57a), but Rabbi Meir there insists that a wife should not remain “even for one hour” without a *ketubbah* (*id.* and B. *Bava Kamma* 89a), and the later codes agree with Rabbi Meir: M.T. *Laws of Marriage* 10:10; S.A. *Even Ha-Ezer* 66:3 and 105:1. See Joel Roth, *Where There Was No Ketubbah*, <http://www.rabbinicalassembly.org> (follow the “Contemporary Halakhah” hyperlink) (last visited Sept. 1, 2008).

17. For a description of legal steps that Conservative rabbis have taken to avoid the serious consequences for the women and children of divorce, see DORFF & ROSETT, *supra* note 1, at 523–39. In recent years, the Conservative Movement’s Committee on Jewish Law and Standards has adopted a rabbinic ruling that would eliminate the illegitimacy of children born to technically adulterous unions of this type—or at least the legal consequences of that classification. See Elie Kaplan Spitz, *Mamzerut*, RESPONSA 1991–2000 OF THE COMMITTEE OF JEWISH LAW AND STANDARDS OF THE CONSERVATIVE MOVEMENT 558–86, RABBINICAL ASSEMBLY (Kassel Abelson & David J. Fine eds., 2002), available at <http://www.rabbinicalassembly.org> (follow the “Contemporary Halakhah” hyperlink).

society as a whole. Fourth, because society will need to take on extra burdens if the couple does not care for themselves and their children, marriage involves a number of duties that society imposes on the couple vis-à-vis each other and their future children. In this section, then, we shall consider how the Jewish tradition would have us think and act with regard to the social element of marriage.

A. *Social Celebration and Recognition of Marriage*

Traditional Jewish law requires people to help the bride and groom celebrate their wedding.¹⁸ This recognizes the fact that marriage is an important, communal event. In it, the couple is declaring their union before their families and friends (and, in religious weddings, before God), and the community needs to affirm their union officially by witnessing the ceremony that binds them together as a couple and then by singing and dancing with them to demonstrate the community's approval and support. As I mentioned earlier, this does not guarantee that adultery or divorce will not happen, but it makes it more likely that the couple will at least try to remain faithful to each other and to make a life together. I would claim that the exact same social re-enforcement is needed and should be given to gay and lesbian couples so that they too are encouraged to remain faithful to each other.

Along with celebrating the wedding that creates the union, of course, society grants a special legal status to married couples that affects everything from their property to their health care to their taxes. Beyond the legal provisions that mark marriage as a special category, couples will soon find that they will socialize most with other couples their own age who are going through the same stages in life. All of these social forms of re-enforcement of marriage are critical to its strength.

B. *Finding a Mate and Having Children*

After schooling is over, it is often hard to find a mate, even if someone is looking for one. The old Jewish form of doing so—the matchmaker—is still used only in some Orthodox communities. Computer dating services have been very helpful here, but families and social and religious groups need to do much more to provide opportunities for people in their twenties and beyond to meet one another. These opportunities can include social events, social action projects, book clubs and any other venue where people with similar interests can meet each other.

This is important not only for the man and woman themselves, but for society as a whole. Financial needs now often mean that both men and women must work outside the home to sustain themselves and their chil-

18. For more on the requirement that people must help a couple celebrate their wedding, see AVOT D'RABBI NATAN, ch. 4, reprinted in DORFF & ROSETT, *supra* note 1, at 468.

dren, and because contemporary jobs often involve much longer training in technology and the like, more and more singles are postponing marriage until they have completed their training, marrying only in their late twenties or thirties. The optimal age for both men and women to procreate, however, is in the early twenties, with a full thirty percent of couples between ages thirty and thirty-five experiencing problems with infertility.¹⁹ After age thirty-five, that number increases dramatically, and with age comes also increased risk of birth defects. Although age is not the only factor in infertility, it compounds all the others, and it makes it less likely that medical interventions will enable the couple to produce a healthy baby.²⁰ Furthermore, contrary to popular belief, this is a problem for men as well as women: a third of infertile couples cannot have children because of a problem in the man, a third because of a problem in the woman, and a third because of a problem in both or for reasons the doctors cannot determine.²¹

In marriages of people older than fifty, the couple usually does not expect to have children, but couples in their teens through their forties commonly do. In such couples, infertility causes immense pressures in the marriage. Every month becomes a final examination, and if the couple has experienced fertility problems, they are likely to fail many of those examinations in a very significant, personal subject. This causes them to raise deep questions about their future as a couple, either without a biological child of their own or without a child altogether. Furthermore, infertility treatments can quickly become very expensive, ranging from a few hundred dollars for artificial insemination of the husband's sperm to tens of thousands of dollars for multiple attempts of *in vitro* fertilization (IVF), especially if pre-implantation genetic diagnosis (PGD) or egg donation is involved.²² Adoption is another option, but adopting a healthy infant is both hard to come by and expensive (as much as 30,000 or 40,000 dollars), leaving the couple who cannot afford that with the option of adopting a foster care child or not having children at all.²³ Some marriages break up over this.

