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Editores: ***Tamar Alexander • Yaakov Bentolila***

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Gender Representation on the Dark Side of *Qidushin*: Between North Morocco and the Balkans (Monastir)

Gila Hadar
Haifa University

The Responsa literature dealing with doubtful betrothals (*qidushei safeq)* produced by the sages of the Sephardi Jewish communities in the Iberian Peninsula prior to the 1492 Expulsion and those communities established in the Ottoman Empire and in North Africa after the expulsion from Spain and Portugal constitutes an important historical source for the study of law, language, daily life, marriage customs, family relationships, the status of women, etc. The marriage of minors and "questionable" betrothals has been researched primarily with regard to their legal and halakhic aspects[1] in the field of Jewish History by Ruth Lamdan[2] and Minna Rozen.[3]

In this article, I attempt to give a gender reading of doubtful betrothals, employing it as a tool for a historical and social analysis in order to make heard the hidden voice of absent, silent, crying, screaming, and denying girls passively struggling not to become betrothed according to "His" will – either their father's or other persons

1 Abraham H. Freimann, *The Procedure of Betrothal and Marriage from the Canonization of the Talmud to Our Days*, Mosad ha-Rav Kook, Jerusalem 1948 (repr. 1965) (Hebrew). For a list of the halakhic sources on this issue, see http://www.daat.ac.il/daat/toshba/ishut/ishut5./htm (Hebrew).

2 Ruth Lamdan, *A Separate People: Jewish Women in Palestine Syria and Egypt in the 16th Century*, Brill, Leiden 2000 (Hebrew version, 1996).

3 Minna Rozen, *A History of The Jewish Community of Istanbul – The Formative Years (1453-1566)*, Brill, Leiden 2002, pp. 137-143, 169. (Hereafter cited as Rozen, *Istanbul*.)

4 Shirley Ardener (ed.), *Women and Space: Ground Rules and Social Maps*, St. Martin's Press, New York 1981, pp. 11-34; Joan Wallach Scott, *Gender and the Politics of History*, Columbia University Press, New York 1986 (Ch. 2: "Gender: A Useful Category of

wishing to marry them off.[4] It is also an attempt to galvanize the saying that "a women is not betrothed except by her consent"[5] and to dare to refuse all those who desire them or who hand them over.

In this article I shall focus on the dark, profane side of betrothals, according to the public ruling regarding *qidushin* in the two areas where those expelled from the Iberian Peninsula settled: the eastern Sephardi community of Monastir (today Bitola) and the western Sephardic communities in North Morocco (Tetuán, Tangier, Larache, Arzila, and Alcazarquivir) during the nineteenth century.[6] This was a period during which the social and cultural order underwent a transformation, primarily due to the increasing influence of modernisation, the collapse of the old order, and emigration. This study revolves around the premise that although the betrothal and marriage customs practiced in these communities contained various elements of Jewish and Iberian tradition, the geographical distance, time gaps, and different local cultural space the various communities of the Spanish diaspora experienced led them to develop different halakhic traditions, prompting women to adopt a variety of tactics in their struggle against enforced marriages. An examination of these factors will allow us to verify or negate our assumptions.

The sources for this article are mainly the Responsa literature dealing with the problems of doubtful betrothals conducted in Monastir and the Northern Morocco communities.[7] Although the evidence was recorded in Hebrew, it was transmitted

Historical Analysis", pp. 29-51); Jill Dubisch (ed.), *Gender and Power in Rural Greece*, Princeton University Press, New Jersey, 1986.

5 Rabbi Itzḥak ben Wallid, *Va-yomer Itzḥak, Responsa*, Eliahu ben Hamozeg, Livorno 1876, #128 (Hebrew).

6 On the marriage customs and patterns of the Sephardim of Northern Morocco, see Sarah Leiboviç (ed.), *Nuestras bodas en Tetuán*: *Antología, Noces Judéo-Espagnoles*, Association France Kabatt, Paris 1983; Lawrence Sawchuck, "Historic Marriage Patterns in the Sepharadim of Gibraltar, 1704-1939", *Jewish Social Studies*, 1 (1988), pp. 177-200; Joseph Chetrit et al. (eds.), *Mi-qedem u-mi-yam: The Jewish Traditional Marriage in Morocco Interpretative and Documentary Chapters*, Vol. VIII (Haifa, 2003), especially my article, Gila Hadar, "Marriage Patterns among the Sephardic Jews of Northern Morocco", pp. 308-350 (Hebrew).

