

*Women's Public Legal Roles as Judges and Witnesses in the Bible  
and Early Rabbinic Literature*

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## Synopsis

In this paper I chose to examine women's public legal roles in the Bible and Mishnah, specifically as judges and witnesses. I also examined extra biblical sources from the Ancient Near East and Roman law. This allowed for an understanding of context, and possible influences, and provided further information. This was especially important with the Ancient Near East material because the biblical text was sparse.

Women are not explicitly prohibited from being witnesses in the Bible, and we have a woman judge in the figure of Devora. There is also biblical evidence of women having had public leadership roles and an active role in public legal proceedings. In the Ancient Near East, up until the latest periods, women were able to act as witnesses and had public legal roles. It is only in the later periods, like the Neo-Babylonian period, when we begin to see that role eroding and women's participation becoming restricted.

So, I sought to examine why we find a principle in the Mishnah whereby women's testimony is prohibited if it was not in the Bible. The rabbis base their decision on a hermeneutical principle where they are able to read the biblical text as saying that only men can be witnesses. But upon examination of Mishnaic texts, we also find many exceptions to this principle when women are allowed to act as witnesses, and when they do so, their testimony is fully accepted and valid.

The Hellenistic world influenced the evolution of Jewish law in the rabbinic period. The rabbis adopted some of the methods of analysis of the Greeks and Romans and there was legal and social influence as well. We see evidence of this in rabbinic literature. In Roman law, women could be witnesses under certain circumstances, but their public legal roles were very restricted. They required representation to bring claims in court and could only bring them concerning themselves or family members, or something of direct concern to them personally.

Ultimately we see an evolution and a change in women's status vis a vis their public legal roles as judges and witnesses over time. This shows that women's status in Judaism has evolved and will probably continue to evolve.

## Acknowledgements

This project was born out of my passion for Judaism and for feminism that has been nurtured in me by my family and many teachers I have had.

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## **Introduction:**

The transition from the biblical to the rabbinic periods of Judaism, from Israelite to rabbinic law, is an important one. It reflects historical events, political, social and economic changes in the lives of the Jewish people. As a result, during this period of change new ideas relating to the social order of Jewish life emerged, new kinds of documents were written, and women's status in Jewish life was impacted.

As a way to understand the impact of some of these changes I will look at the role of women in Jewish law, particularly as witnesses and judges (their role in public legal proceedings) in both the biblical and early rabbinic literature. I will examine the biblical and rabbinic textual evidence (including Mishnah, baraitot, Tosefta, and some gemara) that deals with these issues and to describe the differences and similarities between these bodies of textual evidence. Since the biblical text is more sparse in dealing with this issue than the rabbinic I have also brought in legal sources about women's public legal roles as judges and witnesses from the Ancient Near East from cultures contemporary and close to the Israelite milieu to expand the biblical evidence.

In order to begin to understand the changes that occur between the bible and Mishnah I have also examined some sources that describe women's role in Greco-Roman culture and law and the relationship between the rabbis and the Hellenistic culture around them.

I am interested in documenting the changes that occurred in attitudes towards women's public legal roles from the biblical period through the early rabbinic period and what they meant for women's role in society. Was their role expanded or restricted in the new context? The major questions I am interested in answering include the following:

- (1) Are there changes between the biblical and rabbinic texts in women's role as judges and witnesses? If so, what are the changes?
- (2) Is there a way to explain the changes in terms of social, political and economic developments?
- (3) What can be said about women's social role in the community and status in Jewish law in these periods? What is the implication for women's role and status in Judaism today?

I will begin in Chapter One: "The Ancient World" with an analysis of the texts from the ancient world as well. In Chapter One, Part One: "The Ancient Near East", I will examine the legal sources from the Ancient Near East, mostly in secondary sources, to see if women were acting as judges or witnesses and what other public legal capacities they had. In Chapter One, Part Two: "The Bible" I will look at biblical textual evidence.

In the next section, Chapter Two, "The Rabbinic World", I will move to examine women's public legal roles in the early rabbinic period. In Chapter Two, Part One: "The Mishnah and Women" I will examine the Mishnah's approach to women as a category. In Part Two: "Textual Evidence" I will bring relevant textual evidence to show how the Mishnah deals with women as witnesses. In Chapter Two, Part Three: "Hellenism and Rabbinic Judaism and Roman Law" I will present scholarly evidence to show the influence of Hellenism on rabbinic Judaism and some sources for women's public legal roles in the Greco-Roman world and in Roman Law. In all chapters I will present textual evidence along with scholarly discussions on each topic. Finally, I will conclude the paper by drawing together all the evidence in a chronological comparison to show changes over time and some implications for this work vis a vis women's status in Jewish law in general.

While many works related to women and Judaism focus on “womanly” areas such as rape, divorce, marriage, sex, and the ways in which Jewish law regulates women’s status and body through these areas as well as *niddah*, I wanted to look at women through a different halakhic lens, through their more public roles and how they were restricted in performance of these public roles. To this end I chose public legal roles because it is an area which does not seem to have been looked at extensively by many scholars and it is one which would illuminate and broaden this picture of women in Judaism to include roles not often associated with women. I also sought to examine how women’s public legal roles have evolved over time in order to show that women’s status in Jewish law and society had not been monolithic. There may be mention of women in public roles but the topic is not usually addressed separately from these other categories. Women in the public sphere in Jewish life is a topic that needs to be addressed in order to have a fuller understanding of women in Jewish law and society. To say women were banned from the public sphere in all cases and had no legal rights is inaccurate and incomplete. A more thorough analysis needs to be done to address adequately this complex question of women’s history as related to their status in Jewish law.

Why is it important to look at women’s status in Jewish law at all? My own background in Women’s Studies contributes to my own perspective that it is important to study women’s roles historically as a separate topic from general history. This is because history has usually been told only from the perspective of men’s experiences and accomplishments and women were subordinate and therefore unimportant. What feminist historians have shown is that when women’s experiences are included the resulting analysis is quite different. While women may not have had a formal role in

formulating the halakhah they have been subject to it and it regulates and informs their status and roles in the community; so to learn more about women's role in the community, one must examine the halakhah that regulated their lives. I would like to better understand the evolution of women's public legal roles in Judaism as a way to better understand Judaism, halakhah and women's place in both historically. I have chosen this topic and these periods, as a way to do this in an area I feel is understudied and helpful in beginning to elucidate a larger picture. I hope this work can be one step towards a fuller understanding.

I chose to focus on the roles of judge and witness as a way to narrow the field of my examination in an area that seems to not have been much addressed as a separate topic in scholarship. I also took an expanded view of this focus at times, looking at women's public legal roles not only in the areas of judge and witnesses, but also as plaintiff and defendant and their general public legal rights, such as transactions and ownership of property, when the information about witnessing and judging by women was scant. These other areas women functioned in contribute to the general understanding of women's public legal roles of a given period so they are as useful to creating the picture as is evidence specifically about women witnessing and judging.

This study is not an exhaustive one as far as women in Jewish law in the biblical and early rabbinic period. I did not address women's cultic roles, laws relating to inheritance or marriage and divorce, except when it was particularly relevant, because these are topics that warrant their own study. I also focused on public legal roles and not women in the public arena in general in order to achieve a manageable scope for this work.

## **Chapter One: The Ancient World**

### **Part One: The Ancient Near East**

To get a fuller picture of women's public legal roles in the biblical period it is necessary to supplement the sparse biblical material and to contextualize it by looking at legal materials from around the Ancient Near East from communities before and contemporary to the time of the Israelites. In this section I will first look at why this comparison is valuable and what understanding women's public legal status in the ancient Near East can help us understand about women's status in the Bible. Then I will present secondary source material that gives evidence of women's roles in public legal proceedings and status in public legal roles through various periods and areas of the Ancient Near East; this evidence is derived from ancient legal documents.