19. See NAT'L WOMEN'S HEALTH INFO. CENTER OF THE U.S. DEPT. OF HEALTH AND HUMAN SERV., OFFICE ON WOMEN'S HEALTH, INFERTILITY 2 (2006) available at <http://www.womenshealth.gov/faq/infertility.pdf>.

20. See *id.*

21. *Id.* at 1.

22. Center for Assisted Reproduction, Fee Schedules, <http://www.embryo.net/fertility-pages/fee.html> (last visited Sept. 1, 2008); Huntington Reproductive Center Medical Group, Infertility Treatment Costs, <http://www.havingbabies.com/infertility-treatment-cost.html> (last visited Sept. 1, 2008); Reproductive Genetics Institute, Price List, http://www.reproductivegenetics.com/docs/pgd_pricelist_022305.pdf (last visited Sept. 1, 2008).

23. The Evan B. Donaldson Adoption Institute, Costs of Adoption, <http://www.adoptioninstitute.org/FactOverview/costs.html> (last visited Sept. 1, 2008); Adoption.com, Looking for Adoption in Minnesota, the costs of adoption: a factsheet for families, <http://costs.adoption.com/articles> (follow the "adoption costs" hyperlink, then select "what adoptions cost") (last visited Sept. 1, 2008).

The best advice to help couples avoid these tensions is to alert people in their teens and twenties that despite the impressive advances in infertility therapy, the older one is when first trying to have children, the less likely it is that the process will go smoothly. It is not too early to look for a mate in college, and if one finds one, it is not too early to marry and begin to have children in graduate school, because the pressures of one's first job are often greater than those of graduate school. In this, as in other areas of life, "an ounce of prevention is worth a pound of cure."

Education of young people in the facts of infertility is important for the United States as a nation as well as for individual couples. Americans are an aging population; we would be statistically aging even more rapidly if it were not for young immigrants seeking better conditions in this country. Undoubtedly, with a very high percentage of Generation X remaining single, in coming years the median age of Americans will rise yet further, leading to major problems of caring for the elderly—the solvency of Social Security, providing board and care facilities and appropriate medical care, etc. —and fewer people to contribute to America's creativity and financial strength. Thus, helping people avoid infertility is important not only to strengthen marriages by eliminating the immense tensions that it brings, but also to provide the young people that our nation needs for a vibrant future. The United States, however, has managed to maintain a 2.1 fertility rate, which demographers deem to be replacement level. For Europeans, Japanese, Thais, and South Koreans, the fertility rates are far below that,²⁴ and the same is true for Jews. Jews are a very small people. A third of the world's population is Christian, and twenty percent are Muslim, but Jews constitute only 0.2 percent (approximately thirteen million in total).²⁵ Furthermore, forty-seven percent of Jews marry people of other faiths, and when they do, only about a third raise their children as Jews.²⁶ Even when Jews marry other Jews, their reproductive rate is below 1.9, far lower than the 2.1 rate necessary to sustain a population.²⁷

So Jews are in demographic crisis, and this makes it all the more imperative that Jews look for a mate and marry earlier, and, if they are able, they have three or four children.²⁸

24. Russell Shorto, *Childless Europe*, N.Y. TIMES MAG., June 29, 2008, at 34, 40–41.

25. Sergio DellaPergola, *World Jewish Population*, in AMERICAN JEWISH YEARBOOK 2007, AMERICAN JEWISH COMMITTEE, 551, 562–63 (David Singer & Lawrence Grossman eds., 2007).

26. THE NATIONAL JEWISH POPULATION SURVEY 2000–2001, UNITED JEWISH COMMUNITIES viii–ix, 16–19 (2003), available at <http://www.ujc.org/njps/pdf> (last visited Sept. 1, 2008).

27. *Id.* at 4.

28. For more on this, see ELLIOT N. DORFF, LOVE YOUR NEIGHBOR AND YOURSELF: A JEWISH APPROACH TO MODERN PERSONAL ETHICS 101–04 (2003) [hereinafter LOVE YOUR NEIGHBOR AND YOURSELF]; Kassel Abelson & Elliot N. Dorff, *Mitzvah Children*, <http://www.rabbinicalassembly.org> (follow the "Contemporary Halakhah" hyperlink) (last visited Sept. 1, 2008).

