"What God has Joined Together": Predestination, Ontology, and the Nature of the Marital Bond in Early Rabbinic Discourse

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I. Introduction

In his *novellae* on the Babylonian Talmud, the thirteenth-century Spanish Talmud commentator, R. Yom Tov b. Avraham Alashvili (known to students of the Talmud by his eponym, Ritba), offers an explanation of the famous talmudic dictum, "These as well as these are the words of the living God" (אלו ואלו דברי אלוהים חיים). Ritba explains that with these words the Holy One, blessed be He, said to Moses that "the halakhah should be decided by the sages of each generation,"[1] that is, each generation's sages are given authority to determine the halakhah. This idea very much troubled the seventeenth-century Ashkenazic halakhist, R. Yair Bachrach. In one of his *responsa*, which were collected and published under the title *Ḥavvot Yaʾir*, Bachrach expresses his astonishment at Ritba's idea and says:

> This idea is bizarre, for how can something which is truly impure ... and of its power the *qelippah* and impurity and the *siṭra aḥra* (the Evil) are awakened, be affected by the determination of some people that it is pure?! What is the force of a physician's

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1 See Ritba's *Novellae* ad *b. ʿEruv.* 13b, s.v. אלו ואלו דברי אלהים חיים. Ritba follows the opinion of Naḥmanides, on which see Avi Sagi, "Canonic Scripture and the Hermeneutical Challenge: A Critical Review in Light of Naḥmanides," *Daʿat* 50–52 (2003): 121–41 (Hebrew).

determination, when he claims that some poison is a curative medicine?![2]

Bachrach found Ritba's stance difficult to accept, because in his view when the Torah declares an object as unclean it is because that object *is* unclean ("truly impure"). The halakhic opinion of the sages, declaring something as clean or unclean, cannot be seen as constituting the status of that thing, for its status exists in reality, and therefore it cannot be dependent on the sages' decision.

A fuller exposition of this claim was given several hundred years earlier, by the fourteenth-century Spanish rabbi, Nissim b. Reuven of Gerona (known to students of rabbinic Judaism as Ran). In the eleventh homily of his collected sermons, *Derashot HaRan*, he re-phrases Ritba's idea and maintains that: "As God gave them [i.e., the rabbis] the authority to decide matters, whatever they agree upon *is that which God commended*." Ran views this idea as problematic, however, and writes:

> There is however some room for consideration. For this [idea] follows the opinion of he who thinks that there are no reasons whatsoever underlying the commandments of the Torah but rather that they all follow the Will alone. Accordingly, since the thing in itself is not, for example, pure or impure, but rather the fact that you deem it impure, or pure, merely reflects the Will, it emerges, accordingly, that for he who follows everything that the sages of the generation decide, it is impossible that their decisions be opposite of the truth. And it is impossible that there would be any repulsive effect on our souls from that thing. However, as we do not accept this view, but rather we believe that whatever the Torah prohibited harms us and has a negative effect on our souls—even though we do not know how precisely—according to this view, when the sages determine that an impure thing is pure, what shall be?! After all, that thing would harm us, and would function according to its nature, even though the sages have determined that it is

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2   See *Responsa Ḥavvot Yaʾir*, §192 (דבר זה תמוה, כי מה יועיל דבר שבאמת טמא ... ומכחו תתפורר קליפה וטומאה וסיטרא אוחרא!ן, מה שיסכימו אחרים שהוא טהור? ומה יועיל הסכמת הרופא באמרו על סם המות שהוא סם חיים?). Cf. Moshe Halbertal, *People of the Book: Canon, Meaning, and Authority* (Cambridge, MA: Harvard University Press, 1997), 54–72.

pure! Should the physicians determine that a certain drug is
mild, yet it is, for example, hot in the fourth degree, without
any doubt its effect on the body would not be as the physicians
determined but rather according to its true nature! So too is the
thing, which the Torah prohibited to us because it is harmful
to our souls, how can its nature change merely because the
sages decide that it is permitted?! This cannot happen, unless
as a miracle![3]

Ran contrasts two understandings of the nature of halakhah. The one, which
he espouses, maintains that halakhic categories are related to, and based on,
the natural properties of objects in the world. For example, when the Torah
deems an object impure it is because of some natural quality that inheres in
the object. Purity and impurity are thus halakhic names for natural properties
of objects, and one may therefore say that the Torah deems certain objects
impure because these objects *are* impure, that is, of their own nature.[4] By

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3   *Derashot HaRan*, §11, ed. Vilna, 78: והנה יש כאן מקום עיון. כי זה ראוי שימשך על דעת מי
שיחשוב שאין טעם למצות התורה כלל אלא כלן נמשכות אחר הרצון לבד. ולפי זה, אחר שהדבר מצד
עצמו איננו ראוי להיות טמא או טהור, דרך משל, אבל מה שטמאתהו או טהרתהו נמשך אחר הרצון לבד,
הנה א״כ לפי זה הנמשך אחר כל מה שינינהו חכמי הדור שאי אפשר שיהיו דבריהם על הפך האמת. וא״א
שימשך מהענין ההוא בנפשותינו דבר מגונה כלל. אבל אחרי שאנחנו לא נבחר בזה הדעת, אבל נאמין
שכל מה שמנעתהו התורה ממנו מזיק אלינו ומוליד רושם רע בנפשותינו, ואע״פ שלא נדע סבתו, לפי זה
הדעת א״כ כשישכימו החכמים בדבר אחד טמא שהוא טהור מה יהיה?! הלא הדבר ההוא יזיק אותנו ויפעל
מה שבטבעו לפעול, ואע״פ שהסכימו בו החכמים שהוא טהור! ואלו יסכימו הרופאים על סם אחד שהוא
שוה והוא, על דרך משל, חם במעלה הרביעית, חם ספק שלא תמשך פעולת החום בגוף מה שיסכימו בו
הרופאים, אבל כפי טבעו בעצמו! כן הדבר שאסרה לנו התורה מצד שהוא מזיק בנפש, איך ישתנה טבע
הדבר ההוא מצד שהסכימו החכמים שהוא מותר?! זה אי אפשר רק על צד הפלא! Cf. Zeev Harvey,
"On Ran's Philosophy of Halakha," in *New Streams in Philosophy of Halakhah*, ed.
Aviezer Ravitzky and Avinoam Rosenak (Jerusalem: Magnes Press and Van Leer
Institute, 2008), 171–80 (Hebrew).