The cultural and historical relationship between biblical law and the legal writings of other Ancient Near East cultures is difficult to ascertain for certain. What we do know is that there are many striking similarities and parallels between the legal materials that have survived from these ancient periods. Because of the parallel material scholars have hypothesized about what the nature of the influence or sharing of sources from Ancient Near East cultures and the Bible might have been. Bruce Wells, in his book about testimony in the Bible, addresses the question of the relationship between these law systems. Wells concludes that there are a number of examples where legal provisions in the Pentateuch correspond to legal practice in first millennium Mesopotamia, so if the Pentateuch reflects laws and customs found in other ancient Near Eastern societies this increases the likelihood that they came from those societies. But the exact degree of correlation is not known and this conclusion cannot be applied to the whole of

pentateuchal law.<sup>1</sup> In terms of the influences and relationship between the legal systems Wells feels the evidence favors a common source rather than direct dependence.<sup>2</sup> He says possible reasons for the similarity between Neo-Babylonian legal documents and pentateuchal laws are: the Neo-Babylonian empire's expansion exerted significant influence on the people of Judah, the legal mechanism of Neo-Babylonians was inherited from the Neo-Assyrians, the Babylonian defeat of Judah and the mass deportation of people from Judah that followed and that those deportees kept the legal traditions they encountered there in southern Mesopotamia.<sup>3</sup> He also notes that there are parallels between pentateuchal law and other areas of the ancient Near East as well, which these theories do not explain.<sup>4</sup> Raymond Westbrook, in the Introduction to his two-volume work on Ancient Near Eastern law says of the ancient legal systems that different legal systems in the Ancient Near East were independent and had peculiar rules to themselves and internal dynamics. Laws changed and developed within individual systems but it is impossible to say of any legal system in this period in varying places and times that their conceptual worlds were alien to one another.<sup>5</sup> In other words they were distinct but that does not mean they were not aware of and in contact with one another.

In his article about the gaps in biblical law where the Babylonian law and the Mishnah correlate, Samuel Greengus writes about this relationship as well. He says, similarities between the Laws of Hammurabi and the Pentateuch show that they are not

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<sup>1</sup> Wells, Bruce. *The Laws of Testimony in the Pentateuchal Codes*. Weisbaden: Harrassowitz Verlag, 2004. P. 6.

<sup>2</sup> Ibid.

<sup>3</sup> Wells 158-159.

<sup>4</sup> Ibid.

<sup>5</sup> Westbrook, Raymond. "Introduction: The Character of Ancient Near Eastern Law." In *A History of Ancient Near Eastern Law: Volume One*. Netherlands: Brill, 2003. P. 24.

uniquely an Israelite expression.<sup>6</sup> Greengus, like Wells, sets forth some possible reasons for the parallels. He says perhaps there is a pre-Israelite connection, like Wells' common source theory, perhaps there was a shared legal culture, or perhaps there was a more direct and dynamic connection and contact between these legal traditions.<sup>7</sup> He also proposes an Aramaic connection, whereby the Arameans and the Aramaic language acted as conduits for transmission.<sup>8</sup> He asserts that the similarities in the legal materials between the Bible and Ancient Near Eastern legal documents is not a coincidence because of the important literary position of the texts and the fact that they have been retained in codes.<sup>9</sup> This supports their having been part of a living legal tradition widely shared and preserved over many centuries, and that there was a direct connection between cultures.<sup>10</sup> The fact that there are shared legal traditions in the Ancient Near East legal texts and the Mishnah, which are not mentioned in the Bible, leads him to conclude that the rabbis recognized that their legal institutions were not unique and many important legal principles were shared with pagan legal systems.<sup>11</sup> These parallel cases can be seen as representing "missing parts" of the biblical law of ancient Israel and help us fill in the gaps in our knowledge of biblical law.<sup>12</sup>

The biblical material is also sparser on certain topics so we can use the Ancient Near East legal material to help elucidate and expand some of the biblical sources. It is helpful to see the climate and context that influenced the production of the biblical legal systems and understand women's status and role in the Ancient Near East in general and

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<sup>6</sup> Greengus, Samuel. "Filling in the Gaps: Laws Found in Babylonia and in the Mishna but absent in the Hebrew Bible" *Maariv* 7 (1991) 149-171. P. 149.

<sup>7</sup> Greengus 150.

<sup>8</sup> Greengus 151.

<sup>9</sup> Greengus 170.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Greengus 171.

how it evolved and changed with time. Since biblical legal texts are later than many of other Mesopotamian legal texts, examining the older texts helps to construct a fuller background picture of women's social and legal roles in the world that eventually produced the Bible. Wells says Neo-Babylonian records can be used as a source to help elucidate the meaning of pentateuchal laws.<sup>13</sup> By looking at ANE legal materials we get a window into biblical law even though biblical laws document some changes. Ancient Near East law collections extend from c. 2100 BCE to c. 550 BCE, the Sumerian to the Persian Period. Ancient Near East law is not a single system but is a product of many societies that have different languages and cultures over the course of thousands of years.<sup>14</sup> The law was not expressed through categorization, definition or broad statements of principle until the mid-first millennium because the intellectual tools required were lacking.<sup>15</sup> This may explain why there are not many examples of laws relating to women, because that would fall under the category of a principle but the laws only deal with specific examples. For example we may have a law that deals with men and women but we only have one case listed in the document, we do not know for sure that it applied to both since there is no example specifically mentioning women. This is partly due to a use of masculine rather than gender inclusive language in the documents which make it sometimes difficult to determine if the laws deals with any person of that class or just men. We also do not have an Ancient Near East equivalent to the Mishnah's *Seder Nashim* that deals explicitly with laws relating to women and women's status and legal roles. Although some scholars believe Middle Assyrian Laws "A" may have been a document of laws about women. Women's legal roles in these cultures must be derived

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<sup>13</sup> Wells 8.

<sup>14</sup> Westbrook, *Introduction* 2.

<sup>15</sup> Westbrook, *Introduction* 22-23.

from looking at examples of laws and documentation of proceedings or contracts that include women being mentioned.

In looking at women's public legal roles I will begin with secondary evidence that draws general conclusions across times and places in the Ancient Near East and then look at evidence that deals with specific periods and places in order to show some change over time as well as support the general claims.

Although some changes occur and there are some exceptions, scholars have tried to make some general conclusions about women's status in these ancient cultures and about their public legal roles. These general statements are helpful in painting a picture that can contextualize the biblical material in a greater context.

Wells asserts that despite what the rabbis and Josephus later say, it is quite evident women were allowed to testify in court, at least from the time of the earliest sources until the middle of the first millennium BCE.<sup>16</sup> Neo-Sumerian records, Old Babylonian texts, trial records from Nuzi, Neo-Assyrian documents, and records from the 5<sup>th</sup> century Jewish community at Elephantine all attest that women could function as principal parties and non-party witnesses in court.<sup>17</sup> Therefore it appears unlikely that trial law of ancient Israel and Judah originally kept women from functioning as testifying witnesses.<sup>18</sup> He feels justified in asserting this also because there is no biblical evidence to the contrary, as we will see in Part Two: the Bible. Since women could be witnesses in the ancient documents we have and the Bible does not contradict that assertion and we see a connection between and possible influence upon the general Ancient Near Eastern

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<sup>16</sup> Wells 51.

<sup>17</sup> Wells 52.

<sup>18</sup> Ibid.

and biblical texts then Wells is able to conclude that Israelite women could function in these roles. According to Wells, the evidence demonstrates that it is probable the court allowed nearly anyone to perform the function of a testifying witness.

Westbrook writes further that although a male in the family often represented their interests, women appear to have had access to courts as litigants in all periods.<sup>19</sup> The most common form of evidence in the ancient Near East was oral testimony and women were competent witnesses.<sup>20</sup> These legal systems considered the male as archetypical “person” and head of household; thus women had no special status in law and as a class they were subordinate, like other groups, to the male head of household.<sup>21</sup> All subordinate members of a household had limited rights and duties, including wives and male and female children and the important legal actor was the head of household. At the same time, women could head a household if they were widowed or divorced or single and independent.<sup>22</sup> In theory therefore women had the legal capacities of a male head of household, owning property, making contracts, litigation and providing evidence in court but they were restricted in these acts by relationship to a male head of household as daughter or wife.<sup>23</sup> Functioning in these capacities was left to the head of household, which was the male, so women were technically able to have full legal capacity but were unable to do so practically and socially by their subordinate role to males in a family setting. Widows and divorcees could therefore be heads of household and function in these legal capacities of a man because they were no longer in the position of being

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<sup>19</sup> Westbrook, *Introduction* 31.

<sup>20</sup> Westbrook, *Introduction* 33.

<sup>21</sup> Westbrook, *Introduction* 38.

<sup>22</sup> Westbrook, *Introduction* 39.

<sup>23</sup> *Ibid.*

subordinate to one. Like widows and divorcees, women who held one of the few women's professions are additional cases where we find women acting independently in these areas although women appear to have been excluded on principle from the public sphere including public office.<sup>24</sup> The few public positions reserved for women were: priestess, queen, and queen mother.<sup>25</sup> However, Westbrook also says of women as witness that, although there were exceptions, generally women were not witnesses to contracts in the texts we have.<sup>26</sup> But they did serve in this role in some examples. Meaning it was not impossible. Westbrook does not say if there is any correlation between women acting as witnesses for contracts and their independence as leaders of household. In other words, were the women witnessing contracts widowed or divorced or single, heads of households or dependent on men?