C. *Constructive Conditions of the Marriage Contract:
Social Expectations of the Marriage*

Traditional Jewish law specifies constructive conditions for marriage—that is, conditions that apply to every Jewish marriage whether or not the couple writes them into their marriage contract or has one at all. These include, for example, that the husband agrees to provide for the health care of his wife and to redeem her from captivity.²⁹ Jewish law also spells out the obligations that parents and children have to each other.³⁰

A society should and usually does specify its expectations for married couples, but not primarily in law. California law, for example, has a lot to say about the requirements to get married and who may officiate, and it has even more to say about dissolving marriages and the implications for property and child custody, but it has only one paragraph on the duties of the spouses toward each other: “Husband and wife contract to each other obligations of mutual respect, fidelity, and support.”³¹ Even Jewish law, which goes much further in specifying the duties of spouses toward each other, leaves out a great deal—as I found out the first day my wife and I returned from our honeymoon forty-two years ago and I found myself with the unwritten and unspoken duty of taking out the garbage! I also had many other responsibilities, including much more serious ones, as every spouse does.

These obligations emerge from the fact that marriage is not just a legal state; it is a *relationship*. Every living relationship generates duties for each of the parties toward each other, and those responsibilities change as the relationship does. Until recently, couples determined the exact nature of a few of these obligations themselves, but a large percentage of them derived from social expectations arising out of moral norms or customs. Society expected the husband to do certain things, largely connected with earning a living, and the wife others, largely connected with raising the children and maintaining the household. Nowadays, social expectations of both men and women in marriage are not nearly as clear as they were even one generation ago, and so the couple has to negotiate many more facets of their relationship than their parents or grandparents did. This affords much more freedom to both members of the couple to take on non-traditional roles, with some men becoming the primary caregivers for their children while their wives become the chief breadwinners.³² It also, though, requires the couple to decide on their own who is going to do what in multiple areas of their lives together; the couple can no longer just depend on social custom but

29. M. *Ketubbot* 4:7–12; translated in DORFF & ROSETT, *supra* note 1, at 471–72.

30. For a discussion of these materials, see ELLIOT N. DORFF, *TO DO THE RIGHT AND THE GOOD* ch. 4 (2002); ELLIOT N. DORFF, *THE WAY INTO TIKKUN OLAM (FIXING THE WORLD)* ch. 8–10 (2005) [hereinafter *THE WAY INTO TIKKUN OLAM*].

31. CAL. CIVIL CODE, § 5100 (West 2008).

32. Lisa Takeuchi Cullen & Lev Grossman, *Fatherhood 2.0: As dads have begun to act more like moms, old notions of masculinity have come into question*, *TIME*, Oct. 15, 2007, at 63–66.

must rather negotiate a whole host of responsibilities in their marriage in order to determine exactly what each must do and what each can expect the other to do.

In this situation, we need minimally to apprise couples of the need to carry out this process of negotiation in preparing them for marriage. They cannot assume that they will automatically divide responsibilities the way their parents did; in fact, because the parents of young couples today probably got married in the 1960s or 1970s, when many of the stereotypical roles of husbands and wives were being challenged, it is likely that the man's parents and the woman's parents handled these matters differently, and what the young couple decides to do may constitute yet a third model. We then must provide them with the tools to have such discussions amicably and constructively. Then, if the couple is going to arrange things very differently from what most of their friends do, they need to have the counseling support to learn how to explain their choices to themselves and to others. Otherwise, they will constantly feel that they are odd and that their marriage is somehow flawed.

The men speculate that "if I were a real man, and if this is the kind of marriage I want, I would be earning a living instead of taking care of the kids all the time"; while the women postulate "if I were a real woman, and if this is the kind of marriage I dreamed of, I would not have to be both wage earner and full-time Mom, with all the feelings of guilt that I have when my children express their needs to see me more than I can." Gaining the tools and, if necessary, the aid to work out their own expectations of each other and how they are going to deal with social expectations of their roles in marriage is critical to enabling them to feel good about their marriage and to want to stay in it.

III. THE RELIGIOUS ELEMENTS OF MARRIAGE

Judaism understands marriage to be not only a personal and social phenomenon, but a religious one as well. From the very first chapters of Genesis, the Jewish tradition understands marriage as part of God's plan for us—something that God wants each of us to have in our lives. Thus God says, "It is not good for man to be alone; I will make a fitting helper for him."³³ God also establishes the rules of incest and adultery—that is, who may not marry whom—as well as the expectations that spouses can and should have of each other. Religion also provides a community to strengthen the life of the couple and their children, including life cycle rituals that can be shared with that community. Finally, through prayers and rituals, religion affords daily opportunities for each member of the family to see life and the place of family in it in the context of the broad picture of the goals of life that

33. *Genesis* 2:18.

each religion describes. Here are brief expansions of some of these religious facets of marriage.