4   This attitude toward the nature of halakhah was termed "Realism" by Daniel
Schwartz, and a view similar to the one Ran attributes to Ritba he called
"Nominalism." See Daniel R. Schwartz, "Law and Truth: On Qumran-Sadducean
and Rabbinic Views of Law," in *The Dead Sea Scrolls: Forty Years of Research*, ed.
Devorah Dimant and Uriel Rappaport, STDJ 10 (Leiden: Brill, 1992), 230–40.
The use of these terms is problematic for various reasons, as noted by Jeffrey
L. Rubenstein, "Nominalism and Realism in Qumranic and Rabbinic Law: A
Reassessment," *DSD* 6 (1999): 158–59 n. 5. Because I wish to preserve the term
"Realism" to designate the modern school of legal theory known as "Legal
Realism" (as the term is normally used in legal studies), I shall refrain from
using it here. Instead, I will speak of "ontology" and "an ontological stance."

designating these objects as impure the Torah did not affect the nature of these objects; it only revealed it.

The contesting understanding of halakhah, which Ran ascribes to Ritba, maintains that halakhic status is the sole result of halakhic decision, not of any alleged property of the object to which that status is attached. In fact, this approach denies the very existence of such alleged properties. Purity and impurity are categories that a halakhic authority may attach to an object for various reasons (such as the desire to achieve certain goals), but it does not emanate from and is not conditioned by any natural quality of that object, which—according to the previous view—makes it pure or impure.

Ran rejects the latter view, because in his opinion it implies that there are no reasons for the commandments, but rather they reflect God's arbitrary will,[5] a conclusion which seems to him inconceivable.[6] I am not very much interested in this aspect of his analysis of Ritba's stance. Nor do I wish to engage his ontological view, as such. Rather, I wish to use his argument to clarify the manner by which I shall approach the question of ontology in early rabbinic halakhic thinking. The heart of Ran's halakhic thinking is the claim that objects may have various natural properties, to which halakhic categories relate. Hence, halakhic categories and norms are an outcome of *reality*; they are not the product of human decision. And it is this sense of ontological thinking in halakhic discourse which I shall use in this paper.[7]

My focus is the marital bond between husband and wife. Various early rabbinic texts leave the reader with the impression that the rabbis of the Mishnah, Midrash, and Talmud viewed marriage as based on and as a manifestation of a state of affairs in the real world, *which existed of its own accord, prior to and regardless of its actual realization* by the two individuals. These texts appear to support the assumption that the ancient rabbis espoused an ontological conception of marriage, in a manner resembling Ran's and Bachrach's approach. Furthermore, as we shall see, this assumption may be corroborated by the fact that other ancient Jewish texts of roughly the

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5 Ran's argument is obviously difficult. One does not need to assume some unseen properties in order to imagine good reasons for the commandments; it is easy to think of various *ends* which the commandments are supposed to achieve.

6 Compare, for this matter, Maimonides, *Guide to the Perplexed*, 3:31.

7 I emphasize this point because one could speak of the ontology of marriage in a different sense, namely, the idea that the act of marriage has an ontological *effect*. These are distinct meanings, and I will *not* be dealing with the latter.

same period, or slightly earlier, seem to have held similar views. However, despite the seemingly ontological language of early rabbinic texts concerning marriage, one does not find evidence therein that the ancient rabbis reached normative conclusions from that assumed view, as one would expect. It is suggested, therefore, that despite the rhetoric of early rabbinic texts the ancient rabbis viewed marriage as a man-made social institution, and therefore they accepted the premise that halakhic authorities have the authority to annul it in cases of social need.

II. One Flesh

In the classical Palestinian rabbinic midrash on the biblical book of Leviticus, *Leviticus Rabbah* (presumably of the fifth century CE), there is a beautiful story, which will serve as a point of departure for the present discussion:

> [It once happened], in the days of R. Tanḥuma, that Israel were in need of rain. They approached him, saying: "Rabbi, declare a fast, so that rain shall fall." He decreed once, and twice, but rain did not fall. At the third time he entered [the synagogue?] and said to them: "All people should distribute charity." One of them stood up and took something he had in his house and he went outside to give it in the market. His divorcee met him and said to him: "Help me! For since the day I left your house I have had no good fortune." As he saw her naked and in great distress he was full of mercy over her and he gave her, following the verse, *And from your own flesh you shall not hide yourself* (Isa 58:7). There was one man who watched them, and he went and said to R. Tanḥuma: "Rabbi, why are you sitting here, while the transgression is there!" He said to him: "What did you see?" He said to him: "I saw a certain man talking with his divorcee and lending her money! Had he not had sex with her, would he have spoken with her and given her money?!" R. Tanḥuma sent and brought him. He said to him: "My son, don't you know that the world is in distress? That people are in distress? That the cattle are in distress? And you attend to your divorcee and give her money?!" He said to him: "But wasn't it you who expounded, *And from your own flesh you shall not hide yourself*?! And you yourself said: 'All people should go out and

distribute charity!' So I took something I had in my house and I went out to distribute charity in the market, and my divorcee fell upon me and she said to me: 'Help me, for since the day that I left your house I have had no good fortune.' Once I saw her naked and in great distress, I was filled with mercy upon her and I gave her, following the verse, *And from your own flesh you shall not hide yourself*." At that moment R. Tanḥuma lifted up his face to heaven and said: "[Master of the universe!] If this human being, who is cruel and has no obligation to feed her, once he saw her naked and in great distress was filled with mercy upon her and gave her, we, who are your children, the children of your chosen ones, the children of Abraham, Isaac, and Jacob, and our food is upon you, all the more so!" At that moment rain fell and the world was relieved.[8]

This story, which deserves a close reading for its own sake,[9] attracts my attention in the present context primarily because of its incredible use of Isa 58:7, according to which one's wife, even if not in that status any longer (because the couple is divorced), is considered one's own *flesh*. What is the significance of such a homiletical expression? Is it a "serious" statement, which tells us something about the sages' conception of the marital bond? Or, is it a mere piece of rabbinic entertainment? How are we to treat such midrashic texts?

In the parallel version to that story, found in *Genesis Rabbah* 33:3, the citation of Isa 58:7, *And from your own flesh you shall not hide yourself*, is completely absent.[10] As *Genesis Rabbah* is generally considered earlier than *Leviticus Rabbah*,[11] one might wish to conclude that the reference to the biblical verse

8   *Lev. Rab.* 34:14 (ed. Margulies, 806–9). For parallel versions of this story see Margulies' comments, ad loc.

9   For an insightful literary analysis of the story see Yonah Fraenkel, "Outer Forms and Inner Values," in *Michtam Le-David: Rabbi David Ochs Memorial Volume (1905–1975)*, ed. Yitschak Gilat and Eliezer Stern (Ramat-Gan: Bar-Ilan University Press, 1978), 130–34 (Hebrew) (= idem, *The Aggadic Narrative: Harmony of Form and Content* [Tel Aviv: Hakibbutz Hameuchad, 2001], 308–13 [Hebrew]).