7 On Responsa literature as a historical source, see Harvey E. Goldberg, "Religious Response among North African Jews in the Nineteenth and Twentieth Centuries", Jack Wertheimer (ed.), *The Uses of Tradition: Jewish Continuity in the Modern Era*, Jewish Theological Seminary, New York 1992, pp. 119-144; Marc Angel, "The Responsa Literature in the

verbally in Ladino or Ḥaketía (Judeo-Spanish) the spoken languages employed for daily social communication, especially by the women, among the Jewish communities in the Ottoman Empire and North Morocco.[8] In the nineteenth century, testimonies given by men and women in Monastir were presented in their own language – i.e. in Ladino – while most of the testimonies given by Ḥaketía-speakers in North Morocco were translated into Hebrew by the sages.[9]

The decision to compare these two areas – contrasting the wealth of sources of women's voices in Ladino, mainly from Monastir, with the silence of young girls from North Morocco – was taken primarily in light of the paucity of historical research on these communities in general.[10]

A. Qidushin[11]

Since the arrangement for betrothal and marriage is not as clear as that for divorce, certain doubts and fears often arose with respect to the legality of betrothal in various

Ottoman Empire as a Source for the Study of Ottoman Jewry", Avigdor Levy (ed.), *The Jews of the Ottoman Empire*, Darwin Press, Inc., Princeton NJ 1994, pp. 669-685; Leah Bornstein-Makovetsky, "Halakhic and Rabbinic Literature in Turkey, Greece and the Balkans (1750-1900)", *Pe'amim*, 86-87 (2001), pp. 124-74 (Hebrew); Roni Weinstein, *Marriage Rituals Italian Style: A Historical Anthropological Perspective on Early Modern Italian Jews*, Brill, Leiden 2003, pp. 37-39, 113-154.

8 Jose Benoliel, *Dialecto judeo-hispano-marroquí o Hakitia*, Varona, Madrid 1977. See also in this volume Yaakov Bentolila, "La lengua común (coiné) judeo-española entre el Este y el Oeste", pp. 159-176.

9 Shelomo Hakohen, *Responsa* (Venice, 1592; repr. Jerusalem, 1950), Vol. 3, #33 (Hebrew).

10 On Northern Morocco, see Juan B. Vilar Ramirez, *La Juderia de Tetuán (1489-1860*), Universidad de Murcia, Murcia 1969; Jesús F. Salafranca Ortega, *La población Judia de Melilla (1874-1936)*, Editorial Algazara, Caracas 1990; Mitchell Serels, *A History of the Jews of Tangier in the 19th and 20th Centuries*, Sepher-Hermon Press, New York 1991; Shlomo Alboḥer, *Monastir: Bitola, Macedonia*, Ha-Sifra Ha-Zionit, Jerusalem 2005 (Hebrew).

11 Rozen, *Istanbul* (above note 3), p. 86, "*Qidushin* is the verbal formula *Harei at mequdeshet li ke-dat Mosheh ve-Yisrael* ('hereby you are consecrated unto me according to the Laws of Moses and Israel'), by which a man makes certain that his bride-to-be is consecrated to him alone according to Jewish law".

cases. These included secret betrothal (conducted in the presence of two witnesses without the family's permission), abduction betrothal (the acquisition and assertion were performed fraudulently through transmitting or throwing of the object of acquisition), deceptive betrothal (bribing of witnesses to testify that the betrothal had taken place although it had not), betrothal in jest (during a game or in a drunken state), betrothal of a minor, etc.[12]

Even the custom of sending gifts to the prospective bride (*sivlonot*) raised halakhic questions, lest the presents themselves might be considered as marriage tokens without the declaration and witnesses.[13] Another doubt arose when the acquisition was performed by giving a girl an ordinary object such as a hat[14] or various kinds of fruit or food during a meal, etc.[15]

The leniency which permitted the betrothal of young girls against the will of their fathers contributed to communal disintegration and the diminishment of the status of the father of the family. In order to prevent this kind of betrothal, regulations (*takkanot*) against secret betrothal were instituted throughout the Jewish world.[16] The motive behind these regulations lay in the wish to protect and maintain the social order and the value of possession, the fear of bastardy, and the desire to avoid the creation of a large group of poor *agunot* (deserted wives) with children to care for – a situation which not only imposed an economic burden on the community but also confronted it with a moral problem.

One of the earliest regulations issued by the exiled community in Salonika[17] and the first issued by the Spanish exiles who arrived in Morocco immediately following

12 Freimann, *Procedure of Betrothal and Marriage* (above note 1), pp. i-v; Lamdan, *A Separate People* (above note 2), pp. 223-232.

13 In the Iberian Peninsula and most of the Sephardic communities both in the Balkans and in North Africa, there was no fear of *sivlonot*: see Lamdan, *A Separate People* (above note 2), pp. 33-35; Rozen, *Istanbul* (above note 3), pp. 137-143, 169.

14 Itzḥak Shmuel Adarbi, *Responsa, Divrei Rivot*, Jerusalem, 1989 (Venice, 1587), #1, #10 (Hebrew).

15 Shmuel de Medina, *Responsa, Even ha-'Ezer*, M. Pras, New York 1959 ##1-4, 12, 30 (Hebrew); Yoseph Ben Lev, *Responsa*, Ginzei Kedem, Jerusalem 1959, Vol. 1, #18 (Hebrew).

