Marriage Through the Lens of Divorce

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To understand Superman, one must study kryptonite. Through understanding where a bridge fails, engineers gain new insights into construction. So too, through understanding divorce, can we illuminate the meaning and essence of Jewish marriage as understood in early Rabbinic sources. Within Judaism, marriage is deeply central to personal and communal life, and one who never marries is considered to not have fully lived. There is no one single reason why marriage is so highly valued, nor is there a simple aspect that defines a marital relationship. Divorce, however, namely the failure of marriage, touches upon the essence of marriage and why it is so highly esteemed.

To understand how divorce can be useful to understand marriage, it is important to first provide some background on the laws of marriage and divorce within Judaism.

Marriage in Judaism

During the eras when the Mishna and Gemara came into being, Jews were part of societies with significantly varied approaches to sex and sexuality. In the Hellenistic world the human body itself was placed on a pedestal. Meanwhile, for most Early Christian groups, sex was viewed as inherently sinful.\(^1\) After all, Jesus was the sole individual to be born without being conceived and therefore to not be born of sin. The New Testament states, “When the dead rise, they will neither marry nor be given in marriage; they will be like the angels in heaven.”\(^2\) This extract emphasizes the this-worldly, and potentially impure, nature of sex even within marriage.
Yet, for traditional Jews, neither of these extremes has ever been viewed as valid. Jews have consistently interpreted the Bible as intensely pro-marriage and not as pro-asceticism or pro-hedonism. For instance: “Let your fountain be blessed and rejoice in the wife of your youth,” “He who has found a wife has found good and obtains favor from God,” and “It is not good that the man should be alone; I will make him a helper fit for him,” have all been cited as proof that marriage is the ideal, not a capitulation. The Talmud records that marriage is proclaimed from heaven itself: “Forty days before the formation of the fetus a Divine Voice emerges and states: The daughter of so-and-so shall be the wife of so-and-so.” Marriage is clearly the will of God.

The Sages viewed marriage as a divine gift and saw this attitude all across scriptures:

Rav said in the name of Rabbi Reuven ben Itzterobili … the decree that a specific woman is destined to be married to a specific man is from God. From where is this derived? It is from the Torah, as it is written: ‘Then Laban and Bethuel answered and said: The thing comes from the Lord, we cannot speak to you either bad or good’ (Genesis 24:50). From the Prophets, as it is written: ‘But his father and his mother knew not that it was of the Lord’ (Judges 14:4). From the Writings, as it is written: ‘House and riches are the inheritance of fathers; but a prudent woman is from the Lord’ (Proverbs 19:14).

The wife is compared to the Temple - the Holy of Holies - and to light itself:

And Rabbi Yoḥanan says: ‘For any man whose first wife dies, it is as if the Temple were destroyed in his days’… Rabbi Alexandri says: ‘For any man whose wife dies in his days, the world is dark for him.’
Marriage’s societal impact is enormous, particularly its direct connection to bringing children into the world. The first commandment mankind receives is to be fruitful, multiply and fill the earth, *pru urivu*[^11]. Creating life is the highest form of *imitatio Dei* possible; it is the holiest and most divine act one can do on Earth. Rashi, commenting on Beitza 36b, asserts that marriage is a positive commandment, and that the commandment is *synonymous* with the commandment to have children. Thus, Rashi claims that having children is the crux of marriage. The continuation of humankind and of the Jewish people quite literally rests on procreation. The Talmud says that each soul is dear enough for God to have created the world, and that one who saves a life has, in a sense, saved the whole world.[^12] The Mishna also asserts that the world was created solely for the sake of reproduction, supporting the belief that the creation of life has such a high status.[^14]

Going further, the Talmud also says that even if having children is out of the question, one should still get married:

> The Gemara infers from the Mishna’s wording that if he already has children he may neglect the *mitzva* to be fruitful and multiply, but he may not neglect the *mitzva* to have a wife. This quote supports what Rav Naḥman said in the name of Shmuel: “Even if a man has several children, it is prohibited to remain without a wife, as it is stated: ‘It is not good that the man should be alone’ (Genesis 2:18).”[^16]