10   See *Gen. Rab.* 33:3 (ed. Theodor-Albeck, 304–5).

11   Cf. Herman L. Strack and Günter Stemberger, *Introduction to the Talmud and Midrash*, ed. and trans. Markus Bockmuehl, 2nd ed. (Edinburgh: T&T Clark; Minneapolis: Fortress, 1996), 290.

in our story is a late gloss that was not part of the original story. Accordingly, any attempt to rely on the text of the story as it appears in *Leviticus Rabbah* in order to conclude that "the rabbis"—as if a single story allows us to make generalizations about such a collective—were of the opinion that one's wife is as one's own flesh, would justifiably be rejected as unwarranted.

However, in another story, found elsewhere in *Genesis Rabbah*, we read of R. Yossi the Galilean, who supported his divorcee after her misfortunate re-marriage to a certain policeman, because of these very words of Isa 58:7.[12] That story appears also in *Leviticus Rabbah*, right before the above-quoted story about R. Tanḥuma, and there too it ends with the biblical proof-text from Isaiah.[13] In fact, in the Palestinian Talmud,[14] considered even earlier than *Genesis Rabbah*,[15] this story concludes in precisely the same manner. It emerges, then, that the imperative of Isa 58:7 not to neglect one's own flesh was understood by a well attested rabbinic tradition as a reference to one's wife (even after divorce!).

Indeed, the story about R. Yossi the Galilean, as well as the one about R. Tanḥuma, are presented in *Leviticus Rabbah* (as well as in the early parallel in the Palestinian Talmud) as manifestations of the principle laid down by R. Yaᶜakov bar Aḥa, in the name of R. Elᶜazar (that is, the third-century Palestinian Amora, R. Elᶜazar ben Pedat), who interpreted Isa 58:7 as referring to one's divorcee: "*And from your own flesh you shall not hide yourself*—this refers to one's divorcee."[16] This interpretation, then, does not originate with the

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12   See *Gen. Rab.* 17:3 (ed. Theodor-Albeck, 152–55). The story appears in the text-witnesses of *Genesis Rabbah* in two different versions, as noted by Albeck in his commentary ad loc., yet in both versions it ends with a reference to Isa 58:7.

13   *Lev. Rab.* 34:14 (ed. Margulies, 802–6).

14   *Y. Ketub.* 11:3, 34b.

15   Yonah Fraenkel suggested that the reference to Isa 58:7 at the end of the story about R. Yossi the Galilean is not a genuine part of the story but an editorial gloss. See Yonah Fraenkel, *Midrash and Aggadah* (Tel Aviv: The Open University, 1997), 3.771 n. 4 (Hebrew). While such a conjecture cannot be entirely ruled out, it should be noted that the story in *Genesis Rabbah* appears in the manuscripts of that work in two different versions, in both of which the biblical verse is cited. This is also the case with the version of the story in *y. Ketub.* 11:3, 34b, which is earlier still, and so too with the parallel in *Leviticus Rabbah*. The textual evidence, as it currently stands, does not support Fraenkel's suggestion, and I therefore assume that the citation of Isa 58:7 is an original part of the story.

16   *Lev. Rab.* 34:14; *y. Ketub.* 11:3, 34b.

anonymous story-tellers of the midrash, of whom we know virtually nothing, but with a famous rabbinic authority of the talmudic period.

True, this interpretation departs from an earlier, tannaitic tradition, preserved in the Tosefta, according to which the words "your own flesh" in the biblical verse refer to one's close kin.[17] That early tradition has nothing to do with marriage. However, the above cited midrashic texts indicate that the idea that one's wife is considered as one's own flesh—even after the termination of marriage—was widely accepted among Palestinian rabbis of late antiquity. We can therefore fully understand the midrash's claim that in Ps 27:2, King David referred in fact to his wives: "*To eat up my flesh* (Ps 27:2)—this refers to his wives that he saved, as it is said: *And he shall cleave to his wife and they shall become one flesh* (Gen 2:24)."[18]

Although the midrashic tradition does not disclose the origins of this idea, it stands to reason that it stems from the explicit statement of Gen 2:23: "And the man said: This at last is bone of my bones, and *flesh of my flesh.*" True, that verse refers to the *creation* of woman from man's rib, recounted in the second chapter of the book of Genesis. However, that verse was interpreted by a widespread rabbinic tradition as hinting at the *marriage* of Eve to Adam, not only at her creation. Thus we read in *The Fathers According to Rabbi Nathan*:

> It once happened with R. Yehuda bar Ilay, who was sitting and teaching his students, and a certain bride passed before them. He said to them: "What is this?" They said to him: "It is a bride that has just passed." He said to them: "My children, stand up and engage yourself with that bride, for thus we find with the Holy One, blessed be He, that he engaged Himself with a bride, as it is said: *And God made the rib* (Gen 2:22) ... From here you learn that the Holy One, blessed be He, prepared Eve and

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17 See *t. Soṭah* 7:2 (ed. Lieberman, 191): "One's flesh is nothing but one's close relative, as it is said: *And from your own flesh you shall not hide yourself.*" See also *Gen. Rab.* 18:4 (ed. Theodor-Albeck, 164): "Said R. Tanḥuma: 'When a man marries a woman from among his kin, of him Scripture says: *This at last is bone of my bones and flesh of my flesh.*'"

18 *Pesiq. Rab.* 8 (ed. Friedman, 31a). For minor and insignificant variants see Rivka Ulmer, ed., *Pesiqta Rabbati: A Synoptic Edition of Pesiqta Rabbati Based upon All Extant Manuscripts and the Editio Princeps*, *Volume 1* (Atlanta: Scholars Press, 1997), 114.

adorned her as a bride and [then] brought her to Adam, as it is said: *And He brought her to Adam* (ibid.)."[19]

This reading of the (second) creation story (as it appears in the second chapter of Genesis), which understands it not only as a story of the creation of Eve but also of her marriage to Adam, is found in numerous places in midrashic literature.[20] According to this interpretive tradition, Adam's response, "This at last is bone of my bones and *flesh of my flesh*," was his reaction upon seeing Eve as she entered the bridal chamber, erected for them by God. The cry, "bone of my bones and flesh of my flesh," expresses, then, a view of the relation between husband and wife.

It emerges from all these midrashic traditions, that the ancient rabbis strove to communicate the idea that a man's wife is not merely his "partner," one who lives together with him, but much more than that. In marriage husband and wife become not merely "one unit" but far beyond: they are united in their bodies and become "one flesh." This, in fact, is said in the most explicit manner by the Torah itself: "Therefore a man leaves his father and his mother and cleaves to his wife *and they become one flesh*" (Gen 2:24). If not understood as mere metaphor, one can hardly think of a stronger expression of ontological talk about the marital bond.

III. By God's Decision Is a Woman to a Man

Alongside the idea that in marriage husband and wife become "one flesh," one finds in midrashic and talmudic literature numerous expressions of the idea that the marital bond is not a result of the choice of two individuals, but the product of divine providence. To understand the possible connection between these two ideas, let us look at some of the midrashic expressions of the latter.