16 Lamdan, *A Separate People* (above note 2), pp. 222-232.

17 Medina, *Responsa* (above note 15), #12, p. 7; Freimann, *Procedure of Betrothal and Marriage* (above note 1), pp. 163-192 (Salonika), pp. 83-100, 265-269 (Morocco); Minna Rozen, "Individual and Community in Jewish Society of the Ottoman Empire: Salonica

the Expulsion (in 1494) related to the arrangements of betrothal and marriage and the invalidation of the *qidushin* if they were not celebrated according to the community regulations.[18]

The repetition of the regulations in 1497 and 1592 in Morocco and in 1567 and 1569 in Salonika serves as an indication that the community evidently found it difficult to impose its regulations on its members, and of the opposition amongst many to the community's interference in private events by endeavouring to turn them into public ones.

According to Jewish law, two witnesses are required for a betrothal ceremony. The community regulations require ten witnesses (*minyan*), among them a judge or rabbi who receives a salary from the community. The sanction employed against those who violated the regulations was *herem* (excommunication) and the invalidation of the betrothal – although many rabbis refrained from invalidating marriages for fear of bastardy and out of apprehension over the reaction of other rabbinical authorities. During the first period, many of the sages in both the East and West Sephardic diasporas insisted on observance of the regulations in full, invalidating betrothals that were not performed according to the proper ordinances. They were unafraid of other rabbis and concerned for the honour of girls who had been deceived by villains.[19] In Morocco at the end of the seventeenth century, the sages preferred to demand a divorce or a renewed betrothal ceremony according to the regulations rather than invalidate a marriage, due both to economic and political difficulties and the wide dissemination of Rabbi Joseph Caro's *Shulḥan Arukh*, which held that no authorization existed for invalidating betrothals in such a liberal manner.[20] In many cases, the demand for a divorce induced the consent of the father or the girl to the marriage because of the

in the Sixteenth Century", *The Jews of the Ottoman Empire* (above note 7), pp. 249-251; Rozen, *Istanbul* (above note 3), p. 143.

18 Abraham Ankawa, *Kerem Ḥemar*, Ashdod 1997 (Eliyahu ben Hamozeg, Livorno 1871) Vol. 2, Regulations 1, 2, 34 (Hebrew); Shalom bar Asher (ed.), *Sefer Hataqanot: Spanish and Portuguese Jews in Morocco (1492-1753)*, Academon, Jerusalem 1990, pp. 48, 90 (Hebrew).

19 Adarbi, *Divrei Rivot* (above note 14), #3; Rabbi Ḥayyim Shabetay, *Torat Ḥaiym Responsa*, *Even ha-'Ezer*, Zikhron Aharon, Jerusalem 2004, Vol. 2, #18 (Hebrew).

20 Freimann, *Procedure of Betrothal and Marriage* (above note 1), pp. 104-105; Joseph Caro, *Shulḥan Arukh*, *Even ha-'Ezer*, Ketuvim, Jerusalem 1993 (Venice, 1565), ##27-29 (Hebrew).

negative status associated with divorce.[21] The community, which was not interested in raising illegal children at public expense, was also eager to get the girl married. In this way, the regulations of the community were emptied of meaning and encouraged secret betrothals. At the same time, peace and order were preserved at the expense of its feminine "individuals".

During the fourteenth century in Spain, a large number of doubtful betrothals occurred. Rabbi Shlomo ben Aderet (Rashba), who was unable to impose the regulations instituted by the community, determined to lay accountability for preventing doubtful betrothals at the feet of the girls themselves.[22] Placing such responsibility on girls – who according to halakhah do not constitute a juridical entity – constituted an innovation. Did Rashba feel that the girls were cooperating in secret betrothals imposed upon them against their will and sometimes by means of verbal or physical enforcement? Or was it only when he saw that there was no remedy to such betrothals and that the dam had burst, that he purposely laid the full weight of responsibility on the victim?

A thorough study of the cases of doubtful betrothals leads us to understand that the imagination and creativity of men interested in a certain girl was unbounded. Girls who had grown up and been educated within a Jewish patriarchal family in which sexual separation was dominant possessed no tools or social and educational skills with which to cope with men in general or with the problem of deception, secret betrothals, and abduction in particular.

Up until the middle of the twentieth century, most women and girls did not speak, read, or write Hebrew (the language of prayer and Torah study). They remained at home and learnt the skills of motherhood. The education of girls appears to have included implicit rules of behaviour with respect strangers – such as the prohibition against speaking to them or accepting objects from them for fear of betrothal. Mothers did not always succeed in warning their young daughters of the danger, however, and sometimes failed to educate them completely.[23]

21 Hakohen, *Responsa* (above note 9), Vol. 3, #3.

22 Rabbi Shlomo ben Aderet, *Responsa*, Tel Aviv 1949, Vol. 1, #551, (Hebrew); Rabbi Ya'aqov Elyashar, *Simḥa Le-Ish; Responsa*, *Even ha-'Ezer*, Shmuel Ha-Levi Zukerman, Jerusalem 1893, #9 (Hebrew).

23 Rabbi Ya'aqov ibn Tzur, *Mishpat u-Tzedaqa be-Ya'aqov, Responsa*, P. Ḥayyim Mizraḥi, Alexandria 1894, Vol. 1 #181 (Hebrew) (hereafter cited as Ya'abetz, *Mishpat*).