Rivkah Harris also makes some general conclusions on women in the Ancient Near East based on her reading of the legal materials. She says, despite geographical and chronological differences there was a basic uniformity in women's status and attitudes toward them in the Ancient Near Eastern societies of Egypt, Mesopotamia and Asia Minor.<sup>27</sup> Ancient Mesopotamia was patriarchal in structure and political and socioeconomic changes were probably factors that affected women's status, but not much study has been done in this area and the accidental nature of textual and archeological evidence often skews the evidence.<sup>28</sup> As with the biblical text, important sources for

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<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> Westbrook, *Introduction* 40.

<sup>27</sup> Harris, R. "Women in the Ancient Near East." *The Interpreter's Dictionary of the Bible: Supplementary Volume*. Nashville: Abingdon, 1976, 960-963. P. 960.

<sup>28</sup> Harris, Rivkah. "Women: Mesopotamia." *The Anchor Bible Dictionary: Volume 6*. New York: Doubleday, 1992, 947-951. P. 948.

depictions of women come from literary texts.<sup>29</sup> In terms of their general status she notes that women were under the care and domination of their father and then husband, but well off women enjoyed more legal rights and economic independence.<sup>30</sup> A woman was able to own property and invest the income derived from it.<sup>31</sup> If women could own property then their name was listed on documents, which is a type of witnessing, and a woman might testify on her own behalf or bring a claim as owner of the property. Therefore, although in law codes women are in a subordinate position, Harris says women of means could still own and dispose of property and give testimony in lawsuits.

This speaks to a larger phenomenon that needs to be considered here. We see women's status entrenched in certain legal documents as inferior but we also find examples of women owning property or having other public legal roles like giving testimony that would seem to contradict that inferior status. So we cannot assume that some legal restriction or categorization of women corresponds to absence from any public legal roles, especially for women of means. Economic status could "trump" legal disability.

In terms of the public roles women had, Harris says some women in Babylonia functioned as scribes, most of who belonged to the cloister institution in Sippar. Women were prominent as prophetesses, but women played a minor role in cultic life generally.<sup>32</sup> Women were priestesses in the cult who participated in rituals and represented goddesses at marriage ceremonies,<sup>33</sup> but they often inhabited cultic roles that were marginalized by

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<sup>29</sup> Harris, *Women: Mesopotamia* 950.

<sup>30</sup> Harris, *Women in the Ancient Near East* 960.

<sup>31</sup> Harris, *Women in the Ancient Near East* 961.

<sup>32</sup> Harris, *Women in the Ancient Near East* 962-963.

<sup>33</sup> Harris, *Women: Mesopotamia* 949.

the mainstream cult.<sup>34</sup> Women were involved in commercial activity like selling land, if they were wealthy, but most did at home agrarian jobs.<sup>35</sup> Queens and princesses had a high position and acted more independently than other women; they seem to have been important and influential, as were queen mothers, and are depicted alongside kings.<sup>36</sup>

Although there are commonalities to women's legal status in the ancient Near East that cross time and place, I want to look now at specific periods and places to better understand women's particular roles as found in legal documents from these periods and whether we see trends in women's roles and changes in status over time. Looking at specific eras will help to substantiate some of the general claims by scholars that I have already presented and give more details as to women's roles in particular areas. I will leave the early periods of Egypt for a later discussion.

For this analysis I relied most heavily upon Westbrook's book *A History of Ancient Near Eastern Law*. There are not equal amounts of evidence for all eras pertaining to women and the resulting analysis is limited to what documents were found and may not be fully representative of the culture. When a scholar concludes that women could participate in some particular legal or public role but did not often do so, I assume that analysis is a result of a statistical reality presented by women only being rarely mentioned in that role in texts. This leads me to wonder if that scarcity accurately reflects the representational reality of women's participation or just the chance finding of certain documents and not others. That would depend, of course, on how many documents have been found for that particular period. When there is repetition relating to women's roles or status in one area and another or in one period and another it serves

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<sup>34</sup> Harris, *Women: Mesopotamia* 950.

<sup>35</sup> Harris, *Women: Mesopotamia* 949.

<sup>36</sup> Harris, *Women: Mesopotamia* 950.

to show consistency of that role which provides further evidence for making general or more universal claims about women in the Ancient Near East.

In Mesopotamia in the Early Dynastic and Sargonic periods men were generally the head of household, but women could be as well. Women could make contracts independently and there were reforms in this period to try and reduce the legal status of women.<sup>37</sup> In the Neo Sumerian period in Mesopotamia women seem to have had full capacity in private law as litigants, witnesses, contracting parties, or property owners and a widow could head a household until her sons came of age.<sup>38</sup> In Mesopotamia in the Old Babylonian period a substantial number of litigants were women and seemed not to have been subject to any legal disabilities in this role, but were sometimes represented in court by males.<sup>39</sup> Both men and women could be witnesses<sup>40</sup> and female witnesses were not uncommon in this period.<sup>41</sup> The legal head of household and archetypal legal person was male and all members of a household were subordinate, but a woman divorcee or widow or a single woman could head a household.<sup>42</sup> Women could also have independent status as a result of their profession or vocation like wet nurse, taverness or prostitute.<sup>43</sup> An unusual example of women's roles is the naditu priestesses in the Old Babylonian Period. These were women who served as creditors, bought, sold and leased fields and houses,

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<sup>37</sup> Wilcke, Claus. "Mesopotamia: Early Dynastic and Sargonic Periods". *A History of Ancient Near Eastern Law: Volume One and Two*. Ed. Raymond Westbrook. Leiden: Brill, 2003, 141-181. P. 157.

<sup>38</sup> Lafont, Bertrand and Raymond Westbrook. "Mesopotamia: Neo-Sumerian Period (Ur III)." *A History of Ancient Near Eastern Law: Volume One and Two*. Ed. Raymond Westbrook. Leiden: Brill, 2003, 183-226. P. 198.

<sup>39</sup> Westbrook, Raymond. "Mesopotamia: Old Babylonian Period" *A History of Ancient Near Eastern Law: Volume One and Two*. Ed. Raymond Westbrook. Leiden: Brill, 2003, 362-430. P. 369.

<sup>40</sup> Westbrook, *Old Babylonian Period* 373.

<sup>41</sup> Greengus, Samuel. "Legal and Social Institutions of Ancient Mesopotamia" in *Civilizations of the Ancient Near East*. Jack M. Sasson (Ed.). New York: Charles Scribner's Sons, 1995, Vol. I. P. 475.

<sup>42</sup> Westbrook, *Old Babylonian Period* 379.

<sup>43</sup> Ibid.

hired out slaves at harvest time and other business activities.<sup>44</sup> In the Old Assyrian period in Mesopotamia litigants were sometimes women.<sup>45</sup>

In the Middle Babylonian period in Mesopotamia documents show women appearing in court to defend themselves although largely men initiate legal proceedings,<sup>46</sup> and women do appear on their own behalf, without men, in some decisions.<sup>47</sup> But in the documents we have women are not attested as witnesses.<sup>48</sup> The male is the archetypal person under the law and head of household, but there is evidence for women having some independent legal status.<sup>49</sup>

In the Middle Assyrian period in Mesopotamia there is little information about litigation due to lack of sources.<sup>50</sup> In Middle Assyrian Laws, tablet "A" women are presented as entirely under authority of their husband or father, and are only independent when orphaned or widowed, but in practice in other documents wives had legal capacity to enter into contracts, in the name of their absent husband, on their own.<sup>51</sup> At Nuzi women had full capacity to initiate proceedings before judges.<sup>52</sup> Persons were primarily adult male heads of household but an adult female could play a comparable role in

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<sup>44</sup> Harris, *Women in the Ancient Near East* 962.

<sup>45</sup> Veenhof, Klass R. "Mesopotamia: Old Assyrian Period." *A History of Ancient Near Eastern Law: Volume One and Two*. Raymond Westbrook (Ed.) Leiden: Brill, 2003, 431-483. P. 444.

<sup>46</sup> Slanski, Kathryn. "Mesopotamia: Middle Babylonian Period." *A History of Ancient Near Eastern Law: Volume One and Two*. Raymond Westbrook (Ed.) Leiden: Brill, 2003. 485-520. P. 491.

<sup>47</sup> Slanski 498.

<sup>48</sup> Slanski 494.

<sup>49</sup> Slanski 498.

<sup>50</sup> Lafont, Sophie. "Mesopotamia: Middle Assyrian Period." *A History of Ancient Near Eastern Law: Volume One and Two*. Raymond Westbrook (Ed.) Leiden: Brill, 2003, 521-563. P. 526.

