

“And He Shall Write Her Divorce Papers”: Deuteronomy 24:1–4 Re-examined

One of the most poignant, dramatic and controversial pieces of legislation pertaining to marital relationships is found in Deuteronomy 24:1–4:

When a man marries (*yiqah*) a woman, cohabits with her and, in time, discovers that she no longer pleases him due to some marital indiscretion (*'ervat davar*) on her part, he must write her divorce papers, hand them to her, and send her out of his home. Upon her release, if she becomes another man's (*'aḥer*) wife, and the latter (*'aḥaron*) also develops an hatred for her, he too must write her divorce papers, hand them to her and send her out of his house. Now, should her last husband (*aḥaron*) whom she married subsequent to her divorce, die, her former husband who had previously divorced her, is forbidden to remarry her; she has become tainted and in God's sight she is taboo. You must not contaminate the land which your Lord God is giving you as your possession (*naḥalah*).¹

There are several separate as well as consequential issues discussed in this passage:

- (1) A husband's displeasure with his wife because of some sexual indiscretion on her part may lead to divorce.²
- (2) The *husband* initiates the termination of their marriage by a written divorce and gives his wife her freedom.³
- (3) The divorcée is permitted to remarry and does so; every failed marital relationship requires her husband to deliver her a written divorce and to give her her freedom.
- (4) If death severs the relationship between the remarried woman and her last husband she is forbidden to remarry her first husband.
- (5) Biblical law forbids remarriage to a first husband because the land, as does the twice-divorced woman, becomes contaminated; the holiness of the land and the people whom it represents metaphorically—since both are God's possession (*naḥalah*)⁴— must be protected.

The legal ramifications of this passage are far-reaching and have been a focal point of considerable *halakhic* discussions and decisions throughout Jewish history; therefore some brief remarks on some of its technical aspects are in order.⁵ A valid divorce between husband and wife must be properly written and executed in accordance with strict *halakhic* practices regarding writing instruments and materials, the recording of the names of the divorcing parties, and the inclusion of correct formulae in the divorce document; the divorce must be signed, properly witnessed and delivered to the wife. If the husband is unable to deliver the divorce personally, his duly authorized agent(s) must carry out his wishes. His absence, or even death, while the divorce was being written, threatened future legal hardships for his wife since she would be considered an '*agunah*, a woman "anchored" in an unworkable marriage, unable to remarry according to Jewish rite because she did not have a properly executed divorce (*get*).⁶

Instead of focussing on the technicalities and legalities encountered during the writing of a divorce document I would like to re-examine Deuteronomy 24:1-4 as it took on a metaphorical metamorphosis for the marriage relationship between God and Israel, with God's pronouncement that He will honour His covenant with their ancestral patriarchs and "I will take (*ve-laqahti*) Israel as my people and I will become your God."⁷

The marital covenant between God and Israel as it evolved figuratively in the course of Jewish history will be examined as follows:

1. Courtship and Creation
2. Infidelity and Miscreance
3. Re-creation of the Marital Covenant
4. Reconciliation

I. Courtship and Creation

God created the ideal couple which was to serve as a role model for all future marriages. Following Adam and Eve's creation, and Adam's remarkable statement that Eve was the product of his own "flesh and bones," scripture declares:

Therefore, man must leave his father and his mother's (household) and bond with his wife and become one.⁸

Almost as an aside, we are told that the couple, man and wife,

were naked, devoid of shame.⁹ The physical bond between Adam and Eve linked them directly with God their bridegroom¹⁰ and prefigured the future marital bond between God and Israel. With Adam and Eve's violation of God's prohibition not to eat the fruit of the tree of knowledge of good and evil¹¹ they set in motion the recurring pattern of "apostasy and restoration"¹² which marked the eventual break in this unique bond, a break which culminated in the dispersion of the Israelites first from the northern kingdom in the eighth century B.C.E. and the Judeans from the southern kingdom a century later.¹³

II. Infidelity and Miscreance

Prophetic literature is replete with the most profound thoughts on the God-Israel relationship; prophets warned the northern and southern kingdoms of the consequences of courting foreign powers instead of heeding God's teachings as taught by his representatives. The prophet Isaiah who had witnessed the downfall of the northern kingdom of Israel in 721 B.C.E. and its mass deportations is silent on the subject of the restoration of the covenantal bond. Deutero-Isaiah, however, a prophet who lived about 550 B.C.E. and who had probably witnessed the return of the Judean exiles,¹⁴ denied that there had ever been a legal bill of divorce:

Thus says the Lord: "Where is your mother's bill of divorce with which I expelled her or where are my creditors to whom I have sold you? You were sold into slavery for your sins; for your crimes was your mother driven out."¹⁵

If it was God and not the Babylonians who had expelled Israel from its land and had sent them into captivity without a legal or symbolic bill of divorce,¹⁶ was there a remote possibility that there would ever be an eventual reconciliation between God and his people?