The construction of the social and emotional gender identity of Sephardi Jewish girls from Tangier and Tetuán to Salonika, Monastir, and Jerusalem thus took place within the private space – at home. There, girls felt safe and protected behind the walls and in the bosom of their family. But it was precisely in this safe and protected place that they were also helpless and subject to deception both by strangers and by close family relatives.

B. Love and marriage

Although the choice of a suitable bridegroom or bride was made by the father, mothers nonetheless also played a considerable role in the process.[24] After a candidate was found and the conditions agreed upon by the parents on both sides, the girl or boy was informed concerning their prospective partner in marriage. The symbol of the family's wish to make the bond was the acquisition of an object. The prospective bridegroom gave his bride-to-be a piece of gold jewellery.[25] The girls and young men nearly always accepted the marriage arrangement offered them; in a patriarchal family, the girls were obedient and afraid to oppose their parents' wishes. It would appear that in the "field of choice" for girls, marriage symbolized property (jewels and presents) and freedom from the household tasks imposed by the mother on the one hand and the male supervision of all the men of the family on the other.

Beside the death of one of the partners or the discovery of a defect, the commonest reasons for cancelling betrothals were arguments over money or the sudden appearance of a better marriage prospect. Occasionally, when bridegrooms sensed that the girl's father wished to cancel the engagement, they hurriedly performed the act of betrothal, sometimes by deception, and sometimes with the cooperation of the girl in order to create a *fait accompli* – either marriage or a divorce that would yield them an immediate financial profit.

The fact that the prospective bridegrooms and relatives of the family were accustomed to making visits, bringing gifts, and speaking with the girls in a loving

24 Rozen, *Istanbul* (above note 3), p. 132.

25 Rabbi Moshe Amarillio, *Sefer Devar Moshe*, Betzalel Halevi Ashkenazi, Saloniki 1742, Vol. 2, ##73-74, (Hebrew); Rabbi Ya'aqov Ḥalfon, *Mishpatim Tzadiqim*, Menora Press, Jerusalem 1935, Vol. 1, #53, (Hebrew).

manner, left the latter vulnerable to an act of betrothal.[26] But at the very moment when the giving of an object was accompanied by the statement of the *qidushin*, the father began a long struggle to free the girl from marriage ties to a man of whom he disapproved.[27]

Secret betrothals of girls with the encouragement of the mother and against the will of the father are especially interesting, primarily in light of the ambivalence reflected in the mother-daughter relationship. Betrothals in which mothers and daughters "conspired" possessed two aspects: the advantage taken by a mother of her daughter's love and trust and – not to put too fine a point on it – putting the daughter up for sale. I have chosen to focus on two cases in which the mother induced her daughter to become betrothed despite the fact that, according to halakhah and traditional custom, a mother could not approve her daughter's marriage. In these two cases, while the mother was active and the daughter passive, neither of their voices were heard and their claims are unrecorded in the sources.

On Purim 1553 in Salonika, Yom Tov, a rich merchant and apparently an older man, stood in the gateway of the home of Abraham Salti with two men, discussing a "business deal" with Abraham's wife: the possibility of betrothing her daughter, Sete in exchange for a loan of 120 *akçe* ((Turkish currency) to cover the family debt in the bank. Yom Tov gave the girl a Venetian gold coin as a token of marriage and asked her: "Quieres recibir *kidushin* de mi?" ('Do you wish to accept *qidushin* from me?'). The girl looked at her mother and answered in the affirmative. The betrothal of Sete Salti in the presence of her mother while the father was still living – as well as the mother's demand for secrecy regarding the act – is well understood in view of the fact that Sete had been promised to her uncle. The grandfather demanded the cancellation of the betrothal and Sete was asked by the judges to appoint a deputy to speak for her. Sete twice refused to appoint such a deputy.[28]

According to the records, the mother sold her daughter for 120 *akçe*. But reading between the lines we understand the reason for Sete's choice. How did the family come to have a debt of 120 *akçe* to the bank, and why did the father not intervene? Why did the grandfather and the prospective bridegroom not help the family? Why did Sete agree to serve as merchandise in the marriage market? In the case before us,

26 Medina, *Responsa* (above note 15), #99.

27 Ibid, ##3, 4, 12, 24; Ben Lev, *Responsa* (above note 15), Vol. 1, ##21, 18.

28 Adarbi, *Divrei Rivot* (above note 14), ##4-6.

Sete and her mother realized that her value on the open market was higher than the price that her father's family had determined for her. Unlike other women, Sete had a choice. The marriage to the rich merchant represented an escape for her family from poverty and distress. Sete in fact chose – with the encouragement and consent of her mother – a rich and older man rather than a miserly and older one. Had he not been miserly or poor he would have paid the debt of his bride-to-be's mother. The betrothal of a daughter against the father's will, and – in Sete Salti's case – her refusal to appoint a deputy constitutes a form of feminine resistance against the patriarchal establishment. In this way we see how a coalition of mothers and daughters constituted one of the ways a woman could passively rebel against male supervision and control.[29]