<sup>51</sup> Lafont 533. In law 1 of tablet "A" of the Middle Assyrian Laws we see a woman is referred to as a man's wife or a man's daughter. See Roth, Martha T. *Law Collections from Mesopotamia and Asia Minor: Second Edition*. Atlanta: Scholars Press, 1997. P. 155.

<sup>52</sup> Zaccagnini, Carlo. "Mesopotamia: Nuzi." *A History of Ancient Near Eastern Law: Volume One and Two*. Raymond Westbrook (Ed.) Leiden: Brill, 2003. 566-617. P. 571.

absence of that male.<sup>53</sup> The legal powers women had varied in the documents but seem to compare favorably with other Ancient Near East societies.<sup>54</sup>

In the region of Anatolia and the Levant in Emar and Vicinity female litigants appear prominently in the few records of litigation, and although there were exceptions women did not usually witness documents.<sup>55</sup> In Alalakh and Ugarit women appear frequently as litigants.<sup>56</sup> In Ugarit women were citizens and enjoyed the same basic rights and obligations as men, they could own land, be litigants, had rights of inheritance, were liable to service and were debtors and parties to contract of sale or exchange but do not seem to have held public office.<sup>57</sup>

In Mesopotamia in the Neo-Assyrian period typically a head of household was male (even a eunuch) but households headed by women are attested.<sup>58</sup> Women are nowhere attested as witnesses even though they could buy and sell property, incur debts, act as creditors and appear in court and female members of the royal family were very powerful.<sup>59</sup> In the Neo-Babylonian period women appear as witnesses in litigation and although parties to litigation are usually male head of household women appear in inner family disputes over dowry assets or validity of property settlements.<sup>60</sup> Women were able to conduct legal transactions they could own and acquire property, conclude

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<sup>53</sup> Zaccagnini 583.

<sup>54</sup> Ibid.

<sup>55</sup> Haase, Richard. "Anatolia and the Levant: The Hittite Kingdom." *A History of Ancient Near Eastern Law: Volume One and Two*. Raymond Westbrook (Ed.). Leiden: Brill, 2003, 620-656. P. 661 & 664.

<sup>56</sup> Westbrook, Raymond. "Anatolia and the Levant: Emar and Vicinity." *A History of Ancient Near Eastern Law: Volume One and Two*. Raymond Westbrook (Ed.). Leiden: Brill, 2003, 657-691. P. 687 and Rowe, Ignacio Marquez. "Anatolia and the Levant: Ugarit." *A History of Ancient Near Eastern Law: Volume One and Two*. Raymond Westbrook (Ed.). Leiden: Brill, 2003, 717-735. P. 723.

<sup>57</sup> Rowe 724.

<sup>58</sup> Radner, Karen. "Mesopotamia: Neo-Assyrian Period." *A History of Ancient Near Eastern Law: Volume One and Two*. Raymond Westbrook (Ed.). Leiden: Brill, 2003, 883-910. P. 894.

<sup>59</sup> Ibid.

<sup>60</sup> Oelsner, Joachim, Bruce Wells and Cornelia Wunsch. "Mesopotamia: Neo-Babylonian Period." *A History of Ancient Near Eastern Law: Volume One and Two*. Raymond Westbrook (Ed.). Leiden: Brill, 2003, 911-974. P. 921 & 924.

contracts, and enter into obligations without their husbands but they do not appear as witnesses to contracts.<sup>61</sup> Although they seemed not to have been able to serve as witnesses to legal transactions in this period women's presence at legal proceedings was frequently noted.<sup>62</sup>

From documents of the Ancient Near East scholars have shown that women did serve as witnesses and have many legal capacities. Throughout the Ancient Near East we see many similarities in women's roles and status but some changes also occurred. Women could and did, in all periods, own, buy and sell assets of their own or a male relative.<sup>63</sup> However, by the time of the Neo-Babylonian period, late eighth to early fifth century BCE,<sup>64</sup> women are not attested as witnesses in documents although we see that they could be witnesses in most of the earlier periods attested. So there seems to be some changes that occur in terms of women's public legal roles that would suggest some restrictions but I do not feel the evidence is entirely conclusive to that effect.<sup>65</sup> Women are less frequently or not at all attested as witnesses by documents in later periods but we do not find explicit prohibition from this role. Although that could also be due to the

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<sup>61</sup> Oelsner 928.

<sup>62</sup> Greengus 475.

<sup>63</sup> Ibid.

<sup>64</sup> von Dassow, Eva. "Introducing the Witnesses in Neo-Babylonian Documents." In *Ki Baruch Hu: Ancient Near Eastern, Biblical and Judaic Studies in Honor of Baruch A. Levine*, 3-22. Indiana: Eisenbrauns, 1999. P. 3.

<sup>65</sup> Savina Teubal offers some general statements about women's status throughout the ancient Near East. She says, certain aspects of women's position regressed in the Ancient Near East from earliest times until promulgation of Assyrian laws. She says Repressive attitudes toward women emerged about twentieth century BCE, the time of the Eshnunna laws, in the eighteenth century BCE during the time of Hammurabi they became harsher, and peaked with the Assyrian laws, fourth century BCE. The most obvious deterioration of women's status was within the domain of religious officiants. It is not entirely conclusive that women's status gets worse with time. In the Neo Babylonian Period we do find women's are not acting as witnesses as much as we see earlier and some restrictions seem to take effect but I the evidence does not support an early regression as Teubal claims. The evidence I have found supports Harris' claims and not Teubal's.

Teubal, Savina J. "Women, the Law and the Ancient Near East." In *Fields of Offerings: Studies in Honor of Raphael Patai*, 305-309. Madison: Herzl Press, 1983. P. 305.

nature of the legal documents in general, it could also be due to the discovery of certain documents and not others, especially if because of social convention women's participation was less common. Harris discusses some general trends relating to change over time. She says, economic independence of women in Babylonia continued into Neo-Babylonian times but by the time of the great Assyrian empires women's economic power seems to have vanished, correlating with greater legal disability for women in the region.<sup>66</sup>

Egypt is a somewhat separate civilization in the Ancient Near East. Its culture was more distinct and its geographic location made it less susceptible to cultural and social influences of surrounding peoples, but it is an important civilization for our investigation, especially later when there is a Jewish community in Elephantine that may have been influenced by the Egyptian legal culture. In the Old Kingdom and First Intermediate periods there was no fundamental difference in the legal status of men and women; women participated actively in the economic and public sphere and functioned as priestesses.<sup>67</sup> The absence of women in administrative bureaucracy was probably due to social convention and not explicit legal restriction.<sup>68</sup> In the Middle Kingdom and Second Intermediate Period male and female witnesses are attested in documents and witnesses play an important role in these documents.<sup>69</sup> The archetypal head of household was male but females probably enjoyed equal rights under the law and women's lesser presence as parties of litigation or witnesses is probably due to social causes and not legal

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<sup>66</sup> Harris *Women in the Ancient Near East*, 962.

<sup>67</sup> Jasnow, Richard. "Egypt: Old Kingdom and First Intermediate Period." *A History of Ancient Near Eastern Law: Volume One and Two*. Raymond Westbrook (Ed.). Leiden: Brill, 2003, 93-140. P. 116.

<sup>68</sup> Ibid.

<sup>69</sup> Jasnow, Richard. "Egypt: Middle Kingdom and Second Intermediate Period" In *A History of Ancient Near Eastern Law: Volume One and Two*. Ed. Raymond Westbrook. Leiden: Brill, 2003. 255-288. P. 268.

restrictions.<sup>70</sup> Female magistrates are not attested for this period.<sup>71</sup> During the period of the New Kingdom in Egypt women appear to have no disadvantage when they appear in legal proceedings.<sup>72</sup> Witnesses in this period could be male or, less commonly, female and there are scarcely any examples of women judges.<sup>73</sup> This means that there was some mention of women as judges. Males appear more often in legal texts but there are few explicit restrictions on women's rights; women could initiate a court case, represent their husbands in official or financial matters and appear as defendants in court.<sup>74</sup> The evidence clearly shows women had some legal and economic independence even though Egyptian society was patriarchal in structure and dominated by men.<sup>75</sup> Only in Egypt did I come across possible attestation of women as judges in the Ancient Near East. In a myth entitled "The Contendings of Horus and Seth" we have the goddess Neith rendering judgment. The version we have comes from the New Kingdom, 1500 to 1100 BCE.<sup>76</sup> We see in this myth that women, not necessarily customarily part of a judicial tribunal, were not excluded from rendering judgment on legal grounds. In a footnote to his discussion of this myth S. Allam mentions a New Kingdom record, not mythical but actual, where a local tribunal at Deir el-Medina included two women sitting as judges.<sup>77</sup> This shows us while probably not customary women could act as judges. Perhaps this is a similar situation to the biblical Deborah, not customary but not legally forbidden. This is a plausible explanation when we find few examples attesting to women's roles but

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<sup>70</sup> Jasnow, *Egypt: Middle Kingdom and Second Intermediate Period* 270-271.