The prophets Jeremiah and Ezekiel were present at the destruction of the southern kingdom of Judaea and the First Temple in 597-586 B.C.E. and were themselves deported.¹⁷ Jeremiah, who was intimately involved in preaching God's word to his fellow Judeans both before and after the destruction of Jerusalem and the exile to Babylonia, reminded them of their special relationship with God:¹⁸

Go proclaim this message to
everyone in Jerusalem: Thus says

the Lord: "I remember so well your
youthful devotion,
Your marital love,
How you followed me in the
wilderness, in an unsown land."
Israel was God's sacred possession,
His very first love,
All those who devour you God will
punish.

Jeremiah echoed the divine promise to punish Israel's violators and then asked Judea rhetorically:¹⁹

The Lord asks: "If a man divorces his wife and she leaves him and she becomes another man's wife, can he take her back? Would not the land become completely corrupt? You have been promiscuous with many partners, yet you return to me! [§] Because of her persistent promiscuity, and as a warning to her southern sister Judea, I have divorced [northern] Israel and have given her her divorce papers so that she would not influence her [southern] sister Judea. But [Judea] too went whoring."

According to Jeremiah northern Israel is cut off from God, never to return, just as a written divorce (*get*) is cut to symbolize the severance of the marital relationship.²⁰ Nevertheless, God, an omnipotent Father-Husband, allows himself to be manipulated by his unfaithful daughter-wife, Judea:

Do you not still call me "Father, the beloved of my youth? Will He harbor a grudge forever, maintain [it] eternally?"

The mutual nostalgia for a once-tender relationship, now strained by infidelity and disintegration, is remarkably touching and human; more remarkable, however, is the probability that God is far more forgiving than we mortals and, therefore, concedes the possibility of future reconciliation between God and His people.

Although the vast body of prophetic literature frequently depicts Israel as a constantly errant wife, it would be wrong to portray only *her* as sexually undisciplined, uncontrollable and unfaithful. The fifth century B.C.E. prophet Malakhi chastised the priest-husbands, God's consecrated representatives in the temple cult, collectively and individually, who have also broken their contract with Him.²¹

This is another thing you do. You drown the Lord's altar with tears,²²

weeping and wailing because He no longer willingly accepts the offerings you bring him. You ask "why?": it is because [God] has personally witnessed your betrayal of the wife you married in your youth. She is your friend and your covenantal partner,²³ you promised before God that you would be faithful to her. Did not God make you one body and spirit with her? What was His purpose? To produce children who are truly God's people. Therefore, make sure that none of you breaks his promise to his wife. "I hate divorce," says the Lord God of Israel. "I hate it when one of you does such a cruel thing to his wife. Make sure that you do not act treacherously but be faithful to your wife."

Other prophets consistently condemned ancient Israel's flirtatious and faithless behaviour with foreign powers and religions. Hosea's hypothetical marriages to two unfaithful women, symbolically northern and southern Israel, graphically describe Israel's perversion of their intimate relation with God through marital infidelity.²⁴ His statement, "Your mother is no longer my wife and I am no longer her husband," although not a legal divorce formula, points to the eventual evolution of the legally signed, sealed and delivered *get*: "You are expelled, you are divorced, you are independent, you are free to marry any man." What a stark contrast to the marriage formula between man and woman, "You are sanctified to me," and to the sacred marital relationship described in scripture.²⁵

Divorce, however, is and was a constant reality.²⁶ As marriage breakdown and divorce became more prevalent in Jewish society, the rabbis of the talmudic and medieval periods sought to sever the marital relationship as humanely and compassionately as possible, to minimize the pain that already existed. For the most part, they gave *halakhah* as wide a latitude as possible in order to avoid the problems an eventual remarriage might entail which ultimately would impact either spouse or their children. The meaning of the much-debated phrase "marital impropriety" (*'ervat davar*) in Deuteronomy 24:2 and debated by the first century schools of Shammai and Hillel, may leave the erroneous impression that the rabbis approached the subject of marriage break-up lightly and even facetiously. Nothing could be further from the truth! The phrase *'ervat davar* most likely is connected to some sexual or marital impropriety that triggers mistrust and heartbreak, not to a wife's bad cooking or to her husband's attraction to a younger, more beautiful and vibrant woman, as Rabbi Akiva is quoted as saying. Love, harmony, and commitment no

longer exist; the break, therefore, must be final, the relationship severed and a divorce (*sefer keritut*) issued.²⁷