It appears that the use of girls to cover family debts was relatively widespread. In the village of Targissa in northern Morocco, Ya'aqov gave to his aunt a bundle of money as *qidushin* for her daughter. The mother accepted the money before witnesses, but the father – who was absent from the ceremony – vehemently refused to accept the bridegroom and demanded the cancellation of the *qidushin*. The father's insistence is especially interesting in view of the fact that he owed the bridegroom twenty-five *metkals* (Moroccan currency) and that the mother and cousin were endeavouring to use the daughter as a means to repay the debt. Rabbi Ya'aqov ibn Tzur cancelled the marriage because he considered it to be in violation of the regulations concerning public marriage.[30] The annulment of the *qidushin* was carried out in order to warn and prevent the members of poor families from using their daughters as merchandise, either with strangers or within the family circle, and in order to maintain the status of the father and the class system within the community.

The following case testifies to the marginal value of the daughter, who was sometimes considered as an object in the hands of her family to be used to satisfy economic needs. In 1845, Rabbi Elazar ben Shukrun asked Rabbi Yitzḥak ben Wallid to save Rachel ben Asraf, an orphan, from "a totally evil person" wishing to betroth her.[31] The brother of the girl who acted as her guardian agreed to the betrothal of his seven-year-old sister for 50 *okias* (Moroccan currency). The brother decided to "trade" his sister in order to improve his financial condition and to organize

29 On masculine control, see Pierre Bourdieu, *La domination masculine*, Editiones du Seuil, Paris 1998.

30 Ya'abetz, *Mishpat* (above note 23), Vol. 1, #207.

31 Ben Wallid, *Va-yomer Itzḥak* (above note 5), Vol. 1, #115.

a feast for his friends. The judge, who wished to cancel the betrothal, was familiar with the phenomenon and noted that it was widespread in the Rif area – not only among brothers who sold their sisters but also amongst fathers who sold their young daughters for money in order to maintain their families.

The feminine discourse

Speech is a social and political force. It is the man who speaks, who utters the words. Reticence and absence have long been associated with all things female.

> The linguistic "sense of place" governs the degree of constraint which a given field will bring to beat on the production of discourse, imposing silence or a hyper-controlled language on some people while allowing others the liberties of a language that is securely established … The sense of the value of one's own linguistic products is a fundamental dimension of the sense of knowing the place which one occupies in the social space.[32]

From the behavioural patterns of girls in secret *qidushin* and their conduct in the rabbinical courts we learn about the linguistic and social discourse which is peculiar to women. In order to express their feelings and desires, women and girls used not words but verbal constructions and metaphors. They sang lines from the Romancero,[33] recounted stories,[34] or kept silent. Lies, silence, tears, cries, deafness, dumbness, denial, and loss of memory were some of the tactics typical of women's opposition. While for the bridegroom, witnesses, and judges in the rabbinical court the betrothal was a formative event, some of the girls appear not to remember it as a meaningful occasion. As Sarah Halevi of Monastir testified: "*Yo no lo vide a Yoseph, ni resivi de su mano nada. Ke estonses era chika, no supi nada*" ('I did not see Yoseph, nor did

32 Pierre Bourdieu, *Language and Symbolic Power* G. Raymond and M. Adamson (trans.), Polity Press, Oxford 1991, p. 82.

33 Moshe Attias, *Romancero Sefaradi*, Ben-Zvi Institute, Jerusalem 1961, p. 21; Oro Anahory-Librowicz, "Expressive Modes in the Judeo-Spanish Wedding Song", Yedida K. Stillman and George Zucker (eds.), *New Horizons in Sephardic Studies*, State University of new York Press, Albany 1993, pp. 285-296.

34 Tamar Alexander-Frizer, *The Heart is a Mirror*, Wayne State University Press, Detroit 2008 (Ch. 8: "The Fairy Tale", pp. 333-393).

I receive anything from his hand. I was a child. I did not know anything'). Sarah was seven years old and her betrothed was twelve and a half.

At times, the silence of girls derived from ignorance regarding the statement of *qidushin* uttered in Hebrew or the meaning of the word *qidushin*. On "*Shabbat de las novias*", 13 Adar 1775, Shmuel Menaḥem Calderon and his friends were playing cards in the courtyard where the orphan girl Esther, the daughter of Isaac Calderon, was playing with her friends. Samuel hid a coin inside a handful of raisins and offered them to Esther. The girl accepted them and her friends told her: "*Un dokado tienes entre las pasas*" ('There is a coin in the raisins'). At that moment Shmuel told his friends: "*Por qidushin mis ermanos*" ('For *qidushin*, my brothers'). Esther ran crying to her mother saying: "Shmuel said for *qidushin*". The mother immediately ordered her daughter: "*echalo, y lo echi en su punto*" ('drop them, and I will throw them away immediately').