<sup>71</sup> Jasnow, *Egypt: Middle Kingdom and Second Intermediate Period* 271.

<sup>72</sup> Jasnow, Richard. "Egypt: New Kingdom." *A History of Ancient Near Eastern Law: Volume One and Two*. Raymond Westbrook (Ed.). Leiden: Brill, 2003, 289-359. P. 307.

<sup>73</sup> Jasnow, *Egypt: New Kingdom* 311 & 317.

<sup>74</sup> Jasnow, *Egypt: New Kingdom* 317-318.

<sup>75</sup> Jasnow, *Egypt: New Kingdom* 318.

<sup>76</sup> Allam, S. "Legal Aspects in the 'Contendings of Horus and Seth'." *Studies in Pharaonic Religion and Society: in Honor of J. Gwyn Griffiths* (1992) 137-45.

<sup>77</sup> Allam, Footnote 9.

enough to show that it was not totally impossible or illegal for them to have that role or position of leadership.<sup>78</sup> Custom is a powerful regulator of social order but can be transcended.

This notion of custom or convention versus law is an important one for this study. While women act as witnesses in the Ancient Near East it does not seem prevalent enough to suggest it was entirely the normative approach in all periods, which means that the custom was for men to be witnesses. Women's testimony was legally admissible but there must have existed some notion that it was not ideal or perhaps even unseemly for them to do so. This could also be related to their subordinate position to men as head of household. When in relationship to men women were not full legal actors or public representatives. As we will see in the Mishnah, a legal prohibition does exist whereby women are prohibited from providing testimony but there are many examples whereby they can be witnesses and their testimony is accepted. So we can see there is a complex relationship between what is said and what is done, between women's status socially and what is stated in law and how they may act in public legal roles depending on the circumstances.

In the Third Intermediate period women could act as witnesses, transact legal matters and initiate court cases.<sup>79</sup> In the legal and economic sources from this period women figure prominently: women played an important role in transmission of ownership and property rights and there were female officials who held high office like men could and received corresponding income.<sup>80</sup> Women had full rights but men often

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<sup>78</sup> I would like to credit Dr. Samuel Greengus for suggesting this interpretation of the Egyptian documents.

<sup>79</sup> Jasnow, Richard. "Egypt: Third Intermediate Period." *A History of Ancient Near Eastern Law: Volume One and Two*. Raymond Westbrook (Ed.). Leiden: Brill, 2003, 777-818. P. 793-794.

<sup>80</sup> Jasnow, *Egypt: Third Intermediate Period* 796.

executed those rights for them.<sup>81</sup> In Egypt some princesses became rulers and queens and kings had greater equality.<sup>82</sup> The Egyptian picture seems therefore to resemble that of Mesopotamia, but without any diminution of women's legal powers over time.

By comparing the evidence from documents of the Ancient Near East we see substantial support to claim that in fact women did act as witnesses to documents and participated in legal proceedings. In some periods there is not specific evidence showing women as witnesses but neither is there legal material specifically barring them. It is not until the Neo Babylonian period when we no longer have women attested as witnesses in documents. In some periods we cannot ascertain women's participation in public legal roles because of lack of evidence from that period or area. Often women could enter into legal proceedings and appear in court without male proxy; although in some places it seems male representation was preferred. On the whole women's participation in legal proceedings, their ability to own and buy and sell property and act as witnesses was widely practiced in the Ancient Near East and only seems to have diminished in the later periods. The Ancient Near East as a backdrop for the Bible provides some important context to understanding women as witnesses and judges and other public legal roles in the Israelite legal context. It also demonstrates women's widespread participation in areas on which the Bible is sparse or silent. In the next chapter of this section, *The Bible*, I will examine biblical texts that relate to women as judges and witnesses and in other public legal roles and how the Israelite laws as expressed in the biblical text related to women in public legal capacities.

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<sup>81</sup> Jasnow, *Egypt: Third Intermediate Period* 797.

<sup>82</sup> Harris, *Women in the Ancient Near East* 963.

## **Part Two: The Bible and the Israelites**

In order to understand and trace the development of women's status in public legal roles as judges and witnesses in Jewish law it is necessary to look at the Hebrew Bible. It is important to look at the biblical evidence on its own, before looking the rabbinic sources, which were composed so many centuries later. The same can be said about the legal material of the Ancient Near East. In both cases these extra-biblical sources can help us understand the biblical context and supply some details that are missing or unexpressed in the biblical legal materials. But the Bible is the primary document for investigation of the later rabbinic expansion of law from Israelite Cult to Rabbinic Judaism.

For example, the category of "judge" and "witness" in the biblical setting is not identical to that in the rabbinic conception but there are some parallels. In focusing on the ancient categories, beginning with the Hebrew Bible, it is difficult to determine precise definitions of the category or role of a judge because we do not have biblical material that lays out an explicit definition of who may be a judge in any descriptive way, as rabbinic Judaism does. Who may be a witness is also not explicitly defined in the Bible. In Deuteronomy 17:6 and 19:15 we have the requirement of two witnesses to impose the death penalty, but there is no mention of who can be a witness.

When approaching a text that does not give explicit answers to the question one is asking, other methods need be employed. When the Bible is sparse in its legal material one can turn to the narrative material to obtain information about legal status, definitions, and proceedings. Legal information can be gleaned from narrative material both in the

Torah and the historical narratives.<sup>83</sup> The narratives can show legal customs and family arrangements that existed in the biblical world and throughout the Ancient Near East which do not necessarily conform to what is given as explicit legislation in the Torah.<sup>84</sup> This demonstrates that popular practice did not always conform to explicit, written legislation; the narratives are thus an important source for a fuller comprehension of the realities that may have existed “on the ground”. How a people describes itself through its stories is an important reflection of its ideas, attitudes and practices. This is perhaps even more so than the explicitly legal material, because the legal material often is trying to impose a norm while the narrative material may be more often describing existing realities. The laws are prescriptive but narratives are descriptive, reflecting the lives of the people writing and reading them.

In addressing other topics related to women’s status or roles in a culture, some make the assumption that scarcity of material mentioning women reflects their exclusion from that role or element of society. For example, since we only find a handful of women mentioned as prophetesses in the Bible<sup>85</sup> some conclude that women did not often act as prophets and that the examples we find are more exceptions to the rule than the norm. This could be the case; however, if one takes into account the assertion by feminist hermeneutics that men wrote the texts that were canonized into the Bible and so the text is written from a male perspective<sup>86</sup> and this male perspective marginalizes

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<sup>83</sup> Frymer-Kensky, Tikvah “Anatolia and the Levant: Israel.” *A History of Ancient Near Eastern Law*. Boston: Brill, 2003, 975-1046. P. 975.

<sup>84</sup> Frymer-Kensky 980.

<sup>85</sup> Three women are mentioned as prophetess, Devora Judges 4:4-16, Huldah II Kings 22:14-20, Noadiah Nehemiah 6:14

<sup>86</sup> One example of this perspective can be found in Bronner, where she notes the Hebrew Bible primarily depicts men and their activities. Bronner, Leila Leah. “The Changing Face of Woman From Bible to Talmud,” *Shofar: An Interdisciplinary Journal of Jewish Studies* 2, no. 7 (Winter 1989). P. 35. Also in Bird, Phyllis A. “Women (OT),” in *Anchor Bible Dictionary: Volume 6* (New York: Doubleday, 1992),

women in the written text, then there may have been other stories about women that were not canonized or possibly the stories we do have may have been altered to give women a less significant role. So that fact that women appear less often in certain public leadership roles does not mean that the text is accurately representing a statistical reality but in fact could be a result of male authorship and marginalizing of female characters and narratives. Additionally, when we do have stories about women in positions of power, influence or authority this, too, may be indicative of an even larger trend than the few sources we are left with.<sup>87</sup>

With the approach from feminist hermeneutics in mind my working hypothesis relies not just on the amount of evidence one way or another but also whether there is contrary evidence against women's participation in legal roles as judges and witnesses. That is to say, rather than assume women's roles were limited because there is little evidence to show they were fully involved, I assume, unless there is explicit textual evidence barring women from public legal roles, that women may have inhabited those roles. Women are not explicitly mentioned as being able to act as witnesses in the legal texts but this does not conclusively prove that they are excluded from acting as witnesses.