A. *Religious Duties and Meanings*

In the Torah, God announces two commandments regarding sex within marriage: the duty to procreate³⁴ and the duty of the husband to satisfy the woman's sexual needs.³⁵ In addition, the latter verse requires that the husband provide for his wife's food and clothing. The Rabbis then added further requirements as part of Jewish law.³⁶ These divine commandments, either from the Torah itself or from the Rabbis' later interpretation and amplification of the Torah, raise many philosophical questions about the status and authority of religious demands, issues much broader than the topic of this essay.³⁷

Many American couples, of course, will not want to frame their marriages in religious terms at all. For those who do, however, the religious meaning of a marriage can add many dimensions to it, including additional duties and symbols, and additional levels of significance of marriage and children. Religious leaders should spell all this out during premarital counseling and in their ongoing education of their congregants so that the religious meaning of marriage can further shape and strengthen it.

B. *Religious Community*

Part of the fragility of modern American marriages is due to the fact that many of us no longer live in extended family configurations, where

34. *Id.*

35. *Exodus* 21:10. The Septuagint, Peshitta, and Targums all understood *onata* in *Exodus* 21:10 to refer to her conjugal rights, as did the Rabbis. If correct, this verse uniquely in all the ancient world (and in much of the modern world) would assert that a woman has sexual needs and a right to sex within marriage. The Rabbis then defined exactly how often each week a man had to offer to have conjugal relations with his wife in order to fulfill this marital duty to her, the frequency depending on how often his job would make it possible for him to be home; see *M. Ketubbot* 5:6. (This applies only to those weeks in which she was not having her menstrual period, for the Torah forbids intercourse during her menstrual flow; see *Leviticus* 15:19–24; 18:19; 20:18.) For more on this, see LOVE YOUR NEIGHBOR AND YOURSELF, *supra* note 28, at 82–111. Rashbam and Bekhor Shor, two medieval Jewish commentators, translate *onata* in *Exodus* 21:10 as “her dwelling,” however, and some modern biblical scholars think that it refers to his duty to provide her with ointments. See NAHUM SARNA, *THE JPS TORAH COMMENTARY: EXODUS 121* (1991). The Jewish tradition, however, is defined by the Rabbis' interpretation and application of the Torah, and they determined that this verse demands that the man satisfy his wife's sexual needs.

36. For a summary of the spousal duties that the Rabbis interpreted the Torah to require or created on their own authority, see *M. Ketubbot* 5:5–6:1; 7:3–10; *M.T. Laws of Marriage* 12:1–15; 13:3–6. Most of this is translated and discussed in DORFF & ROSETT, *supra* note 1, at 472–85. For a discussion of many of these spousal duties, see *THE WAY INTO TIKKUN OLAM*, *supra* note 30, at ch. 8.

37. For a survey of representative Orthodox, Conservative, and Reform positions on the authority of Judaism's commandments, see ELLIOT N. DORFF, *CONSERVATIVE JUDAISM: OUR ANCESTORS TO OUR DESCENDANTS* 96–150 (1996).

aunts, uncles, cousins and grandparents can help parents and children deal with problems they have with each other. We live, instead, in nuclear families—or often broken, blended, or single-parent families. A strong community of friends and their families can sometimes substitute for an extended family in these respects. Religions help to form such communities through frequent meetings for worship, holiday celebrations and social and social action activities; religions thus help to strengthen marriages in some very practical ways.

IV. EPILOGUE

I have delineated a number of ways in which paying attention to the three elements of marriage—contractual, social and religious—can strengthen modern American marriages. Very little of what I am suggesting requires changes in either American or Jewish law, although the latter would gain by becoming more egalitarian. What needs to change, in my view, is the way we think about marriage, what we expect out of it, and most importantly, the ways in which families and society as a whole can buttress it.³⁸ This is important both for society, so that many critical social functions can be accomplished by couples and families rather than by government, and it is at least as important for the people involved. As the Rabbis say, “A man without a wife lives without blessing, without life, without joy, without help and without peace.”³⁹

38. Russell Shorto, for example, maintains that Scandinavian countries and the United States have been able to maintain replacement levels of population by being very generous to families (Scandinavia) or by being very flexible in enabling women to drop out of the job market during their childbearing years and then rejoin it (the United States); *see* Shorto, *supra* note 24, at 40–41.

39. MIDRASH PSALMS ON PSALM 59:2 (William Braude trans., Yale Univ. Press 1959).