Deuteronomy 24:1-4 underwent a complete metamorphosis in qabbalistic literature. In the *Zohar*, *The Book of Splendour*, one of medieval Spanish Jewry's most enduring legacies, this passage was transformed into a lengthy excursus on the soul's destiny after the physical demise of the body.²⁸ According to the qabbalists, the soul underwent many transmigrations (*gilgul*) and metamorphoses until it united with the soul of another human, plant, animal or bird. The qabbalists believed that souls (*neshamah*) from the upper world unite with spirits (*ruah*) from below and are clothed in a supernal light. The spirit of the man who has died without children undergoes constant transmigration and finds no rest until his *levir*²⁹ comes forth to redeem his spirit and rebuild him into a new creation, "a new spirit in new body," which can now perfect itself and keep the commandments. Of course, if the dead man's widow remarries there is a strong possibility that the spirit of the deceased husband and that of the second may unite in her body and "prick her [...] and writhe within her like a serpent [ש]. Divorce causes a defect in the stone of the heavenly altar [ש] and the woman who stood formerly in the likeness of the supernal form has now become attached to the low form, 'another' ('*aḥer*) and 'last' (*aḥaron*)." ³⁰ Hopefully this second husband will be the "last" and not undermine the entire new "building." Therefore, "the former husband who sent her away cannot again take her to be his wife, after that she is defiled [...]. Once she has united herself with a lower grade, the first husband, who belongs to the grade of 'good,' may not associate himself with her any longer." God does not want the "first" husband to demean himself in such a remarriage since he would become "a laughing stock."

The terminology of marriage and divorce in Deuteronomy 24:1-4 entered another of Spanish Jewry's finest literary legacies – poetry and prose. During the so-called "Golden Age" of Jewry's lengthy sojourn in Spain Jewish poets-laureate infused their literary creations with the despair of exile and persecutions, the longing for a return to Zion, and the desire to return and serve God whom they worshiped as their sole hope and refuge.

Samuel Ibn Nagrela (993, Cordova–1056, Granada),³¹ the fabled

vizier of the Muslim caliph whom later Spanish historians credited for the flowering of Hebrew *belles-lettres* in Spain, had witnessed the Almoravide destruction of his birthplace in 1013 and was among the many expellees. In an expiatory hymn for the High Holydays he pleaded to God in the language of the prophets on behalf of his people.³²

The bereft divorcée / without a
bill of divorce—
Betrothe her faithfully again /
Her marriage contract endorse.

Solomon Ibn Gabirol (1021/1022, Malaga-Valencia, 1053–1058),³³ born in Malaga, a city famed for its wine, women and song, lived and wrote in Saragossa. Plagued by physical pain because of a severe skin disease, handicapped by severe emotional trauma suffered by the early death of his mother and father, lonely perhaps because of lack of siblings, filled with the need to write as much as he could during the brief life allotted him, dependent on a wealthy patron who was later executed,³⁴ Ibn Gabirol poured out his heart in poetry. He began writing at a very early age, both in Hebrew and Arabic, and displayed remarkable virtuosity in biblical exegesis, grammar, philosophy and ethics; in the eyes of his detractors he was without parallel.³⁵

Despite his turbulent life and loneliness³⁶ Ibn Gabirol's religious, secular and love poetry is suffused with eloquent accounts of nature and God's sublime creation. He too pleads for God's restoration of the Jews to Zion.³⁷

Restore the divorcée /
to her proprietary estate /
Remember the severely pained /
Afflicted by adversarial fate.

In spite of lack of wife or family, he could express his tender feelings and yearning towards women:³⁸

My wife is the most praiseworthy of
women,

she is a queen, majestic in the
skies,
The sun's sister and the moon's
mother

In one of his many ballads in which he seeks God's intervention to redeem his people (*Knesset Yisra'el*) God echoes Isaiah's words:³⁹

To whom then have I sold you?
Let your adversary appear!
Whoever gave you a bill of divorce?
Like a fiery, walled tower I'll
enfold you.
Why do you weep,
Why are you sorely grieved?