Marriage, therefore, is an ultimate purpose that would have value regardless of other potential motivations. God has proclaimed that it is not good for man to be alone and that marriage is good because of the intimate interpersonal connection it creates. Many kabbalists appreciate this view and say that marriage is the reunion of two half souls forming one full soul, much like the reunion of the aspects of God in kabbalistic theology. There is a metaphysical good done through this reunion
achieved through marriage, and the world is in some sense repaired. Considering that the verses quoted above from Tanakh do not mention children when discussing kindness and love within a marriage, it seems that marriage is independently valuable. One midrash implies that mutual love and understanding makes a marriage worthwhile even at the expense of potentially having no children.

These images of marriage from a non-pragmatic vantage point often take on a metaphysical nature. Namely, the nation of Israel’s relationship with God is often compared to that of a wife to her husband because marriage is seen as a covenant and is ideally filled with compassion and dedication. A marital covenant is in many ways the perfect parallel for the covenant between God and the nation of Israel. Both covenants imply the existence of kinship and require fidelity; the natural state of each is to exist for as long as both participants are alive.

And I will judge thee, as women that break wedlock and shed blood are judged; and I will bring upon thee the blood of fury and jealousy ... Nevertheless, I will remember My covenant with thee in the days of thy youth, and I will establish unto thee an everlasting covenant.

Marriage is a contract involving exclusivity. Marriage is defined by prohibition to everyone else, thus making it a unique bond; it is only between the partners and no one else is allowed to enter into or abrogate their covenant. The connection between marriage and our relationship with God is so prominent that when Jews put on tefillin in the mornings, they say:

And I will betroth thee unto Me forever; yea, I will betroth thee unto Me in righteousness, and in justice, and in lovingkindness, and in compassion. And I will betroth thee unto Me in faithfulness; and thou shalt know the Lord.

There is a deep association between Marriage and faithfulness.
Divorce in Judaism

Divorce is often viewed as the direct betrayal of a covenant.23

Rabbi Eliezer says: Concerning anyone who divorces his first wife, even the Mizbeḥ (altar) sheds tears about him, as it is stated: 'And further, this you should do: Cover the altar of the Lord with tears, with weeping and sighing, from His no longer showing regard to the offering, nor receiving it with goodwill from your hand’ (Mal. 2:13), and it is written: 'Yet you say: Why? Because the Lord has been witness between you and the wife of your youth, against whom you have dealt treacherously, though she is your companion and the wife of your covenant’ (Mal. 2:14).24

This baraita is the last word in tractate Gittin, the tractate that specifically deals with divorce. The placing of this homiletical teaching as the final note on divorce is a powerful structural message about the gravity of divorce, and the placement nicely complements the words of the baraita as a powerful and strong condemnation of divorce. This attitude towards divorce is clearly cross-generational. Rabbi Eliezer is a Tanna, a rabbi from the first centuries CE. Yet this story and its commentary is primarily in Aramaic, the language in which centuries later the Amoraim and Savoraim wrote. Thus, Rabbi Eliezer’s statement was made hundreds of years before this passage’s final form was written down by other generations of rabbis who agreed with and added on to his statements.

One striking question is why the Mizbeḥ, the altar, cries over divorce. Why not the Menorah, or the laver or any other of the Temple’s vessels? Perry Netter, a Conservative Rabbi and author living in Zikhron Yaakov, says the reason the Mizbeḥ and not God Himself cries is because God is easy to find in a healthy marriage but seemingly absent in divorces and unhealthy marriages. Rabbi Netter
writes that He is not truly absent, but rather than God crying, His abode on Earth cries on His behalf. While a touching and insightful idea, the original question still stands: Why specifically the Mizbeah?