In the rabbinical court, the girl cried and shouted that she did not want to marry Samuel. When the rabbis asked her: "*Porke lo tomastes en la mano y tambien kuando sentistes dizir ke disho por qidushin, porke no se los echastes?*" ('Why did you take them in your hand and even after you heard him say that this was for *qidushin* did not throw them down?'), her answer was: "*No se lo ke es qidushin*" ('I don't know what *qidushin* is').[35]

Both the judges and researchers in various disciplines refer to silence as subversive, interpreting it as implicit consent and cooperation. A girl could object by articulating herself in language. But for those who had been educated *not* to express themselves in words, silence and bodily gestures contained the despairing force of both opposition and powerlessness.

Leah Kasorla of Monastir was typical of such girls, forced to consent to a marriage with an elderly widower: *"Yo non senti nada, ni por quidushin, ni por nişan, siendo estava yorando…non senti nada"* ('I did not hear anything, neither *qidushin* nor a sign of betrothal because I was crying … I did not feel/hear anything').[36] The word *sentir*

35 Rabbi Yoseph Shmuel Modiano, *Rosh Mashbir*, Betzalel Halevi Ashkenazi, Saloniki 1821, #22.

36 Rabbi Shmuel Arditi, *Divrei Shmuel, Even ha-'Ezer*, Etz Ha-Ḥayyim, Saloniki 1891, Vol. 2, #5 (Hebrew); Joseph Nehama, *Dictionnaire du Judeo-espagnol,* C.S.I.C.: Instituto 'Benito Arias Montano', Madrid 1977. The Turkish word *nişan* signifies a sign of engagement in Ladino.

has a double meaning, and it is possible that it was not by chance that the girl chose to use this term, which signifies both to hear and to feel. Many girls were terrified by the situation in which they were placed in the rabbinical court. They were asked to plead and to argue in words. As a result, they withdrew into themselves and became dumb, mute. In fact, there are very few instances in which girls expressed any active opposition to *qidushin* forced upon them against their will.

In Alcazarquivir in the mid-nineteenth century, Makhlouf ben Itakh invited a number of Jewish travellers to dine at his home. During the dinner one of the guests, Meir Lavrat caught the hand of Makhlouf's daughter, put some sugar in it, and then declared in front of the diners that she was sanctified to him. The girl dropped the sugar immediately. It appears that the custom of inviting Jewish travellers passing through the city to a meal, primarily in homes where there were young unmarried girls, was under threat – or perhaps the purpose of inviting strange young men was intended for matchmaking?

Despite having done everything to express her refusal of the sudden betrothal, Rabbi Itzḥak ben Wallid did not annul the *qidushin* and determined that the girl required a divorce or a renewed *qidushin*, this time according to the rules of the community. A monetary fine and lashes were imposed upon the bridegroom and the witnesses to the *qidushin* for violating the community regulations – "so that this would not occur again".[37]

A bridal feast that took place in Monastir reflects interesting human interrelations and strong desires in a little community where everybody knew each other. I have selected this incident in particular out of a large variety dealing with betrothal of girls through deception and deceit because the response details and illuminates an intimate and unusual feminine discourse.

In Tishrei (September) 1885, two weddings were celebrated in Monastir. One was of the Aroeti family, the other that of Hayyim Meshulam. In the past, Hayyim Meshulam had been engaged to Sarah, daughter of Yoseph Calderon, but the engagement was annulled. The guests went from one party to another; the wine flowed like water, and Itzḥak ben Yakar decided to betroth the orphan girl Sarah. At the wedding of the

37 Ben Wallid, *Va-yomer Itzḥak* (above note 5), #118. It appears that Meir Lavrat had not learnt his lesson. In another question from Larache regarding the *qidushin* of a girl of eleven that was not performed according to the regulation, he served as a witness to the marriage.

Meshulam family the women and children sat together and watched the men dancing. Itzḥak ben Yakar intentionally stumbled and dropped a coin onto Sarah's dress. The friends called out "*be-Siman Tov*". Sarah jumped up from her place, shook the coin off her dress, and ran away. In supporting Ben Yakar's testimony and in order to cast doubt on Sarah's morality and honesty, one of the witnesses quoted words he claimed Sarah had exchanged with a friend. When the latter asked her how they should go to the wedding of her former bridegroom, Sarah answered: "*Ke puede azer este gallo*" ('What can this rooster/cock do?').

We are witness here to an intimate conversation between women, a dialogue different from the "respectable" silence considered proper for women. *Gallo* is the derogatory term for a man which a decent woman is not supposed to mention – certainly not in public. Sarah makes use of the widespread feminine practice of opposition: a double denial. She did not say the word, she did not speak at all, and regarding the testimony with respect to *qidushin* she said: "*...non konsenti ni tomar mano, ni resivi nada de su mano, ni vide dukado*" ('…I did not agree to take his hand or receive anything from his hand, and I did not see a coin').[38]

Young girls kept silent, they denied everything, they threw down the objects for *qidushin*, and they wept a flood of tears. But because they had been educated to be obedient and were disciplined to behave according to the family and community hierarchy, they obeyed their father's decision and that of the rabbinical court. Very few girls rebelled against their fathers' will and insisted upon marrying the man of their choice. They did, however, threaten to commit suicide by jumping into the well or immolating themselves[39]– and there were also girls who fought and succeeded in marrying the man who had been chosen for them by their fathers who later on cancelled the betrothal.