Ibn Gabirol, like so many of his contemporaries, was pressured to study and engage in intellectual quests. And, like them, so many external and internal anxieties prevented him from achieving all that he demanded of himself. He is chastened by the figure of "wisdom" for neglecting her. In his despair he describes her hold on him and how he wanted to write her a bill of divorce:⁴⁰

You were like a fiendish vulture
You resembled the eye of a desert
jackdaw
Divorce insight
Release the noose of intellect and
its claw

The prophet Isaiah's description of God's abandonment and exile of Israel was fleshed out centuries later by the well-known poet and philosopher, Judah ha-levi (1025, Tudela-1141, Egypt). In his poetry, which longed for an end to his and his people's lengthy exile and a return to Zion, he depicted expelled Israel as "an abandoned and sadly distressed woman":⁴¹

How neglected am I /
When can I expect relief;
I reside in a brackish land /⁴²

Called, dismissed, without a legal
brief!

But not all medieval Jewish poetry was devoted to Israel's "lachrymose history" or to the poets' anguish at being divorced from God and their land. Their prolific output in parody and satire which drew on the many literary traditions which surrounded them, display lore of wine, women, song, travels and adventure.

Judah Al-Harizi (1170-1235), vagabond Spanish troubadour, philosopher, translator and satirist, was the author of the *Tahkemoni*, a multi-chaptered, many-splendoured book written in rhymed prose and poetry.⁴³ In lofty language and sublime style Al-Harizi praises and satirizes Jewish mores, customs, culture, religious figures, institutions, unhappy marriages and the men and women he had encountered in the different "holy communities" and countries where he had travelled. In describing his travels to Toledo, Calatayud, Lerida, Barcelona in Spain, the cities of Provence, Cairo, Jerusalem, Acre, Damascus, and Homs, he remarked on their physical beauty, their luminous scholars, their "knaves and nobles," their wisdom, philanthropy, superb culture and courtliness.⁴⁴ Any reservations Al-Harizi might have had in his lavish praise of the Barcelona philanthropists were limited only to a certain Rabbi Jacob of Barcelona who wore the diadem (*nezer*) of greatness and the crown (*keter*) of praise but who had rejected philanthropy and refused to come into its council. Rabbi Jacob had symbolically divorced philanthropy and delivered into her hand a bill of divorce. Is it possible that Rabbi Jacob was fed up with endless fundraising meetings and had refused to have anything more to do with them?

Another favourite subject of satire among Jewish, and non-Jewish, poets was the perfidious, unfaithful, and shameless wives, whose husbands were continually testing their loyalty and fidelity. Joseph Ben Meir Zabara,⁴⁵ born in Barcelona in about 1140, was another master parodist. In his *Book of Delight*, a collection of folk-tales in which fabled animals speak in the language of bible, talmud and midrash in order to elucidate, teach, clarify, and above all, to entertain,⁴⁶ he tells many tales about unfaithful wives and cunning women and how they can be detected.⁴⁷ Now, Zabara found that there are women who are loyal and faithful but that would not have suited the literary genre which he was imitating.⁴⁸

It would be remiss to neglect one of one of Spain's greatest luminaries, Moses Ibn Ezra, (ca. 1055–after 113S),⁴⁹ poet and philosopher, a native of Granada, and a student of Isaac ibn Ghayyat in Lucena, "the city of poetry."⁵⁰ Ibn Ezra had witnessed the Almoravid capture of Granada in 1090 and the subsequent destruction of its Jewish community. A brilliant theoretician as well as practitioner of sacred and secular poetry, he mourned in rhymed dirges and laments the deaths of Spanish Jews, the destruction of Jewish communities as well as immediate family members. In many wars he too had led a sad and distressing life, complicated by conflicts with family members, contemporaries and authorities. Nevertheless, on the death of his brother Isaac he wrote:

Mourn, My Soul⁵¹
 Mourn, my soul, don mourning garb
 Secure your sack with rope
 Seclude yourself, mope!
 Arise and lament; expose your robe.
 Sell your joy forever; have neither
 redeemer nor jubilee,
 Divorce glee!
 Take up wailing instruments, not
 harp
 Fear neither time nor space
 What further harm can they do you?
 [. . .] After my brother's departure
 to destruction
 I understand full well creature's
 oblivion.

For Moses Ibn Ezra, who also wrote songs about love, wine and wisdom, the foolish woman is a metaphor for this world of oblivion and emptiness, to be given short shrift:⁵²

The world is like a foolish woman⁵³
 Empty is her majestic glory;⁵⁴
 She whispers sweet words,
 But beneath her tongue is a
 quandary.⁵⁵
 Thwart her advice, wise brother,
 Change her honour into shame

Hurry up! deliver her a permanent bill of divorce.