To answer this question, Dr. Reuven Bulka, a Canadian Psychologist and Orthodox Rabbi, writes the following:

These two fundamental emotions, penitence and appreciation, are evoked at the altar. They are also two critical ingredients in marriage. Being penitent speaks of the ability to see that one has erred, that one has not lived up to one’s responsibilities, and that one has the courage and the desire to correct the situation. Being appreciative is an essential part of the outer-directedness dynamic of marriage. Expressing appreciation to one’s spouse binds the relationship with the glue of caring and attentiveness. Marriages that fail invariably lack the outer-directedness and ‘willingness to adjust’ ingredients. The altar, which also thrives on these ingredients, cries when a couple divorce, when the ingredients it thrives on are lacking in marriage.

The Mizbeah is crying not because of divorce itself, but because of the situation that has caused the divorce to become necessary. This interpretation minimizes the harsh stance against divorce that this baraita had initially taken. The action of divorce, when necessary, does not make the Mizbeah cry. The fact that divorce is necessary makes it cry.

A similar concept can be seen in some medieval commentaries. For instance, the Metzudat David says that the altar’s cries mimic the cries of the women of Israel who cry over their insults and scorn. Rashi when discussing this dictum also says something similar, but focuses on the husbands at the time treating their Jewish wives as if they were concubines and courting non-Jewish women despite already being married. For the pain of Jewish women, the Mizbeah cries. Thus, if the divorce
did not happen in any of these senses, the *Mizbeḥ* would still be crying. Divorce, it would seem, is sometimes kosher.  

**Divorce and Marriage Together**

Despite being a foundational construct of society and the basis of the Jewish community, the marriage process itself is hardly discussed in Tanakh. Ironically, verses about divorce are actually the foundation for most of the laws pertaining to the institution and rites of marriage in Judaism:

> “When a man takes a wife and possesses her, if she does not find favor in his eyes because he finds something flawed about her (*Ervat davar*), and he writes her a bill of divorcement, hands it to her, and sends her away from his house.”

This verse contributes substantially to Rabbinic understanding of when divorce is considered permissible. Some may expect the question of when divorce is allowed or warranted to be discussed on the first page of the tractate, but divorce’s permissibility is only discussed in the last Mishna of the only tractate whose primary focus is divorce. The details of when and why divorce is an acceptable practice are surprisingly sparse and much less fleshed out than are the details of how one may hand the writ of divorce to his wife. The fact that the Rabbis were so taciturn on this topic reflects two fundamental realities. First, the Talmud is chiefly a legalistic work. While it does deal with theology, ethics, science, medicine, and history, these are secondary to the legalistic discussions and exegetical analyses of the Talmud. Second, the Rabbis were wary of explaining exactly when divorce is warranted. Any human relationship is inherently complicated and multifaceted, and understanding all the specifics associated with them is nearly impossible for an outsider. No one can create a set of external rules that govern all marriages, and no one can truly understand a marriage in which they are not one
of the parties. The Rabbis, who were so in favor of debate and who so valued uncertainty, realized that trying to legislate when one should or should not get divorced would be in many ways a fool’s errand with potentially disastrous results.

While they did not discuss how to know when one should get divorced, they did discuss when one is allowed to get divorced:32

Beit Shammai say: A man may not divorce his wife unless he finds out about her having engaged in a matter of forbidden sexual intercourse [devar erva], i.e., she committed adultery or is suspected of doing so, as it is stated: ‘Because he has found some unseemly matter [ervat davar] in her, and he writes her a scroll of severance’ (Deuteronomy 24:1). And Beit Hillel say: He may divorce her even due to a minor issue, e.g., because she burned or over-salted his dish, as it is stated: ‘Because he has found some unseemly matter in her,’ meaning that he found any type of shortcoming in her. Rabbi Akiva says: He may divorce her even if he found another woman who is better looking than her and wishes to marry her, as it is stated in that verse: ‘And it comes to pass, if she finds no favor in his eyes’ (Deuteronomy 24:1).33