A famous literary expression of this idea is found in a midrash, in which a certain Roman noblewoman is said to have engaged in dispute with R. Yossi

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19   See *Avot de-Rabbi Nathan*, Version A, Chapter 5 (ed. Schechter, 10a); ibid., Version B, Chapter 8 (ed. Schechter, 22); *b. Meg.* 29a; *b. Ketub.* 17a.

20   See Adiel Schremer, *Male and Female He Created Them: Jewish Marriage in the Late Second Temple, Mishnah, and Talmud Periods* (Jerusalem: Zalman Shazar Center, 2003), 49–50 (Hebrew).

concerning the question, "What does God do since he finished creating the world?" Thus we read in *Leviticus Rabbah*:

> A Matrona asked R. Yossi b. Ḥalafta: "How many days did God take to create the world?" "Six days," he answered, "as it says: *For in six days the Lord made heaven and earth* (Exod 20:11)." She replied: "And what has he been doing since?" He answered: "He sits and brings couples together, the daughter of so-and-so to so-and-so, the wife of so-and-so to so-and-so, the money of so-and-so to so-and-so." She said: "I have many male and female slaves and in a short time I can match them!" He said: "If it is easy in your eyes it is as difficult for the Almighty as the splitting of the Red Sea, as it is written: *God restores the lonely to their homes* (Ps 68:7)." R. Yossi went to his home. What did she do? She sent and brought in a thousand male slaves and a thousand female slaves, lined them up in rows, and said to them: "So-and-so will marry so-and-so, and so-and-so will be married to so-and-so." In the morning they came to her. One had his head injured; another one lacked an eye; another a broken hand and another a broken leg. One [male slave] said: "I do not wish her," and the female slave replied: "I do not want him." She immediately sent a message to R. Yossi b. Ḥalafta: "Your Torah is pleasant and praiseworthy." He replied: "Didn't I tell you so?! If it is easy in your eyes it is considered by the Almighty as difficult as the splitting of the Red Sea. As it is written: *He brings out the imprisoned into prosperity* (בכושרות) (Ps 68:7). What is the meaning of *into prosperity* (בכושרות)? Weeping and songs (בכי ושירות). These weep, and these sing, and the Holy One, blessed be He, unites them unwillingly and marries them one to the other.[21]

To the Roman lady's question, "What has God been doing since he finished creating the world?," R. Yossi replies that God is constantly engaged in various types of match-making. The Roman woman cannot agree with this idea, as match-making seems to her an activity that requires no special talent. Her

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21 See *Lev. Rab.* 8:1 (ed. Margulies, 164–67), and the parallels listed there. Cf. Schremer, *Male and Female*, 43 n. 36.

attempt to prove her opinion through an empirical experiment fails, and this brings her to concede that Israel's Torah is correct.[22]

Much ink has been spilled over this story, as it appeared to many scholars to revolve around the grave theological issue of divine providence. Such a reading engendered a lively debate concerning the polemical character of the story and its possible target.[23] These questions need not concern us here. Rather, I wish to focus on the story's claim that the marital bond is a heavenly creation.

This idea appears throughout talmudic and early midrashic literature. In *b. Moʿed Qaṭan* 18b it is expressed by the Babylonian Amora, Rav Yehuda, in the name of his master, Shmuel. And according to another tradition, cited by the Talmud at the same place, it is maintained also by R. Reuven, who lived in Palestine in the first half of the third century CE. In *Genesis Rabbah* 68:3 the same idea is expressed by R. Pinḥas in the name of R. Abbahu, who lived a generation later.

In *Leviticus Rabbah* 29:8, the third-century Palestinian Amora R. Levi explicitly contrasts this idea with the conventional view held by most people:

> R. Ḥiyya b. Marya in the name of R. Levi expounded: "*Men are mere breath* (הבל); *mortals, illusion; placed on a scale all together, they weigh even less than a breath* (Ps 62:10)—normally, people say: 'So-and-so [male] marries so-and so [female],' [but this is merely] *men are mere breath*. 'So-and-so [female] is married to so-and-so [male],' [but this is merely] *illusion of mortals*. [For], *placed on a scale all together*!" Said R. Ḥiyya b. Marya: "Said the Holy One, blessed be He: 'Already since they were as mere "air" (הבל) in their mothers' wombs I have unified and attached them one to the other.'"[24]

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22   The reference to "Your Torah" is, in fact, a reference to the *rabbinic interpretation* of Ps 68:7, with which the story concludes.

23   See Moshe D. Herr, "The Historical Significance of the Dialogues between Jewish Sages and Roman Dignitaries," in *Studies in Aggadah and Folk Literature*, ed. Joseph Heinemann and Dov Noy, *Scripta Hierosolymitana* 22 (Jerusalem: Magnes Press, 1971), 147; R. Gershenzon and E. Slomovic, "A Second Century Jewish-Gnostic Debate: Rabbi Jose ben Halafta and the Matrona," *JSJ* 16 (1985): 27–28; T. Ilan, "Matrona and Rabbi Jose: An Alternative Interpretation," *JSJ* 25 (1994): 34–38.

24   *Lev. Rab.* 29:8 (ed. Margulies, 678–79). Needless to say, the verse from Psalms was read by the midrash in a totally different manner than the way it is translated

According to R. Levi, most people consider marriage as a private decision of two individuals, who, of their own free will, decide to marry each other. This conventional outlook is erroneous, however, because (based on a reading of a verse in Psalms) *marriage is a matter of divine plan*. Yet, there is an important addition to this basic idea, to which I wish to draw here attention. According to the midrash, not only is the marital bond a matter of divine providence, but much more: it is *primordial*. It goes back to the very moment of conception!

The most famous talmudic statement to this effect is the one cited by the Babylonian Talmud in the name of Rav Yehuda and in the name of his master, Rav: "Forty days prior to the formation of the fetus a heavenly voice comes forth declaring, 'The daughter of so-and-so [is destined] to so-and-so.'"[25] As talmudic embryology assumed that the fetus takes its form forty days after the moment of conception,[26] it turns out that according to Rav Yehuda (in the name of Rav) the heavenly decision that a certain man would marry a certain woman takes place at the moment of conception.

Now, if marriage realizes a bond that already "exists" (because it was already formed by God when the two individuals were conceived in their mothers' wombs), it appears that the act of marriage only "uncovers" a reality that already exists and has waited for many years to be fulfilled. True, this in itself does not necessarily imply an ontological notion of the connection between husband and wife. Yet, if this connection already "exists" prior to its being "revealed" in marriage, treating it legally will almost inevitably be drawn into that structure of legal thinking characteristic of an ontological approach. A connection which is a matter of natural fact (even if it is not easily recognized as such) cannot be cut off by a mere desire of human beings.