III. Re-creation

Life for Jews in the Iberian Peninsula ended tragically with their expulsion from Spain in 1492 and from Portugal in 1497. The Iberian society in which Jews had lived for a millenium and to which they had contributed so richly culturally and socially, had frequently turned against them in the past. Previous violent outbreaks which had resulted in massacres or forced conversions — to Christianity or Islam — for many of the survivors, paled in comparison with the savage outbreaks in 1391; the Jews' inability to regroup and recover successfully hurtled them into social, cultural, economic, political and religious oblivion and culminated in their expulsion a century later. But the mass conversions after 1391 differed from previous ones: they created a new category of converts, *conversos* or crypto-Jews, who continued to practise Judaism secretly, in the presumed safety and secrecy of their homes, or in their new lands where they had fled in great numbers.⁵⁶

One of the many problems these crypto-Jews faced when they wanted to reintegrate as professing Jews into their new communities concerned their changed marital status. *Conversas*⁵⁷ especially faced particular problems: if their husbands had fled Spain following their conversion without writing and delivering them a valid Jewish divorce as required by Jewish law, their future remarriage according to Jewish rites was impossible since the children of their new marriage would be considered *manzerim*, offspring of an adulterous union.⁵⁸ Childless widows also required a brother-in-law who was a valid *levir* before they could remarry.⁵⁹

After 1391 there were virtually no rabbis left in Spain to deal with these issues since most had fled to North Africa and elsewhere. From the comparative safety of their new homes they resumed their interrupted lives and once again were able to counsel their correspondents.⁶⁰ To their lasting credit these rabbis showed great leniency to crypto-Jews who wanted to reenter the Jewish fold. For *cooersas* who had married prior to 1391 but did not have valid divorce decrees because their husbands had vanished, the rabbis accepted the evidence of the witnesses to their Jewish marriage who

were now *conversos*: since they continued to practise Judaism faithfully in secret, their testimony could still be relied upon. Furthermore, if *conversos* continued to take proper precautions to obtain reliable witnesses to their marriage after 1391—and *conversos* usually married within their own group—these true crypto-Jews could be regarded as valid witnesses in cases of marriage and divorce.⁶¹ Civil marriages or *converso* marriages in a Catholic church by Catholic clergy were not considered valid; therefore, no divorce was necessary, the *conversa* was free to marry whomever she wanted and her children from her new marriage would not be considered *mamzerim*, the offspring of an adulterous marriage. The subject of Jewish marriage and divorce became only academic after 1492 since all professing Jews had supposedly left the Iberian Peninsula and all active Jewish life had ceased. The Jews of the Iberian Peninsula who had survived attempts to annihilate or convert them, took their talents elsewhere and recreated their broken lives in different worlds.

IV. Reconciliation

To return to the passage in Deuteronomy 24:1–3 with which we began our study: can a divorced wife remarry her first husband if she has married another man in the interim? Halakhically, the answer must be an unqualified, resounding “no”! When a couple divorces, the consequences for the nuclear and extended family can often be tragic; divorce, however, may be a necessary stage in the maturation and liberation of an individual and, by extension, of the family. When we look beyond the personal and familial implications of a severed relationship and focus on those of a people or nation, we return to the question as to whether ancient Israel, God’s bride, pride and possession, divorced, exiled, battered and bruised, could ever be reconciled with God in her promised land, as prophets and poets had pleaded. Arguably, the creation of the State of Israel in 1948, and its ongoing ingathering of hundreds of thousands of exiles from many lands over four and a half decades, attest to the renewal of the covenantal relationship between God and the purported descendants of ancient Israel. We return to the prophet Jeremiah:

Return, you unfaithful children, says the Lord, because I am intimately committed to you; I have married you⁶² and I shall bring you to Zion. [§] Then shall Jerusalem be called “The Throne of God” and all nations will

gather there in Jerusalem in God's name. [§] At that time the House of Judea will join with the House of Israel and will come together from the northern country to the land which I have bequeathed to your ancestors.⁶³

And, in the words of the prophet Hosea:⁶⁴

I will betrothe you forever; I will betrothe you in righteousness and in justice and in loving kindness and with compassion. I shall betrothe you faithfully; you shall know the Lord intimately.