The positions of Rabbi Akiva and Beit Hillel seem quite shallow. Is burning dinner in any sense a reason to get divorced? Would any marriage be able to survive if a burned soup could end it? The Meiri, a 13th century Catalanian Talmudic scholar, expounds upon this debate and says that, yes, burning dinner can be a good reason to get divorced. He explains that the inability for a family to be sturdy enough to feed itself shows that the household is dysfunctional.34 According to the Meiri, then, Beit Hillel actually held marriage to a higher standard than did Beit Shammai. A marriage is not successful if neither partner simply refrains from violating the bare minimum precept of physical
fidelity. For a marriage to be considered successful overall, it must also be coherent and functional. 

Rabbi Akiva follows with higher standards, saying that if a man finds any woman more attractive than his wife, he has enough cause to divorce her. Even if both partners are physically faithful, and even if the house is functional, a marriage is not necessarily complete. Rabbi Akiva would likely say that a marriage should be more than a good working relationship as seen between two business partners. A marriage must include love, attraction, and care; if these aspects are lacking, there are grounds for the marriage’s dissolution.

Divorce does not serve solely to teach the inherently complex nature of private relationships or what the intimate relationship of marriage must minimally include to be considered successful. Divorce also serves to teach about the institutional nature of marriage. It is written:

A woman is acquired by [i.e., becomes betrothed to,] a man to be his wife in three ways, and she acquires herself [i.e., she terminates her marriage,] in two ways. The Mishna elaborates: She is acquired through money, through a document, and through sexual intercourse ... And a woman acquires herself through a bill of divorce or through the death of the husband.35

The three methods of betrothal seem to be unrelated either to each other or to the nature of marriage. They seem to be three different legal alternatives through which marriage can be affected. However, the relevance of these three methods of betrothal to marriage itself becomes clear through divorce. Divorce is created through the negation of marriage and requires the completion of three separate acts which parallel the three possible methods of betrothal.

From the verse, “When a man takes a wife and possesses her, if she does not find favor in his eyes because he finds something flawed about her, and he writes her a bill of divorcement, hands it to
her, and sends her away from his house,” the Rabbis learn that a man must produce a physically written contract, hand it to his soon-to-be ex-wife, and then live separately from her. The physical contract to dissolve a marriage parallels the contract to enter marriage, the giving of divorce contract mirrors the giving of money to enter a marriage and sending her away mirrors the physical intimacy that can begin a marriage.

Marriage is a multifaceted institution. There is a contractual societal obligation that a marriage contract or divorce contract symbolize. The husband and wife have certain obligations toward each other, much like business partners. This aspect of marriage is represented by the contract as a betrothal method. Additionally, the wife and husband are not fully independent when married to each other, as symbolized by the acquisition the man takes of the women through payment, and how she takes back full ownership of herself when she is physically given the contract of divorce. There is an aspect of ownership over one’s spouse in marriage. Lastly, there is the practical relationship aspect to marriage. Part of marriage is living together and being together intimately, and a part of the dissolution of marriage is the negation of this relationship. Therefore, it is considered crucial in the Talmud to say to the women, “behold you are free and permitted to anyone” for a divorce to take effect. Being forbidden to someone else on account of one’s relationship with a specific man is definitionally marriage, and divorce is inherently incompatible with maintaining the special exclusivity that comes with marriage.

Marriage is central to the Jewish conception of the world. It is a model for interacting with God as well as the institution through which Jews are prescribed to organize their lives. Jewish marriage is neither a capitulation to baser needs nor solely a pragmatic issue, though there are pragmatic aspects to it. Through an analysis of divorce, we have seen how important marriage in Judaism is. Divorce can
be the greatest betrayal and ultimate selfishness, but it is sometimes necessary. The Rabbis did not dictate when exactly divorce is warranted and when a marriage is worth preserving because marriage depends on the attention and emotions of those in the marriage. An outsider cannot accurately understand the situation, and no set of rules could sufficiently establish a precedent that is universally applicable. The delimitation as to when divorce is permissible, however, sheds light on what the bare minimum is for a marriage to be considered passable and as the Rabbis are often wont to do, they debate it. Furthermore, since divorce is the negation of marriage, we can learn about marriage by analyzing the steps taken in divorce and applying them in reverse. By studying where marriage fails, we can truly gain a deeper understanding of when and how marriage thrives.