Sometimes, marriage within the family became tangled and caused quarrels and tragedy in the family. This was the case with respect to a young man who was betrothed to his cousin. The custom of North African communities was that the prospective bridegroom was obligated to support the girl from the day the betrothal was fixed and the conditions determined. The young man brought the girl to the house of his mother, who had remarried. The girl fell in love with his brother. The betrayed

38 Arditi, *Divrei Shmuel* (above note 36), #4. The *Beit Din* declared that there was no *qidushin* and that the girl did not require a *get*.

39 Ibid, #10.

brother demanded the consummation of his marriage with the girl. Was there any love here? Obstinacy, competition between brothers? Perhaps the young man had in view the property the bride's father had promised him – including half the courtyard he owned – and the condition that, if the marriage did not take place, the person who cancelled it would pay a fine of 2,000 *duros* (Spanish currency). In order to make everyone face the facts, the girl claimed that she was pregnant with her lover's child. The Rabbi asked the whore (as it says in the text): "When did he come upon you?" The girl answered: "On 17 Tammuz." The betrothed man insisted that he would marry the girl and declared that if the girl continued to refuse to marry him, he would demand that the contract commitments be upheld and that the father pay him the fine.[40]

Feminine discourse and the tactics of refusal and acceptance practiced by girls were the result of male practices – the father and the betrothing man – imposed upon them. The few girls who obstinately rebelled were a pioneering force. Slowly, they gathered into a critical mass that exploded in the period of change and transformations in the Mediterranean Basin which began with the onset of modernization. This altered the attitude of the religious establishment towards the problem of doubtful betrothals, the marriage of minors to older men, and the issue of *agunot*.

The change in attitude towards the marriage of minors

Up until the mid-nineteenth century, the marriage of minors was a common practice throughout the Jewish communities situated round the Mediterranean Basin. Rabbi ben Wallid held his own opinion concerning the marriage of minors, expressing his sorrow over the custom: "Also these acts of every day in which minors are married to their husbands and no one opens his mouth and speaks. Perhaps they are suffering the pain in silence because of shame. And also not all the girls have the same body. There are little ones who suffer a lot of pain and there are some who suffer a lesser pain, and everything is according to the individual physical being".[41] His use of the word "pain" indicates that he was well aware of the physical problems caused to girls who married older men. Yet he refrained from acting against the phenomenon because the marriage of minors was widespread in Morocco due to the economic difficulties attendant upon

40 Ben Wallid, *Va-yomer Itzḥak* (above note 5), #128.
41 Ibid, #124.

raising girls, the problem of raising dowries, and the fear of the abduction of young girls by Gentiles.

At the end of the nineteenth century, the influence of European colonialism and the opening of Alliance schools throughout the Mediterranean areas led to the beginning of a transformation in the religious and cultural life of the Jewish communities, primarily in such multi-cultural coastal cities as Salonika, Istanbul, Cairo, Alexandria, Algiers, and Tangier. The number of cases of doubtful betrothals increased, but the girls did not obey the pressure exerted upon them and refused bridegrooms who forced themselves on them or were forced upon them by their parents or brothers.[42] The rabbis were left bewildered in face of the growth of this phenomenon, but consoled themselves with the words: "Although this is not frequent, in Spain in the Responsa of Rabbi Shlomo ben Aderet, there were girls who actually refused".[43]

In 1864, Mordeḥai ben Jo annulled the fine that had been set in the betrothal contract between Zahara the daughter of Yoseph Toledano of Tangier and Shmuel Toledano, in the event that one of the parties changed their mind. Yoseph Toledano cancelled the betrothal of Zahara to Shmuel, claiming that his daughter did not want to marry him. He also declared that he had tried to persuade her to marry but that she stood by her refusal.[44] Although the girl's voice was not heard, the appeal to the claim that the bride did not want him and the fact that Zahara's father took her opinion into consideration both indicate a change in the perception of fathers and rabbis alike regarding the free choice and will of girls.

Rabbi Mordeḥai ben Jo applied to Rabbi Raphael Aharon ben Shim'on, the Chief Rabbi of Egypt, noting that Tangier was not a conservative eastern city but a modern European one and that there women and men chose their partners: "… first the girl and boy love each other … and afterwards they become betrothed. And if the daughter does not agree, the father cannot influence her".[45] The "liberalism" Rabbi Mordeḥai ben Jo displayed was not accepted by the rabbis of Egypt and Jerusalem, and nine years after the event they ruled against the cancellation of the betrothal and the fine. They also added an educational dimension to their response, asking why the daughter's shame

42 Ibid, #60.

43 Raphael ben Shim'on, *U-miZtur Devash*, *Even ha-'Ezer*, Shmuel Ha-Levi Tzukerman, Jerusalem 1912, #13 (Hebrew).

44 Ibid, #7.

45 Ḥalfon, *Mishpatim Tzadiqim* (above note 25), #68.