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NOTES

- 1 All translations, unless otherwise indicated, are mine.
- 2 For the rabbinic discussions on the meaning of the term 'ervat davar see M. Giṭṭin 9:10; B.T. Giṭṭin 90a.
- 3 For differing points of view on whether the husband can divorce his wife without her consent or whether she must consent to be divorced see Judith Romney Wegner, *Chattel or Person* (Oxford University Press, 1988), 45–50.
- 4 The term *naḥalah* is used for Israel the people (e.g., Ex 34:9; Dt 4:20; Jer 3:18) and for Israel the land which God had bequeathed them (e.g., Dt 15:4). It also signifies property inheritance within the family (e.g., Gn 48:7). God is also referred to as the Levites' inheritance (*naḥalah*) since they were not to receive a portion of Israel as their inheritance (Num 18:20).
- 5 On some of the legal discussions see Simon Greenberg, "And He Writes Her A Bill of Divorcement," *Conservative Judaism* (1968): 75–141. On some of the emerging feminist literature on divorce see Wegner, *Chattel and Person*, 40–113 and *passim*.
- 6 See the brief discussion below; Wegner, *Chattel or Person*, 63–64. The laws regarding the 'agunah are extensive and discussed in the literature of the rabbinic, medieval and contemporary periods.
- 7 Ex 6:7. The verb *laqaḥ* is one of the technical terms for marriage. See, for example, Gn 25:20; Dt 20:7.
- 8 Gn 2:21–24. The verb, *davaq*, "to bond," describes the relationship between God and Israel also. See Dt 4:4; 10:20; 11:22; 30:20; Josh 22:5; 23:8; Ps 101:3 and many other examples in Hebrew scriptures.
- 9 The term for nakedness, 'arom, is most likely derived from the same root as the term 'ervat davar. See below.
- 10 See *Midrash Bereshit Rabba*, ed. J. Theodor and Ch. Albeck (Jerusalem, 1965) 18:3.
- 11 See Gn 2:6.
- 12 The term used by Northrop Frye. See *The Great Code* (Toronto, 1982), 169.

- 13 2Kgs 15:29; 25:1–12.
- 14 The Persian king, Cyrus, God's "anointed" (Is 45:1), had allowed those exiles who wanted to return to Judea, to do so. See Ezr 1:1–8.
- 15 Is 50:1.
- 16 The medieval bible commentators, Abraham Ibn Ezra and David Kimbi, agree at Is 50:1 with Jeremiah's view that northern Israel and the "ten tribes" expelled by the Assyrians in 721 B.C.E. were formally divorced from God, never to return; in their opinion, however, Judea, who was destined to fulfil the messianic destiny in the person of King David's descendant, was to return to its land.
- 17 See Jer 42–43; Ez 1:1–3. 18. Jer 2:2.
- 18 Ibid., 3:1–10 (ca 626–622 B.C.E.). On the condemnation of Judea's "promiscuity" see also Ez 16, 23.
- 19 See Joseph Karo, *Shulkhan 'Arukh*, 'Even ha-'ezer, 154 (*Seder ha-geṭ*), par. 86: *va-yiqre'enu sheti va-'erev*.
- 20 Jer 3:4.
- 21 Mal 2:13–16.
- 22 See *Sefer ha-zohar*, (*Zohar*) 3 vols. (reprinted Jerusalem, 1970), 2:102b.
- 23 On taking oaths in covenantal relationships concerning land or marriage see also Gn 21:23, 32; 31:44–53; Ez 16:8. On the wife's abandonment of her husband who was "the champion of her youth" and the disregard of her covenant with God see Prv 2:17. On the special consideration due to be given "the wife of your youth" see also Prv 5:18–19; *B.T. Yevamot* 63b.
- 24 Hosea, the northern prophet, lived before the fall of Samaria in 721 B.C.E. His warnings against the northern kingdom (1:2, 1:7, 2:7 and *passim*), were probably written ca. 783–743 B.C.E., before and during the massive invasions of the Assyrians. As a prophet of conciliation he concluded that ultimately God will have compassion on his children. The prophet Ezekiel (chap. 16, 23) also denounced both kingdoms' "promiscuity."
- 25 Lev 19:1. On the marriage and divorce formulae see Maimonides, *Mishneh Torah*, *Hilkhot 'Ishut* 3:1; *Hilkhot Gerushin* 1:4.
- 26 See for e.g. Lv 21:7, 14; 22:13; Num 30:10.
- 27 In *M. Giṭṭin* 9:10, the school of Shammai states that the phrase '*ervat davar*' has sexual implications whereas the school of Hillel interprets this phrase as any annoyance a wife might cause her husband. Rabbi Akiva's marriage to Rachel, his devoted wife who had encouraged him to study in the learning academies for over twelve years, was exemplary. An examination of the root '*araj*' throughout scripture conveys some type of physical or or inappropriate trait, whether it is incest, nakedness, cunning or bodily function, in opposition to "holiness." Cf. Dt 23:15 where both concepts are opposed: "[§] therefore shall your camp be holy (*qadosh*) and [God] will not witness any indecency ('*ervat davar*) among you."
- 28 The following discussion is based upon the *Zohar*, *Mishpaṭim* 2:99b–103a (for the purposes of this paper I have used the English translation, 3 vols., 1931–