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by modern translations of the Hebrew Bible. Thus, the Hebrew phrase אך הבל בני אדם was read by the midrash as a statement about the thoughts of humans (that is, that they are of no significance). Similarly, the Hebrew phrase כזב בני איש was read by the midrash as a judgment on the thoughts humans entertain (that is, what people think and say is worthless). This phenomenon is not unique to this midrash, of course. See my "Note on the Translation of Rabbinic Texts," in *Brothers Estranged: Heresy, Christianity, and Jewish Identity in Late Antiquity* (New York and Oxford: Oxford University Press, 2010), xxi.

25   *B. Soṭah* 2a; *b. Sanh.* 22b. In some of the parallels the saying is attributed to Rav Yehuda in the name of Shmuel. For the purposes of the present discussion this variant is immaterial.

26   See, for that matter, *m. Nid.* 3:7; *b. Bek.* 21b; *b. Yebam.* 69b.

This is indeed the conclusion reached by some ancient Jewish Palestinian sources, the evidence of which I would like to turn now.

IV. Foundation of Creation

Among some first-century Jews this conception of the connection between husband and wife (which was based, as we have seen, on a literal reading of Gen 2:23–24), led to the conclusion that the marital bond, which is God's creation, cannot be dissolved by human beings. This stance, as is very well known, is attributed to Jesus, in his controversy with the Pharisees concerning divorce as recounted in the synoptic tradition:

> And Pharisees came up and in order to test him asked: "Is it lawful for a man to divorce his wife?" He answered them: "What did Moses command you?" They said: "Moses allowed a man to write a certificate of divorce, and to put her away." But Jesus said to them: "For your hardness of heart he wrote you this commandment. But from the beginning of creation, *God made them male and female* (Gen 5:2). *For this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one flesh* (Gen 2:24). So they are no longer two but one flesh. What therefore God has joined together, let not man put asunder." And in the house the disciples asked him again about this matter. And he said to them: "Whoever divorces his wife and marries another, commits adultery against her. And if she divorces her husband and marries another, she commits adultery."[27]

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27   Mark 10:2–10 (compare Matt 19:2–12). These texts stand at the center of much scholarly writing, which cannot be summarized here. Long bibliographies can be found in Donald A. Hagner, *Matthew 14–28*, WBC 33b (Dallas: Word Books, 1995), 543–44; Hans D. Betz, *The Sermon on the Mount*, Hermeneia (Minneapolis: Fortress, 1995), 240–43; W. D. Davies and Dale C. Allison, *A Critical and Exegetical Commentary on the Gospel According to Saint Matthew*, ICC (Edinburgh: T&T Clark, 1997), 3.4–30. For some recent discussions see Bernard J. Jackson, "'Holier Than Thou'? Marriage and Divorce in the Scrolls, the New Testament and Early Rabbinic Sources," in *Essays on Halakhah in the New Testament* (Leiden: Brill, 2008), 167–225; Lutz Doering, "Marriage and Creation in Mark 10 and CD 4–5," in *Echoes from the Caves: Qumran and the New Testament*, ed. Florentino García Martínez (Leiden: Brill, 2009), 133–64; Peter J. Tomson, "Divorce Halakhah in

In contrast to the Pharisees' claim based on the allowance of divorce in Deut 24:1–4, Jesus maintains that Gen 2:24 indicates that "they are no longer two, but one flesh," and this leads him to conclude that divorce is impossible: "What therefore God has joined together, let not man put asunder."[28]

Customarily, "let not man put asunder" is taken to imply a rejection of any individual's ("man") ability to divorce his wife. In context, however, it seems that "man" is a reference to Moses, who according to Jesus is the one who instituted divorce ("What did *Moses* command you? They said: *Moses* allowed..."). The reference to the book of Deuteronomy as Moses' command enables Jesus to contrast the legal institution of divorce, which in his opinion was created by "man" (Moses), with God's deed, and thus to reject the former's validity.[29]

The synoptic evidence indicates that the talk about one's wife as one's own flesh, based on the words of Gen 2:24, is not a late midrashic invention but rather an early Jewish discourse that pre-dates rabbinic literature. The Gospels of Matthew and Mark, which report the encounter between Jesus and the Pharisees, were composed no later than the early 90s of the first century CE.[30] But it may be even earlier than that. For, that which God has

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Paul and the Jesus Tradition," in *The New Testament and Rabbinic Literature*, ed. Reimund Bieringer et al. (Leiden: Brill, 2010), 289–332. I hope to return to this issue in the future.

28   Paul, too, appears to have embraced an ontological view of the marital bond, based on the words of Gen 2:24 (see 1 Cor 6:16), as has been noted by Aharon Shemesh, "4Q271.3: A Key to Sectarian Matrimonial Law," *JJS* 49 (1998): 250–51. However, Paul's ontological view is different than Jesus' (that is, the one with which I am here concerned): while for Jesus the connection is primordial and created by God, not by human deed, for Paul the sexual union between man and a woman has an ontological *effect*. I shall not focus on this kind of ontological thought in this paper.

29   The reference to the Torah, especially the book of Deuteronomy, by the name of Moses, is found in various ancient sources. See Moshe Weinfeld, "God versus Moses in the Temple Scroll," *RevQ* 15 (1991): 175–80; Menahem Kister, "Studies in 4QMiqṣat Maʿaśe Ha-Torah and Related Texts: Law, Theology, Language and Calendar," *Tarbiz* 68 (1999): 322 n. 15 (Hebrew). In the present case, however, this reference is meant literally, as it facilitates Jesus' argument: since God creates the marital bond, a human being, even one as great as Moses, cannot annul it. Davies and Allison, *Matthew*, 3.14, reject this interpretation, but the Patristic evidence they cite at n. 56 strongly supports it.

30   This is the date usually accepted for Matthew, but Mark is earlier still. See Raymond E. Brown, *An Introduction to the New Testament* (New York: Doubleday, 1997),

joined together is seen by Jesus as "the foundation of creation," and this very phrase appears, almost word for word, in a famous passage in the Damascus Document from Qumran, in which the author attacks the "builders of the wall" (presumably the Pharisees) for taking two wives, in contrast to "*the foundation of creation* (יסוד הבריאה), male and female He created them."[31]

The significance of the link between Jesus' argument and the Qumran text goes far beyond matters of genealogy of ideas and their dating, however. As noted by Daniel Schwartz, the complaint of the author of the Damascus Document is that "*law must conform to nature*, and since nature links one man to one woman, therefore polygamy—or perhaps even remarriage—is forbidden."[32] This text is Schwartz's first (and perhaps strongest) example for what he considers the "realist" (that is, ontological) approach to the law, characterizing, in his view, the Qumran-Sadducean halakhic thought. Indeed, even Jeffrey Rubenstein, who rejects Schwartz's overly-sharp distinction between rabbinic and sectarian attitudes to halakhah, concedes that the phrase יסוד הבריאה ("the foundation of creation") in CD 4:21 indeed appears to disclose a "realistic," or ontological approach to halakhah.[33]

As noted by Schwartz, the Qumran author of the Damascus Document draws a *normative conclusion* from the theoretical view he espouses: as "the foundation of creation is male and female," the marriage of a man to more than one woman—whether this refers only to polygamy or even to remarriage is a matter of interpretation—is prohibited.[34] Jesus too, as we have seen,

163–64 (on Mark); 216–17 (Matthew); Davies and Allison, *Matthew*, 1.127–38.