was not publicized so that other girls would not behave like her. Were the rabbis who discussed the case not aware of the feminine biological clock or of the fact that girls above the age of twenty-five were considered as defective merchandise in the Judeo-Spanish marriage market at the end of the nineteenth century, when the customary age of girls when they got married was between nine and fourteen?[46]

The phenomenon of refusal in Tangier spread through all levels of society. Rabbi Mordeḥai ben Jo heeded the sensitivities of the city and the community he led. In 1905, he spoke against the marriage of minors, primarily in the villages of the Atlas Mountains.[47] Tangier and the surrounding areas in the nineteenth century were no longer part of the Muslim Moroccan expanse. Tangier was a Western, advanced city and "a land of freedom and liberty". In a question to Rabbi Eliahu Ḥazan, the Chief Rabbi of Alexandria, Mordeḥai ben Jo complained that Tangier was being flooded with poor families composed of old men married to young girls of seven or eight, sent by their husbands to work as servants in the homes of wealth families. The girls rebelled against their husbands and their husbands fled out of shame, leaving them as *agunot*. Rabbi ben Jo was embarrassed by the custom of child marriages and argued that the age of marriage should be raised because "even our neighbours the people of Europe are mocking us".[48]

Conclusion

Over the generations, we witness a difference in the attitudes of rabbis from the Eastern Sephardic communities (the Ottoman Empire and the Balkans) and those from the Western Sephardic communities (North Africa) to doubtful betrothals and to the fact that girls hold their own wishes and aspirations. Whereas the rabbis of Salonika and Monastir appear to have strictly applied the regulations of the community, the rabbis of Morocco were afraid to impose the rules and preferred to impose divorce or public marriage. A gender analysis of the representations of women in the Responsa

46 Eliezer Bashan, *Parents and Children as Reflected in the Literature of North African Rabbis*, Haqibbutz Hameuḥad, Tel Aviv 2005, pp. 18-31 (Hebrew).

47 Ankawa, *Kerem Ḥemar* (above note 18), Vol. 1, #56 (betrothal of a six-year-old girl); Vol. 2, #13 (a betrothal of a baby just born, before the father even saw the baby).

48 Eliahu Ḥazan, *Ta'alumot Lev*, Eliahu ben Hamozeg, Alexandria 1904, ##12-13 (Hebrew).

literature shows that the rabbis perceived women as easily tricked and sometimes as liars. Although they could pity the weeping girls, they were afraid of their sexuality and the halakhic implications of bastardy.

Unlike that in Morocco, the *Beit Din* in Monastir listened to the testimony of the girls, and, when they insisted and stubbornly refused a bridegroom who had forced himself upon them, annulled the *qidushin*.

The involvement of the community in the lives of the individual and in the union between men and women was primarily due to social and economic reasons, being exercised in order to protect internal public order and to avoid the involvement of the authorities in the community's life. The Rabbis' anger derived more from the infringement of public order and the challenge to the authority of the communal organization than from the marriage of minors to older men. It was felt that marriage against the regulations would lead many other members of the community to disregard the community rulings, impinge on the finances of the community (payment for *qidushin*), and harm the social order, leading to anarchy.

With the spread of modernity towards the end of the nineteenth century, young girls who had formerly submitted to the overwhelming pressures imposed upon them by male authority figures began to express their refusal in words and actions. A significant factor that altered the gender discourse – primarily among impoverished girls – was their entry into the job market as servants. They began to earn money – a source of power once the exclusive preserve of men. They were not afraid of doubtful *qidushin* that would leave them as *agunot*. For working girls, being an *aguna* was perceived as providing freedom from family supervision and an elderly husband. In contrast, the rabbis considered the phenomenon as a disease infecting the moral nature of the community.[49] *Agunot* were easy prey for men who wanted to enjoy life outside the marriage bed and their legal wives – an activity which weakened public morals, encouraged prostitution, and increased bastardy. The struggle against the marriage of minors to older men and the marriage of minors in general commenced at the end of the nineteenth century under the leadership of the directors and teachers of the

49 Ben Wallid, *Va-yomer Itzḥak* (above note 5), *quontres 'agunot*, #8, p. 209.
"… especially when most of them are young girls and there is no bread or clothes in their homes, perhaps a remedy will be found to their malady, and release them from the chains of *igun* …"

Alliance schools, joined by rabbis and graduates of the Alliance schools. But it was only in 1950, at the third Rabbinical Council that assembled in Rabat (Morocco), that it was decided that girls must be fifteen years of age before they could marry – and in the introduction to this decision appeal was made to the damage caused by marrying a minor to an older man.[50]

50 Michael M. Laskier, *The Alliance Israélite Universelle and the Jewish Communities of Morocco*, *1862-1962*, State University of New York Press, Albany 1983; Moshe 'Ammar et al. (eds.), *Ha-Mishpat Ha-'Ivri be-Qehilot Maroqo – Taqanot Fes ve-Taqanot Mo'etzet ha-Rabanim be-Maroqo*, Makhon Toldot, Jerusalem 1980, p. 273 (Hebrew).