Since in the Bible women are not barred explicitly from acting as judges and witness in the legal material one must look at narrative evidence where women seem to be performing tasks explicitly or implicitly connected to the role of a judge or witness. I will, in coming chapters, discuss evidence for the inclusion of female witnesses in ancient

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951-957. P. 951. Bird says in a text and society dominated by men, women are presented through male eyes in the Bible.

<sup>87</sup> Not all scholars agree. Carol Meyers acknowledges that women leaders, like Miriam and Deborah, were part of an epoch when women could rise to positions of leadership but were exceptional because of the patriarchal struggle of tribal life, but notes that they were not considered inferior. Meyers, Carol. "The Roots of Restriction: Women in Early Israel," *Biblical Archeologist* 41, no. 3 (September 1978), 91-103. P. 101-102.

Near Eastern societies as well as for their exclusion and inclusion in certain rabbinic laws. But, for reasons already stated, I hold these apart from my analysis of biblical sources.

The Hebrew word for witness *ed* in the Bible refers to testimony, witness or evidence by things or people.<sup>88</sup> It also occurs in the feminine form in the Bible albeit referring to a monument rather than to a person. The law relating to witnesses appears in Deuteronomy 17:6 and 19:15. This law states that two witnesses are required for a conviction. Deuteronomy 17:6 says, "A person shall be put to death only on the testimony of two or more witnesses; he must not be put to death on the testimony of a single witness." Deuteronomy 19:15 says, "A single witness may not validate against a person any guilt or blame for an offence that may be committed; a case can be valid only on the testimony of two witnesses or more."<sup>89</sup> These laws do not state that women can or cannot be witnesses. One might make the argument that since the word for witness is in the masculine form and the related verbs in the phrase also occur in the masculine that it only refers to male witnesses, but Hebrew, being a gendered language uses the masculine grammatical form both to speak about men or males specifically but also people in general. One example of this is the use of the term *B'nai Yisrael*, literally sons of Israel, but refers to the nation as a collective and includes all the Israelites, men and women.

The feminine form *edah*, is used in the Bible to refer not to women witnessing but to grammatically feminine objects. For example, in Genesis 31:52, we find *edah*

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<sup>88</sup> Brown, Francis. "Ayin Vav Dalet" in *The Brown-Driver-Briggs Hebrew and English Lexicon*. Massachusetts: Hendrickson Publishing, 1999, 728-730.

<sup>89</sup> Translation for biblical verses from: *JPS Hebrew-English Tanakh: The Traditional Hebrew Text and the New JPS Translation, Second Edition*. Philadelphia: The Jewish Publication Society, 1999.

*hamatzevah hazot*, a stone used as “witness” and to mark a boundary between Laban and Jacob. This feminine form, however, is not attested with reference to persons.

In the Bible we do have a prominent example of a woman acting formally in the role of a judge, Deborah. Biblically the role of a judge was broad and not only restricted to rendering judgments.<sup>90</sup> Judges were also charismatic leaders. The Hebrew root *shafat* is often only translated as “judge” and also “decide”, “rule”, “govern”, “vindicate”, and “deliver”. The verb *shafat* also refers to administration, ruling or governing of a territory including commanding armies. This is its general meaning in the book of Judges.<sup>91</sup> In the Bible the *shofet* had authority from God to function in that role.

Deborah is described as a prophetess as well as a judge in Israel.<sup>92</sup> While she was the acknowledged head of the Israelite community and is lauded for her military victories she does also act as a judge, in the sense of rendering decisions.<sup>93</sup> Being described as prophet and judge is a dominant element in the description of great leading figures in Israel, like Moses and Samuel.<sup>94</sup> So Deborah is being grouped in with and parallel to those leaders by how she is being described. This demonstrates how important she was and that, although a woman, she filled a role held by some of the greatest male heroes in the biblical text.

We find the role of a judge as both leader and magistrate in the Bible.

Scholarship often distinguishes between two types of judges, great judges, who were

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<sup>90</sup> Examples of judges making legal decisions in civil disputes: Judges 4:5, I Samuel 7:15, II Samuel 15:4 in Temba L.J. Mafico, “Judge, Judging.” *The Anchor Bible Dictionary: Volume 3*. New York: Doubleday, 1992, 1104-1106. P. 1105.

<sup>91</sup> Temba 1105.

<sup>92</sup> Judges 4:4-16.

<sup>93</sup> See Judges 4:5.

<sup>94</sup> Avishur, Yitzhak. “A Common Literary Formula to Describe the Canaanite Daniel and the Israelite Deborah.” *Studies in Biblical Narrative: Style, Structure, and the Ancient Near Eastern Literary Background*. Tel Aviv: Archeological Center, 1999, 248-249.

redeemers and lesser judges who were magistrates, but Deborah fits both categorizations.<sup>95</sup> Geoffery Miller, in his analysis of the language and structure of “The Song of Deborah” says while other women rise to powerful roles by their relationship to a powerful male figure, Devora seems to have rose to the role on her own merit and she exercises authority that does not depend on men.<sup>96</sup> Deborah’s authority in this role is also unquestioned, according to the message of the song a fierce Israelite woman like Deborah is to be valued and not mocked.<sup>97</sup> He also says it was unusual for a woman to be a judge in this period,<sup>98</sup> but he does not give any textual evidence for this. This statement appears to be an example of making assumptions about women’s roles based only on the number of examples the text gives us.

We see that Deborah held a significant and important role as a leader in Israel. The text lauds her and she is portrayed positively and as powerful. We do not have other texts of women as judges, but combined with the texts that allude to women’s other legal roles as advisors, plaintiffs, leaders and prophetesses, which I will discuss in the next section, we can begin to consider the possibility of women’s roles as judges and witnesses in the biblical period. Looking at women’s public legal roles as judges is one step towards understanding their public legal roles in the biblical period. I will now examine other public legal roles for women that we find in the biblical text.

Since there are few specific examples of women acting as judges and none specifically as witnesses in a narrow sense of the word, it is necessary to examine examples of women acting in other leadership roles and in public legal capacities. We

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<sup>95</sup> Avishur 249.

<sup>96</sup> Miller, Geoffery P. “A Riposte Form in the Song of Deborah.” *Gender and Law in the Hebrew Bible and the Ancient Near East*. Sheffield: Sheffield Academic Press, 1998, 113-127. 123.

<sup>97</sup> Miller 125.

<sup>98</sup> Miller 113.

have a number of types of examples of such roles in the Bible. We have prophetesses, plaintiffs, advisors on military matters to Kings, and “wise women”. These women are trusted public figures acting independently of any visible male control.

One such example is in the narrative told of Huldah the prophetess, which shows her important role in the community.<sup>99</sup> During the reign of King Josiah a scroll is found in the Temple. Josiah sends a priest, a scribe and one of his ministers to the prophetess Huldah to verify that the scroll is the word of God and that the people must repent or face their destruction. Huldah verifies the scroll is in fact the word of God. Huldah is the only person that testifies to the scrolls validity. Her word is the evidence required for the scroll’s veracity to be determined. Josiah does not take the scroll also to male prophets or any other authority. Her testimony is enough to convince the King and in turn the entire kingdom to implement the reforms in the community that the scroll demanded. Huldah had to have been a respected, powerful and well-known authority in the community for her to be chosen to verify the scroll and for her decision to be trusted, not only by the King, but the entire community. Whether the priests fabricated the scroll, as some have suggested, or whether it was an authentic relic of earlier times, the fact that Huldah was chosen to publicly attest to its authenticity and validity is a significant statement about her power and authority in the community.

An unnamed woman who is not in a formal position in the community is also trusted by a King to testify to the validity of the claim of another. In II Kings 8:4-6 Gehazi is telling the King about the wonderful things Elisha has done and Gehazi tells the King Elisha revived a dead person. The King does not believe it so an unnamed woman is brought in with her son, whom Elisha revived, and after hearing her verify the story the

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<sup>99</sup> II Kings 22:14-20.

King believes it. Here the woman is testifying to an event before the King and it is based on her testimony and verification of the story that the King believes it. The situation here may perhaps point to a more general role for women as witnesses.