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Endnotes

2 Mark 12:25.
3 The Qumran sect and Essenes did, however, take a more ascetic approach to sex. For instance, the Qumran sect forbade sex on Shabbat and abstained from sexual relations with their wives during pregnancy or when they aged and were consequently unable to bear children.
4 Proverbs 5:18.
5 Proverbs 18:22.
7 Sanhedrin 22a.
8 All English Talmud quotes are taken from Sefaria. Verses are either from Sefaria, Mechon Mamre, or translated by Mark Lis.
9 Moed Katan 18b.
10 Sanhedrin 22a.
11 There is a debate in Yevamot 65b as to whether women are commanded to reproduce or if solely men are obligated. Jewish Halkha has pretty decisively decided that women are in fact not obligated. Obviously, it takes two (three counting God) to make a child and women are a necessary part of pru urivu. Further, in Yevamot 62b it is written that it is meritorious for men to have more children than the bare minimum that is required and the logic there is applied equally to women. Regarding why women are exempted from pru urivu, R Meir Simcha of Dvinsk is quoted as saying that since man is biblically entitled to be polygamous, if his wife is incapable of having children, he would not have to divorce her in order to fulfill the mitzva; he could merely marry another woman. However, since a woman must be monogamous, if her husband is incapable of siring children, she would have to be divorced from her husband in order to fulfill the mitzva. This would contradict the concept of derakheha darkhei noam (the ways of the Torah are pleasant) and would create an acrimonious situation.
There are some versions of this text that insert the word לארשימ and therefore read “anyone who says the life of any Israelite, it is as if he has saved the entire world.” However, even if this is was the original version it would still seem to be a general rule about all humanity as the idea is only brought to caution against giving the death penalty unnecessarily which Jewish courts at the time could only impose upon Jews, so it may have only mentioned Jews due to the surrounding conversation only pertaining to Jews. The Rambam, however, does not have the word לארשימ in his rendering in Mishna Torah Sanhedrin 12:7.

While Children are the most obvious and most discussed pragmatic reason to get married, other pragmatic reasons are given as well. For instance, the Talmud in Kiddushin 29-30 says the following: “If one is twenty years old and has not yet married a woman, all of his days will be in a state of sin concerning sexual matters… I.e. All of his days will be in a state of sexual thoughts… Rav Hisda said: The fact that I am superior to my colleagues is because I married at the age of sixteen, and if I would have married at the age of fourteen, I would say to the Satan: An arrow in your eye.” Meaning that marriage is also important because it is a permitted sexual outlet. Were this the primary reason given for marriage, it would seem that marriage is a capitulation to human desires. See also Yevmot 63a-b.

It should be noted that not all Jewish thinkers were comfortable with this line of thought. For instance, Rav Saadia Gaon explicitly argues against this theory: “They maintain that God has created the spirits of his creatures in the form of round spheres, which were thereupon divided by him into halves, each half being put into a different person. Therefore, does it come about that, when a soul finds the part complement it, it becomes irresistibly drawn to it… Now the advocates of all that has been mentioned above are really thoughtless and without intelligence.” S. Gaon, The Book of Beliefs and Opinions, trans. S. Rosenblatt (New Haven: Yale University Press, 1976), 374-375.