1934, 3:314–16) and is only a very brief summary of a very complex topic with which many of the citations in this paper are concerned and upon which I hope to expand elsewhere. On the possible connection of the transmigrating of souls and the fate of a man who died without a child see also Jacob Katz, "Halakhic Statements in the *Zohar* (Hebrew), *Tarbits* 50 (1980–81): 405–22; idem, "Levirate Marriage (*Yibbum*) and *Halizah* in Post-Talmudic Times," (Hebrew), *Tarbits* 51 (1981–82): 59–106; idem, "Post-Zoharic Relations between Halakhah and Kabbalah," (Hebrew), *Daat* 4(1980): 57–74, esp. 69–70 and nn. 58–60; Isaiah Tishby, *Mishnat ha-zohar*, 2 vols. (Jerusalem, 1961), 2:31–42; Joseph Hacker, "The Connection of Spanish Jewry with Eretz-Israel Between 1391 and 1492" (Hebrew), *Shalem* 1 (1974): 105–56. The halakhic debates in the Middle Ages turn on certain ceremonies that the surviving brother of a childless man was supposed to undertake with respect to his dead brother's childless widow. See discussion below.

- 29 Dt 25:5–9 obligates the brother of a childless man who dies to marry his brother's widow in order to perpetuate his dead brother's name when the first child is born. This marriage ceremony was designed to bind the family relationship even closer. Should her brother-in-law refuse to marry her, then she must perform the "unshoeing" ceremony which permitted the childless widow to remarry outside the husband's family. This ceremony was usually required to take place within three months following the death of the widow's husband to ensure that the wife was not pregnant; during this time she was entitled to enjoy the benefits of her late husband's estate. If her brother-in-law agreed to marry her, he too was entitled to a share of his late brother's estate. If he did not agree to marry his childless sister-in-law or if the "unshoeing" ceremony took place, he did not share in the inheritance (Lv 18:16). See also Wegner, *Chattel or Person* 104–113.
- 30 Dt 24: 2–4; trans. *Zohar*, 3:103a–315.
- 31 See Schirmann, *Hebrew Poetry in Spain and in Provence (Ha-shirah ha-'ivrit)*, 4 vols. (Tel Aviv, 1961), 1:74–78.
- 32 See Schirmann, *ibid.*, 143–145.
- 33 *Ibid.*, 176–285; *Selected Religious Poems of Salomon Ibn Gabirol*, , trans. Israel Zangwill (Zangwill, *Ibn Gabirol*) (Philadelphia, 1923), xvii–xl.
- 34 Schirmann, *ibid.*; Zangwill, *Ibn Gabirol*, xviii, xxiv–xxvi.
- 35 His philosophical works included *The Fountain of Life (Meqor Hāyyim)* and *The Royal Crown (Keter Malkhut)*; his ethical works were *Remedying the Soul (Tiqqun Middot ha-nefesh)* and *The Choicest Pearls (Mivḥar Peninim)*.
- 36 Ibn Gabirol probably never married. His inclination to asceticism, discerned in much of his poetry, may have been due to the bitterness at his all-consuming illness.
- 37 Zangwill, *Ibn Cabirol*, 20–1.
- 38 See Schirmann, *Ha-shirah ha-'ivrit*, 214. Cf. his poem, *ibid.*, 231, in which he despises the acquisition of property and of children.
- 39 Schirmann, *ibid.*, 246. Compare Zangwill, *Ibn Gabirol*, 28.