31   CD 4:20–21, on which see Adiel Schremer, "Qumran Polemic on Marital Law: CD 4:20–5:11 and Its Social Background," in *The Damascus Document: A Centennial of Discovery*, ed. Joseph M. Baumgarten, Esther G. Chazon, and Avital Pinnick (Leiden: Brill, 2000), 147–60.

32   See Schwartz, "Law and Truth," 230 (emphasis added). "Nature" here refers, of course, to the picture of nature advanced in the first chapter of the biblical book of Genesis, as the Qumran author of the Damascus Document understood it.

33   "I concede," Rubenstein writes, "that the phrase 'principle of creation' is significant, and that the Qumran law, at least phenomenologically, reflects a realist perspective" ("Nominalism and Realism," 163). See also his statement at 161 ("this is perhaps Schwartz's strongest example, at least for priestly realism").

34   On the question whether the author of the Damascus Document prohibits only polygyny (that is, the marriage of one man to more than one woman simultaneously), or any second marriage (that is, remarriage after divorce, or even after the death of one's spouse), see Schremer, "Qumran Polemic on Marital Law," 148–49.

asserted that a normative conclusion should be drawn from the view of the marital bond as a divine deed: as "the foundation of creation is *God made them male and female*," divorce should be prohibited, for "What God has joined together, let not man put asunder."

V. Halakhic Discourse

As we have seen, the rabbis of the Midrash and Talmud espoused a similar ontological view about the connection between husband and wife. One would therefore expect to find them too drawing halakhic conclusions from that conception. Yet, despite the many midrashic texts we have seen, which speak of the relations between husband and wife in strong ontological terms ("one flesh") and as a divinely-made connection, to the best of my knowledge in no place in classical rabbinic literature does one find a halakhic prohibition either on divorce or polygyny. Nor do the ancient rabbis draw any other halakhic conclusion from the aggadic idea concerning the divine origin of marriage.[35]

35   The single exception is the *sugya* in *y. Yom Ṭov* 5:2, 63a (= *y. Taʿan.* 1:8, 64d; *y. Taʿan.* 4:9, 69b; *y. Ketub.* 1:1, 24d [the text in all these parallels is identical]); compare *b. Moʿed Qaṭ.* 18b, but note that R. Ḥananʾel, in his commentary ad loc., reads: שמא יקדמנו אחר בתפילה, precisely as the reading in the Palestinian Talmud, which reads as follows: "Shmuel said: Even on *Tishʿah be-Av* one may betroth [a woman], lest someone else anticipates him. Shmuel's stance is self-contradictory! For elsewhere he says: *God restores the lonely to their homes* (Ps 68:7); *Placed on a scale all together they weigh even less than a breath* (Ps 62:10), and here he says so?! [Rather Shmuel meant] lest someone else anticipates him in prayer. Even so, he did not rule accordingly." The *sugya* contrasts Shmuel's halakhic dictum, permitting one to betroth a woman on *Tishʿah be-Av* lest another person comes and "snatches" her, with Shmuel's own statement, expressed elsewhere, that marriage is a realization of a primordial divine plan. This rhetorical move gives the impression that the *sugya* considered Shmuel's aggadic statement as having halakhic significance, not only as a midrashic play for the sake of hermeneutic entertainment. For this reason it can be contrasted with Shmuel's permissive halakhic rule, that one may betroth a woman on a day on which otherwise marriage is prohibited because of the fear that someone else might come first and "snatch" that woman. The talmudic *sugya* thus seems to indicate that the sages of the Talmud did treat the midrashic statements relating to the marital bond as a realization of an earlier divine plan as containing some legal significance. Note, however, that Shmuel himself clearly did not share the *sugya*'s view. For, despite his own aggadic statement, he ruled that one may rush to betroth a woman even on a day such as the Ninth of Av (on which betrothal is prohibited), lest another person would betroth her first. This ruling indicates that Shmuel himself did not consider the

And this raises a question concerning the nature of the seemingly ontological language that rabbinic texts frequently use with respect to marriage. It stands to reason that such aggadic statements do not really reflect an ontological view, but rather are used as a rhetorical device to buttress the message about the importance of marriage and its religious value.

Still, such rhetoric has the potential to influence the attitude of *later* readers of the Talmud and Midrash, who might read the early rabbis' aggadic statements in a stronger sense than they were meant to be understood by their original authors. Talmudic law, to be sure, permits divorce, and even polygyny,[36] yet readers of later generations, who internalize the message of the aggadic references to marriage, might follow a different path and attempt to minimize the permissibility of these practices. Indeed, reading through the halakhic literature of the Middle Ages down to our era reveals that many halakhic authorities display a very strict attitude to marriage and divorce, in a manner that gives place to the possibility that they were guided, in fact, by a strong ontological view of the marital bond as a connection created by God, which should not be altered by human beings.

It is, therefore, significant that even those halakhic authorities that indeed display such a stringent tendency with respect to marriage and divorce do not usually justify their halakhic positions on such grounds: they virtually never claim that divorce is a severe halakhic matter because the marital bond between husband and wife is an ontological, divinely-made connection.

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aggadic idea of the marital bond as the realization of a predestined divine plan in a strong sense, as an actual description of the state of affairs in the world. The fact that Shmuel's stance is expressed as the mere quotation of two biblical verses (Ps 68:7 and Ps 62:10) should not detain us here. This phenomenon is found in other places in talmudic and midrashic literature. See Menahem Kahana, "The Critical Edition of *Mekilta De-Rabbi Ishmael* in the Light of the Genizah Fragments," *Tarbiz* 55 (1986): 510 n. 114 (Hebrew). The reference to these verses, however, can be understood only in light of other midrashic traditions, in which they serve as the foundation for the claim that the marital bond is God's creation, not a human choice. Of Ps 62:10 see R. Levi's midrash in *Leviticus Rabbah* (above, n. 24); of Ps 68:7 see the story of R. Yossi and the Matrona (above, n. 21).

36   This is so not only as a theoretical legal stance but as a matter of fact as well: there is evidence for the actual practice of divorce and polygyny among the Jews of Roman Palestine throughout late antiquity. See Adiel Schremer, "How Much Jewish Polygyny in Roman Palestine," *PAAJR* 63 (2002): 181–223.