An important example of women in public legal roles is that of Zelophehad's daughters.<sup>100</sup> They act as plaintiffs on their own behalf when they bring forward their case for land inheritance to Moses and contest the law that they cannot inherit their father's land because they are women. They have no male representation to present their case for them. They appear directly before Moses, Elazar the priest, the chieftains, and the whole assembly. They testify on their own behalf. Moses takes their case before God and it is so compelling, God changes the law of inheritance, so when there are no living male relatives daughters may inherit. Although the word *ed* or *edah* is not mentioned, the daughters are effectively acting like witnesses because they are protagonists in a legal proceeding before a court-like body. Zelophehad's daughters are also an example of women demanding their rights and bringing about a reinterpretation of the law in ancient times.<sup>101</sup> This demonstrates women had the power to bring a complaint, act as their own representation and be respected enough not only to be heard but to win their case.

Although there is scant information to attest to it in the Bible, the text indicates any adult, male or female, could be party to a dispute and that women function as petitioners on their own behalf and do not have to be represented by men.<sup>102</sup> The role and court appearance of the daughters of Zelophehad as litigants and the story of the unnamed woman telling the King about Elisha support the possibility of women also functioning as witnesses.

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<sup>100</sup> Numbers 27:1-11.

<sup>101</sup> Bronner 35.

<sup>102</sup> Frymer-Kensky 994.

There are other biblical women who had prominent though not formally titled roles. In II Samuel 20:16-22 we have a short narrative of a remarkable woman, referred to as a “wise woman” (*isha hahamah*) who calls over Joab King David’s general and advisor, and negotiates with him on behalf of her besieged city. She tells him to listen to what she has to say and he does. What she tells him ultimately comes to pass. She exerts enough authority and influence to garner the ear of the King’s primary general. It is not clear if she held the title of “wise woman” as a formal position of leadership or if it is a term used to describe her abilities. In either case she is recognized and respected to the extent that she represented her community and commanded the attention of Joab immediately.

Another woman who held a position of communal leadership is Miriam, sister of Moses and Aaron. She is also indirectly referred to as prophetess in Numbers 12:5-8. Miriam has often been touted by feminist hermeneutics as the unsung hero of the Exodus from Egypt narrative. Some even claiming the Song of the Sea under her authorship.<sup>103</sup> Although she is somewhat marginalized to the leadership demonstrated in the book of Exodus by Moses and Aaron, the prophet Micah lists her along with them as a leader of Israel sent by God as part of the redemption from slavery.<sup>104</sup> Biblical tradition thus recognizes Miriam’s role and status equally alongside Moses and Aaron. Here we have another example of a woman recognized as prominent in the community, respected as a leader and authority figure whose exploits are not fully recounted in the male-dominated pentateuchal narratives. If we judged Miriam’s role or significance only on the amount of

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<sup>103</sup> This is based on Exodus 15:20-21 because she is leading the women in song and the text of her song here is the same as the second half of verse one of the Song of the Sea in Exodus 15:1-18. It seems she is leading the women in singing of that same song.

<sup>104</sup> Micah 6:4.

verses dedicated to her in the Bible we would not consider her at all, but if we look at what is written about her and what her role was we get a very different picture. We see how prominent and important she was to the narrative and in the Bible's understanding of the story.<sup>105</sup>

Prophetesses are also mentioned in the Bible by profession and not by name. In Ezekiel's condemnation of false prophets he includes specifically women who prophesize.<sup>106</sup>

I have attempted to show through these examples that women in the Bible were able to be in positions of power and leadership, where they influenced the community in formal capacities as leaders and were able to provide trusted testimony and advice. These examples give us the basis of a paradigm demonstrating women's involvement in roles that would indicate their inclusion into political and public life of the community in a significant way. The assertion that women were involved in the life of the community in this capacity is based on textual evidence of women's roles as judges, leaders, advisors and plaintiffs. I consider this evidence as counterweight to the lack of specific evidence for them acting as witnesses. By including Biblical texts of women in other types of significant roles the sparse textual evidence relating specifically to judges and witnesses is expanded into a general picture of women in the Bible that provides a clearer, bigger picture.

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<sup>105</sup> There is another case of women who seem to have the capacity to testify and that is the Levirate widow. I will not do a close examination of this case in both biblical and rabbinic texts because it requires a lengthy analysis and would bring us too far from this discussion, but it does deserve mention. In the *halitzah* ceremony the widow is given a considerable role and is required to make a public statement about her brother in law that serves as a kind of testimony to his actions and intentions for all to hear. She is an integral part of this very public ceremony and acts as a witness to the events.

<sup>106</sup> Ezekiel 13:17.

It is also helpful to look at women's legal status generally in the Bible to determine their larger social and legal roles outside of public legal proceedings as witnesses and judges and to determine in what ways the narrative examples are consistent or inconsistent with the legal texts.

Contemporary scholars have accepted this evidence but also applied it with caution. Leah Bronner, for example, asserts that women held positions of prominence despite legal disabilities.<sup>107</sup> If we look at women's public legal roles, like the examples I have given, there seemed to be no legal disabilities and women were able to transcend social ones, at least in these cases. Bronner says areas of women's legal disability were divorce, adultery and inheritance, but she recognizes how the Bible does depict women active in public and private life.<sup>108</sup> These disabilities then did not impede women's ability to be active in public life and we have the narrative examples to attest to this assertion.

Moreover, scholars do not regard women's roles in public, formal ways in a unified fashion. When discussing women's social and legal roles, a distinction is often made between public and private realms. Carol Meyers assumes the dichotomy of public and private when she traces women's relegation to certain tasks, which she claims is a result of historical circumstances, which drove both men and women to focus on domestic work. She says the very channeling of female and male energies into domestic affairs was ultimately the reason for continued and exclusive confinement of women to that sphere.<sup>109</sup> However, Erhard Gerstenberger asserts that one cannot actually determine

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<sup>107</sup> Bronner 34.

<sup>108</sup> Bronner 35 and 36.

<sup>109</sup> Meyers 101.

the borderlines of public and private jurisdiction in Israelite society.<sup>110</sup> I agree with Gerstenberger. The division of public and private work does not have the same meaning in the ancient world as it does for us today. Although there were certain official roles that one could say definitively were public, such as that of judge or prophet, or community leader of another type, work for income and sustenance was not divided in that formal way. But if there was a distinction between public and private, then it also becomes difficult to trace how this division came about. Meyers attributes much of women's defined work in the home to her reconstruction of historical circumstances that necessitated a certain type of labor, and women remaining in these in those roles after it was no longer necessary for men to do them as well. She says women's roles were very different pre-Israel from later and it was non-egalitarian forces in Mosaic Israel that caused the change.<sup>111</sup> Meyers blames the formation of Israelite society for the limiting of women's roles. She asserts that once women and men worked in, what she calls, the domestic sphere, this became deeply engrained even after the passing of crises that precipitated this shift and became the basis for ideologies for female subordination. She further attributes this change in women's status to the rejection of pagan deities, which included goddesses, for Yaweh.<sup>112</sup> Meyers also asserts that in early Israel female creativity and labor were highly valued in early Israel and then the previous equality of participation momentum of the previous period was transformed into masculine domination and female subordination.<sup>113</sup> The underlying reason for Meyers' project in trying to determine women's status in Israelite society is because she asserts that to

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<sup>110</sup> Gerstenberger, Erhard S. "Women in Old Testament Legal Procedures," *Lectio Difficillior* 1 (2005), 1-11. P. 5.

<sup>111</sup> Meyers 92.

<sup>112</sup> Meyers 100-101.

<sup>113</sup> Meyers 98 and 102.

understand Israelite society it is crucial to look at women, often slighted, who control certain unique and critical functions in society.<sup>114</sup>

Tikvah Frymer-Kensky, in an article on law in ancient Israel, does agree with Meyers that there was a change from the pre-monarchal to the monarchal period as far as women's status and roles. Before the monarchy women could rise to public authority within the household, but with the consolidation of the monarchy, although there were protections instituted to prevent their being abused at will by the male heads of household, women were shut out of political power.<sup>115</sup> In theory all Israelites were citizens and there were no **official** class distinctions but that was not the case in reality, women were legally disadvantaged.<sup>116</sup> Frymer-Kensky also notes that women were defined in relationship to the household, which was normally headed by a man.<sup>117</sup>

Instead of looking at historical circumstances, as Meyers does, Gerstenberger looks at the biblical text for clues as to women's roles by examining the relevance of gender in laws and rituals. Being a woman in terms of how it restricts or allows for certain privileges is more important for women than for men.<sup>118</sup> He says, because there is a fear of female reproductive capacity cultic rituals and legal proceedings are used to construct and maintain a certain idea of female identity in the public sphere in order to limit women because of that fear by men. Gerstenberger notes that law and law enforcement were the traditional privilege of males but that women's limitations under the law and custom do have divergence in real life situations.<sup>119</sup> So there were situations

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<sup>114</sup> Myers 91.

<sup>115</sup> Frymer-Kensky 1003.