- 40 See Solomon Ibn Gabirol, *Secular Poems* (Hebrew), ed. H. Brody and J. Schirmann (Jerusalem, 1974), 85–6.
- 41 Is 54:6–7. On this poem see *Maḥzor 'Aram zova'* (Venice, 1527), *Seliḥot le-shabbat shofetim*, 355.
- 42 See Jer 17:6.
- 43 *The Tahkemoni of Judah Al-Harizi*, trans. Victor Reichert, 2 vols. (Jerusalem, 1965), was written to show that the linguistic wealth, prowess and treasures of the Hebrew language were equal to those of Arabic, the language commonly used by Jewish *literati* of this period.
- 44 *Tahkemoni*, 296–328.
- 45 See Schirmann, *Ha-shirah ha-'ivrit*, 3:11–55; Joseph Ben Meir Zabara, *The Book of Delight*, tr. Moses Hadas (New York, 1932), 149–61.
- 46 See Schirmann, *ibid.*, 19–24. Folk tales were transmitted from India through to the Muslims and then to the Christians through the medium of the Jews. On their transmission see *Book of Delight*, 11–41.
- 47 *Book of Delight*, 9; 152–60.
- 48 On the literary genre of perfidy and infidelity see Talya Fishman, “A Medieval Parody of Misogyny: Judah ibn Shabbetai’s ‘Minbat Yehudah sone hanashim’” *Prooftexts* 8 (1988): 89–111; Norman Roth, “The Wiles of Women Motif in Medieval Hebrew Literature of Spain,” *Hebrew Annual Review* 2 (1978): 145–65. On many similar works by Spanish Jewish writers see Isaac ben Shelomo Ibn Sahula (1244–after 1291) who, in his *Ancient Parable (Mashal ha-qadmoni)*, elaborated on the theme of the unfaithful wife (Schirmann, *Ha-shirah ha-'ivrit*, 4:349–52). On “The Pious Man and His Adulterous Wife” see *ibid.*, 367–77. On “Judah the Misogynist” (Judah ibn Shabbetai, Toledo, 1168–Saragossa, 1225) see Schirmann, *ibid.*, 3:70–86. Judah seemingly parodied women as wily and wicked, thus negating completely the requisites of a youthful married woman. Common to all these women in satirical writing was their beauty, ostensible virtue and above all, their zest and lust towards men not their husbands despite the latter’s claim to fame, prestige, wealth, piety, knowledge and wisdom.
- 49 On his life see Schirmann, *Ha-shirah ha-'ivrit*, 2:362–67.
- 50 On Isaac ibn Ghiyyat, see Schirmann, *ibid.*, 2:301.
- 51 See *Selected Poems of Moses Ibn Ezra*, , trans. Solomon Solis-Cohen (Philadelphia, 1934), xx–xxv; *Post-Biblical Hebrew Literature*, an Anthology, trans. B. Halper (Philadelphia, 1921), 100–01; *Moses Ibn Ezra, Shirei ha-hol [Divan]*, 2 vols. (Berlin, 1935), 1:31–32.
- 52 *Selected Poems of Moses Ibn Ezra*, 47.
- 53 Prv 9:13.
- 54 Ps 45:4.
- 55 Eccl 7:26.
- 56 On crypto-Jews see Haim Beinart, “The Conversos and their Fate,” in *Spain and the Jews*, ed. Elie Kedourie (London, 1992), 92–122; Henry Kamen, “The Expulsion: Purpose and Consequence,” *ibid.*, 74–91; Yitzhak Fritz Baer, *A*

History of the Jews in Christian Spain, 2 vols. (Philadelphia, 1960–1966), 2:95–169; 244–99; 433–43; Benzion Netanyahu, *The Marranos of Spain from the Late 14th to the Early 16th Century* (New York, 1966), 6–22 and *passim*.

- 57 On the plight of these women see Renée Levine Melamed, "The Ultimate Challenge: Safeguarding the Crypto-Judaic Heritage," *Proceedings of the American Academy for Jewish Research* 53 (1986): 91–109.
- 58 See the discussion on adultery and *Manzerut* in Louis M. Epstein, *Marriage Laws in the Bible and Talmud* (Cambridge, 1942), 195–97. For discussions as to what constituted valid divorce proceedings in Jewish law see Zeev Ealk, *Jewish Matrimonial Law* (Oxford, 1966), 113–143.
- 59 See n. 30 above.
- 60 The leading rabbis of the period were Rabbi Isaac ben Sheshet (Valencia, 1327–Algiers, 1408), and Rabbi Simon ben Şemab Duran (Majorca, 1361–North Africa, 1444) and his descendants. Their advice is contained in the *responsa* literature, a vast body of rabbinic literature containing responses to legal questions which were asked by individuals and communities throughout the Jewish world. See Solomon R. Freehof, *The Responsa Literature and A Treasury of Responsa* (New York, 1973), 21–41; 210–16; Epstein, *Marriage Laws in the Bible*, 104–30; 139–42.
- 61 The rabbis were operating on the talmudic principle in *B.T. Sanhedrin 44a*: A Jew, even if has sinned, is still a Jew. See also Isaac ben Sheshet, *She'elot u-Teshuvot Bar Sheshet* (reprinted Jerusalem, 1974) (Ribash, *Responsa*), no. 4. The following discussion encapsulates only briefly what became a subject for much discussion in many *converso* communities for at least the next two centuries.
- 62 *ve-laqaḥti 'etkhem*. See also Dt 24:1; Ex 6:7.
- 63 Jer 3:14–18: *hinḥalti 'et 'avoteikhem*
- 64 Hos 2:21–2. This passage reiterates God's characteristics: righteousness, justice (Gn 18:19), loving kindness and compassion (Dt 7:12; 13:18). For a midrashic interpretation of this passage see also *Deuteronomy Rabbah* 3:9.