Rather, they maintain that the strength of the legal act, in itself, is such that it cannot be annulled.[37]

Thus, for example, the twelfth-century French Tosafist, R. Yaʿakov b. Meir (known by his eponym, Rabbenu Tam), responds in one of his responsa to a rabbinic enactment of the Babylonian Geonim, which was understood as resting on the principle of annulment of marriage (הפקעת קידושין), and writes in an unequivocal manner that: "While the Geonim could enact, either on the basis of halakhah or according to their own view, that a woman's ketubbah would include movable possessions [a *novum* that was not supported by the Talmud—AS], that is in the realm of monetary issues. But to permit an invalid *geṭ* we do not have any *power* since the days of R. Ashi until the days of the Messiah."[38] Rabbenu Tam does not deny that the sages of the Talmud did have the authority to annul a valid bill of divorce; he only thinks that such an authority is not granted to post-talmudic rabbis any longer.

True, one may wish to view such a position as expected from one who espouses an ontological view of marriage.[39] The two are not identical,

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37 See, for example, R. Ben-Zion Meir Uziel's explanation for why the concept of annulment of marriage is difficult to be practically applied: "They did not say, and it is inconceivable to say, that the sages would annul a marriage that was conducted in a correct manner, without an act of divorce" (לא אמרו, ולא יעלה על הדעת לומר, שחכמים יפקיעו הקידושין שנעשו כתיקונם בלי שום מעשה של גירושין). See R. Ben-Zion Meir Uziel, *Mishpeṭe Uziel*, Part II (*Even Ha-Ezer*) (Jerusalem: Mosad ha-Rav Kook, 1964), #87.

38 See *Sefer ha-Yashar le-Rabbenu Tam: Ḥeleq ha-Sheʾelot ve-ha-Teshuvot*, #24, ed. Sheraga Faysh Rozenthal (Berlin: Itskovski, 1898), 40: ונהי דהגאונים יכולים לתקן כתובת אשה על המטלטלין או על פי הלכה או על פי דעתם – דהיינו ממונא; אבל להתיר גט פסול אין כח בידינו, מימות רב אשי ועד ימות המשיח.

39 Thus, for example, R. Eliyahu Galippapa (died 1740) writes in his book, *Yad Eliyahu*, #66, that: "In all of the cases of annulment [of marriage] mentioned in the Talmud ... the sages did not annul [the marriage] of their own accord, but only with an instrument which stands against [literally: contrasts] it" (בכל ההפקעות האמורות בתלמוד ... דרבנן לא מפקעי קידושין בריקניא, אלא באיזה דבר המנגד אותן). Along the same lines he further writes: "It is specifically in the case of marriage that was done improperly, in an evil manner, that they [the sages] have an authority to annul it, that is, [to declare] that the marriage was not valid from the outset, and that the money [given as a means of betrothal] should be considered as mere gift. However, in the case of marriage that was properly valid and in accordance with the halakhah, they only have the authority to annul it retroactively with an instrument that stands against [literally: negates] the marriage, that is, a bill of divorce" (דווקא בקידושין הנעשים בעוול וחמס יש כח בידם להפקיעם, דהיינו דלא ליחלו כלל)

however; Rabbenu Tam's outlook is highly legalistic, but it is not ontological. It claims that a legal act which has God's sanction cannot be affected by a human decision. It seems, therefore, that the rabbis adopted a middle stance: marriage is neither ontological nor a mere social construct. Rather, it is God's Law (because the Torah, for the rabbis, emanates from God), and for this reason humans cannot change it. Put differently: the reason for the halakhists' limited ability to manipulate marriage legally does not rest in an assumed ontological character of the marital bond but rather it stems from a view of the legal act as decisive. Jesus' words are fitting, if used with a slight change: "What halakhah has joined together, let not man put asunder."

Conclusion

Classical rabbinic discourse about marriage is full of ontological imagery. Following the biblical precedent the rabbis of the Talmud and Midrash frequently relate to man's wife as his "own flesh," and they speak of husband and wife as "one flesh." If not read metaphorically this language seems to indicate that the rabbis viewed the marital bond as an ontological connection between husband and wife. Thinking about marriage in such a way, however, can follow two different paths. On the one hand it may mean an ontological connection *created* by the act of marriage. On the other hand, it can bear the meaning of primordial connection, which is *realized* by the act of marriage, while having been in existence long before. The main concern of the present paper was with the latter meaning.

As we have seen, various early rabbinic texts express the idea that the marital connection between husband and wife is the result of divine matchmaking, which God performs years before the actual marriage takes place. A potential consequence of such a view could have been the limiting of human intervention in marriage and the restriction of halakhic authority and ability to manipulate marital status. Such conclusions were indeed reached by various Jewish groups of the late Second Temple period, who claimed that as the marital bond is not created by man, it cannot be changed through human activity either. The sages of the Talmud, however, did not reach that

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מעיקרא, וליהוו מעות מתנה. אבל בקידושין שכבר חלו כדין וכהלכה, אין כח בידם להפקיעם למפרע, (אלא על ידי דבר המנגד לקידושין, דהיינו על ידי גיטין). Such formulations may be understood as reflecting an ontological outlook of the *geṭ*. See further Uriel Lavvy, "האם ניתן להפקיע קידושין של סרבן גט?," *Tehumin* 27 (2007): 304–10.

conclusion, apparently because they drew a distinction between sayings that were meant to convey religious and ideological ideas and statements of legal nature. For halakhic authorities, the former are "permissive legal materials," but only the latter truly have significant halakhic weight.[40]

Appendix

In a recently published article, Shai Wozner interpreted a now-famous *sugya* in *b. Yevamot* 110a as giving voice to a strong ontological conception of marriage. In that *sugya* we find the following story, to which is attached a short talmudic discussion:

[א] עובדא דהוה בנרש ואיקדישה כשהיא קטנה וגדלה ואותביה אבי כורסייא ואתא אחרינא וחטפה מיניה, ורב ברונא ורב חננאל תלמידי דרב הוו התם ולא הצריכוה גיטא מבתרא.

[ב] אמר רב פפא: בנרש מינסב נסיבי והדר מותבי אבי כורסייא.

[ג] רב אשי אמר: הוא עשה שלא כהוגן לפיכך עשו בו שלא כהוגן ואפקעינהו רבנן לקידושי מיניה.

[ד] אמר ליה רבינא לרב אשי: תינח דקדיש בכספא, קדיש בביאה מאי?

[ה] שויוה רבנן לבעילתו בעילת זנות.

[A] It once happened at Naresh that a certain woman was betrothed while she was a minor, and after she matured they placed her upon the bridal chair, and another man came and snatched her away from him, and R. Beruna and R. Ḥananᵓel, Rav's disciples, were present there, and they did not require her to obtain a writ of divorce from the second man.