There is a concept that if a couple are unable to have children after a decade they must divorce. One such couple went to R’ Shimon to be divorced: “Said Rabbi Shimon to them, ‘Just as you got married in eating and drinking, so too you should separate from one another in eating and drinking.’ What did she do? She made a splendid meal and gave her husband too much wine to drink, and she gave a sign to her slaves and said to them, ‘Take him to my father’s house.’ At the middle of the night he woke up. He said to them, ‘Where am I?’ She said to him, ‘Didn’t you tell me, “anything precious that I have in my house you may take and go to your father’s house”? This is indeed so; I have nothing more precious than you.’ Immediately as Rabbi Shimon ben Yochai heard this, he prayed for them, and they were blessed [with pregnancy].” (Pesikta de-Rav Kahana, Sos Asis, 2 ed. Mandelbaum, 1.327) This story is somewhat inconclusive as to whether children or the relationship are more important as they were able to conceive at the end, however the emphasis on a loving marriage even without children is clear.

And since the nation of Israel and God are eternal, our covenant is eternal. This is not to say that marriage can never be terminated, but that marriage’s natural state is to be eternal unless interrupted.

It is important to note that when divorce is mentioned as a betrayal, it is in the context where one side has failed to live up to its obligations to the other side. This is why the condemnation is normally targeted towards the man, who in much of classical Jewish thought is responsible for taking care of his wife in a very literal sense. As men owned most
property, it was often a sentence of poverty for a woman to be widowed or divorced if she had no hope of getting remarried. This was a large part of the impetus that caused the Rabbis to ban unilateral divorce.

Not only is it discussing divorce, but only a specific law within divorce. Namely that once a man divorces a woman, he cannot take her back once she has been again married.

Deuteronomy 24:1.

Ultimately, the decision to divorce is up to the couple even if rabbinic courts rule the reason is not valid. If they choose to divorce, they are no longer married.

There are some situations where the Gemara does discuss that one in fact must get divorced, but those are in extreme cases where there is less gray than in the average relationship.

Gittin 90a.

Chabad.org’s “Jewish approach to divorce 101” series takes a separate approach that I think is less pshat based but is interesting nonetheless. “The language of the Talmud in this situation seems to focus on the element of spite. The language of this clause is, precisely, that ‘she spoiled his food’ (Gittin, 90a). This means that her own food was not spoiled, but that his was spoiled. This would indicate that the wife deliberately spoiled her husband’s food but made sure that her own meal was okay. Such culinary spite speaks of the wife’s purposeful setting out to ruin her husband’s meal and indicates that the marriage has reached intolerable levels.” It seems that when it says ‘his food’ it means as opposed to her own and that in some way spite was the motive, but it is an interesting example of how contemporary Jews may choose to read this passage.

Kiddushin 2a.

Deuteronomy 24:1.

In Rabbinic terminology, the word kinyan is used to define the Husband becoming responsible for his wife. It is normally translated as acquisition. Traditionally, a woman is considered to be joining the man’s household and is in that sense transferred over. However, the word “acquisition” implies something much stronger than what the term actually means, which is some sense of limited freedoms on both participants.

To what extent the women is truly the property of her husband halakhically is a complicated topic. The Talmud does not have one clear position and it seems to be a nuanced issue. For instance, the Gemara in Ketubot 56a addresses the eligibility of a woman who marries a Kohen to begin eating Teruma, tithed produce only a Kohen and his family may eat. It asserts she may eat Teruma because she is kinyan kaspo, his purchase. By contrast the Gemara in Kiddusin 6b when discussing the difference in text between a writ of manumission and a bill of divorce says: “If [inconclusive language] is sufficient to free the slave, whose body the master owns, it should certainly suffice to divorce a wife which the husband doesn’t really own.”

This is the majority position. Interestingly, R’ Eliezer actually says that one can in a sense ‘partially divorce his wife’, but he is the exception that proves the rule: “With regard to one who divorces his wife and said to her while handing her the bill of divorce: You are hereby permitted to marry any man except for so-and-so, Rabbi Eliezer permits her to remarry based on this divorce. And the Rabbis prohibit her from remarrying, as their bond is not entirely severed by this divorce, and she is therefore still considered his wife” (Gittin 82a).

Other Sources