[B] Said R. Pappa: "At Naresh they marry first and only then they place [the bride] upon the bridal chair."

[C] R. Ashi said: "He acted improperly, therefore they [the sages] treated him improperly and nullified the betrothal."

[D] Said Ravina to R. Ashi: "This is satisfactory where the man betrothed [her] with money; if, [however], he betrothed her by cohabitation, what can be said?"

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40   My use of the concept of "permissive legal materials" is indebted to Leslie Green, "Law and the Causes of Judicial Decisions," *University of Oxford Legal Research Series* 14/2009, 18–20. I plan to develop this point in the future.

[E] "The rabbis have declared his cohabitation to be an act of
mere fornication."

The legal question raised by the *sugya* is clear: why didn't R. Ḥananʿel and R.
Bruna require the young girl to be divorced from the man who "snatched"
her from the bridal chair? R. Pappa answers that in Naresh the custom is that
people "marry first and only then place [the bride] upon a bridal chair." The
young girl, accordingly, was actually married at the time of her abduction,
and therefore the "snatcher" accomplished nothing. R. Ashi offers a different
explanation. In his view, the rabbis rendered the abductor's act of marriage
invalid because he acted improperly: "He acted improperly, therefore they
[the sages] treated him improperly, and annulled (literally: expropriated) the
betrothal" (הוא עשה שלא כהוגן לפיכך עשו בו שלא כהוגן ואפקעינהו רבנן לקידושין מיניה).

On Wozner's reading, there is an important moment in this *sugya* which
reveals the Talmud's awareness of the distinction between an ontological and
a social-constructionist view of marriage. When Ravina poses the difficulty
to R. Ashi, "This is satisfactory where the man betrothed [her] by means of
money; if, [however], he betrothed her by cohabitation, what can be said?"
(תינח דקדיש בכספא, קדיש בביאה מאי איכא למימר?!), we are confronted, so Wozner
suggests, by these two views. Ravina assumes that if a man betroths a woman
by means of money, then R. Ashi's suggestion that the rabbis annul the legal
status of the act is conceivable, since marriage by means of money is, in
itself, a legal construct of rabbinic origin. In contrast, marriage by means of
cohabitation cannot be annulled—that is, it cannot be *declared* invalid—*as
something in reality happened*! To use Ran's words, quoted at the beginning
of this article: "How can that which the Torah prohibited to us change its
nature merely because the sages decide that it is permitted?!" R. Ashi's
answer is that, as surprising as it may seem, even in the case of marriage by
means of cohabitation *the legal status of the act does not rest in the act itself*—as
if legal status is naturally attached to certain actions—but rather it depends
on our view of that act. If we view it as an act for the sake of marriage then
it can be considered as such. If, however, we view it as a mere act of sexual
intercourse, then it would not necessarily constitute marriage.[41]

41   See Shai A. Wozner, "Annulment of Marriage: A New Interpretation of the
      Talmudic Rule," *Diné Israel* 26–27 (2009–10): 40–42 (Hebrew). Wozner's in-
      terpretation of Ravina's question and R. Ashi's reply is different both from
      Rashi's interpretation and from that of Rashi's teachers (quoted by Rashi in his
      commentary, ad loc.), which are, basically, the two understandings followed

Even if Wozner's interpretation were accepted, it should be noted that Ravina's ontological view (as understood by Wozner) would be very much different from the presumed ontological view which I have been attempting to ascribe to the above quoted midrashic texts. In the latter, "the ontology of marriage" refers to the idea that the connection between husband and wife existed "in the world" already prior to their personal decision to marry each other. Whereas in Wozner's interpretation of Ravina's stance, "the ontology of marriage" is the *effect* of the act of marriage, or, to be more precise, the result of the sexual intercourse between husband and wife.[42]

Furthermore, even on Wozner's reading, the *sugya* gives voice to Ravina's outlook precisely for the sake of its rejection. The *sugya*'s aim, in other words, is to uproot an ontological conception (of whatever type) of marriage, which might have been held by some. Its claim is that marriage is a social and legal status, not an actual "state-of-affairs" in the world.[43] And we should not lose sight of the fact that that *sugya* appears no less than five times in the

(with some minor modifications) by virtually all commentators of the Talmud. Rashi's teachers' interpretation of Ravina's question is that, as marriage by means of cohabitation is biblically founded (מדאורייתא), how is it possible that a rabbinic enactment would override a ruling of the Torah (והיינו דקפריך "תינח דקדיש בכספא, קדיש בביאה" - דכתיב בהדיא 'כי יקח איש אשה ובעלה', מאי איכא למימר", היאך יכלו לעקור דבר מן התורה?!). Rashi's interpretation, in contrast, is that, while in marriage by means of money there is something to expropriate (that is, the money by which the marriage was created) and thus to annul the marriage, when the marriage was created by means of cohabitation what is that which can be expropriated?! תינח דקדיש בכספא - איכא למימר אפקעינהו לקידושין בגט דדבריהן ואמרו ליהוי מעות למפרע מתנה,) וממילא פקעו שהרי כשקידש ע"מ כן קידש. קדיש בביאה - דקיימא לן בקידושין, מ'כי יקח איש אשה ובעלה', דאשה מתקדשת נמי בביאה, מאי אפקעתא איכא למימר בהא ביאה?). Wozner's reading is slightly closer to Rashi's, but not more than that. For, according to Rashi, Ravina was seeking that which can be annulled, while according to Wozner's reading Ravina's claim was that the idea of legal annulment cannot apply to actions which have effect in the real world.

42 Compare, for this matter, Paul's approach, as found in 1 Cor 6:16. See above, n. 28.

43 Cf. David Henshke, "על המציאות המשפטית במשנת הרמב"ם," *Sinai* 92 (1983): 228–39.

Talmud,[44] which is an important indication of the popularity of the legal stance it expresses.[45]

44   On these *sugyot*, see Avishalom Westreich, "The 'Gatekeepers' of Jewish Family Law: Marriage Annulment as a Test Case," *Journal of Law and Religion* 27 (2012): 101–29; idem, "*Hafkaʿat Kiddushin* (Annulment of Marriage): Re-examination of an Old Debate," *Sidra* 27–28 (2013): 111–41 (Hebrew).

45   True, the legal concept of "annulment of marriage" was used extremely rarely by later halakhic authorities, and one possible explanation for this could be that the ontological view of marriage, expressed, as we have seen, in numerous early rabbinic texts, was so strong that the Talmud's attempt to deny it did not seem convincing to its later readers. In other words, later halakhic authorities were very reluctant to apply the talmudic legal concept of annulment of marriage because they accepted, in a sense, Ravina's stance. After all, in normal marriage, there is sexual intercourse, and if we view the bodily union of husband and wife as having an actual effect in reality, it would indeed be very difficult to accept the idea that a "legal declaration," emanating from whatever legal authority that might be, can change nature itself.