<sup>116</sup> Frymer-Kensky 999.

<sup>117</sup> Frymer-Kensky 1002.

<sup>118</sup> Gerstenberger 6.

<sup>119</sup> *Ibid.*

in which we see women participating even though they were legally disadvantaged. Here we see again the notion that the legal and narrative texts are not always in agreement nor are each a full picture of any issue of women's status and we need both for a better understanding. Regarding women as judges and witnesses the narrative materials are crucial for they are the only source for these roles, while other issues of women's legal status and protection that Gerstenberger discusses are laid out more explicitly in the laws and contradicted at times in the narrative passages. In respect to these issues of authority and contradiction he says patriarchal authority probably always stood on much softer ground in Israelite homes than claimed.<sup>120</sup> Then by comparing the narrative material to the legal texts we see that patriarchal authority may not have been as strong as the legal material made it out to be.

In her analysis of gender in the biblical context Phyllis Bird does not want to make simple assumptions although she does assume some type of public/private dichotomy. Bird says an anthropological study of gender reveals complex patterns of male-female relationships within patriarchal societies, which require qualification of many common views of women in ancient Israel.<sup>121</sup> Bird affirms the assertion by other scholars that there is no monolithic view, the Bible does not give a single portrait of women in ancient Israel, for it spans differing times, places and genres of literature.<sup>122</sup> Despite the multiple portraits of women Bird does see one common set of expectations and values is that of women's labor in the domestic sphere, particularly as reproducers. She says this may explain why women are absent from legal documents and are restricted

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<sup>120</sup> Gerstenberger 5.

<sup>121</sup> Bird 952.

<sup>122</sup> Ibid.

from roles outside this primary one in the home.<sup>123</sup> Although she says women's roles are varied and complex she does focus on women's confinement to home life as a reason for their exclusion from public roles. Bird also notes that at home women did exert much formal and informal power although still subject to male authority, as males were heads of household.<sup>124</sup> According to Bird's portrait women were confined to certain spheres but did exert power and authority. This multi-faceted approach makes it difficult to determine exactly what women's status was vis a vis public legal roles, since this status seems not to have been consistent or defined legally. Bird notes, in the Bible we have male dominated forms of speech, male genealogies and male predominance in the historical record,<sup>125</sup> which she concludes meant male dominated life. This may be the case but what then do we do with the narratives about women's roles? Were they rare exceptions or normative experiences that were marginalized by the writers? While she draws the conclusion that male dominance in the text is a product of male authority in society, Bird also says we see women's actual power and recognized authority in narrative not legal texts, and we see it is more complex and forceful than legal texts describe.<sup>126</sup>

Biblical texts do depict women's authority, as I have described, even though women faced certain legal and social disadvantages. Some examples of women's legal and social disadvantages are: women are not often communal leaders, we do not find women as prophets as often as men, women cannot be priests and we seldom find Israelite women as reigning Queens, except for Athaliah in II Kings 11:3. Bird shows

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<sup>123</sup> Ibid.

<sup>124</sup> Bird 953.

<sup>125</sup> Ibid.

<sup>126</sup> Bird 956.

how complex it is to determine women's status in a clear way in ancient Israel and how the narrative texts do point to more roles for women than some scholars would attribute to them.

It is my conclusion that in the Bible women are not explicitly forbidden from acting as witnesses since there are a number of examples when women act on their own behalf in public legal proceedings and as community leaders. Women also were able to act as judges in the Bible. So despite some legal disabilities or exclusions prescribed by the biblical text, we find evidence of some women taking prominent roles. There is no solid evidence to show that being a woman would disqualify someone from being a testifying witness in a trial.<sup>127</sup> It appears unlikely that trial law of ancient Israel and Judah kept women from functioning as testifying witnesses and the evidence demonstrates that it is probable that the court allowed nearly anyone to perform the function of a testifying witness.<sup>128</sup> In the early rabbinic period, as we shall see, we find a shift from this attitude to one that explicitly forbids women acting as judges and witnesses. What precipitated this change? On what is this based? What factors influenced the rabbis? Through a close examination of Tannaitic material and the larger Hellenistic culture some of these questions may be answered.

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<sup>127</sup> Wells, Bruce. *The Laws of Testimony in the Pentateuchal Codes*. Weisbaden: Harrassowitz Verlag, 2004. P. 50.

<sup>128</sup> Wells 52 & 53.

## **Chapter Two: The Rabbinic World**

### **Part One: The Mishnah and Women**

Between the end of the biblical period and the redacting of the Mishnah around 200CE, Rabbinic Judaism emerges. The rabbis of the Mishnah, formulating law in the land of Israel at the beginning of the Common Era, were coping with a new society, one that had been impacted by the Hellenistic culture around them. They needed to deal with the religious implications of the destruction of the second Temple in Jerusalem in 70CE. The rabbis of the Mishnah were furthermore interested in organizing and categorizing, organizing according to common attributes, aspects of society in order to create halakhic boundaries, which institutionalize their views within their legal system but also cope with the variables of everyday life. They could also very well have been describing what already existed in an ordered fashion. Regulating women's place and role in the system was of importance to the rabbis and took a major portion of the Mishnah text in the form of *Seder Nashim*, the Order of Women. In this section I will first examine how the rabbis deal with women in the Mishnah. Then I will look specifically at women's public legal roles in this period by examining texts from the Mishnah and Tosefta that deal with women as witnesses and judges. In examining these texts I will try to make some conclusions about women's legal roles in this period. I also will try to determine if it is possible to say that some of the influences on rabbinic thinking about women were derived from the greater Hellenistic culture and the possible impact of Roman law.

The Mishnah reflects and represents the world-view of the rabbis whose discussions and legal decisions are included in it. Jacob Neusner, in his analysis of the Mishnah's description of women, says that the Mishnah arose within-- and can only

imagine-- a patriarchal society; and its legislation on women expresses the values of that society.<sup>129</sup> So the Mishnah expresses values whereby maleness is normative and central. It does not imagine women living apart from men or that women live outside of relationships to and control of men. The Mishnah imagines a man's world and is a man's document and regulates women in relationship with men, who are at the center.<sup>130</sup> Males are the norm and females an anomaly, or deviation from the norm, and therefore occupy a different category than men.<sup>131</sup>

The Mishnah divides Israelite society into four main categories: householder, minor sons, women and bondsmen, the householder being the normative, male, Israelite adult.<sup>132</sup> Each category is like the householder yet different.<sup>133</sup> Women are further divided into six subgroups, which are also paired: minor daughters, adult daughters, wives, divorcees, widows and levirate widows.<sup>134</sup>

So why does the Mishnah spend so much time regulating women's lives, bodies and status if maleness was central to the rabbinic framework? The Mishnah spends a considerable amount of time regulating women because they are the other and the irregular; they are the anomaly and require elaboration, ordering to the disorderly.<sup>135</sup> The project of the Mishnah is to cope with disorder and women present an anomaly in its project of organization, they do not inhabit only one category and therefore cannot be

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<sup>129</sup> Neusner, Jacob. "Mishnah on Women: Thematic or Systemic Description." *Marxist Perspectives*. 3.1 (1990) 78-98. P. 92.

<sup>130</sup> Ibid.

<sup>131</sup> Romney Wegner, Judith. *Chattel or Person? The Status of Women in the Mishnah*. New York: Oxford University Press, 1988. P. 5.

<sup>132</sup> Flesher, Paul Virgil McCracken. "Are Women Property in the System of the Mishnah?" *From Ancient Israel to Modern Judaism: Intellect in Quest of Understanding Essays in Honor of Marvin Fox Volume One*. Jacob Neusner, Ernst S. Frerichs, Nahum M. Sarna (Eds.). Atlanta: Scholars Press, 1989, 219-231. P. 222.

<sup>133</sup> Flesher 223.

<sup>134</sup> Flesher 224.

<sup>135</sup> Neusner "Mishnah on Women", 93-94.

easily categorized. Judith Romney Wegner identifies the Sages' problem of where to put women as one of categorization because the Mishnah is preoccupied with taxonomy, insists on order and abhors disorder caused by anomaly and ambiguity which women present.<sup>136</sup>

The ambiguity comes because woman is not like a man, but she is similar to man in some important ways. This generates apparent inconsistencies in the Mishnah's treatment of women, one that they have to contend with in the taxonomy and organization of women in the Mishnah.<sup>137</sup> In order to organize women into the legal system of the Mishnah, Romney Wegner asserts that the rabbis sometimes categorize women as persons, like men and sometimes as property, or chattel, as she calls it.<sup>138</sup> The sages vacillate between defining women as chattel or persons.<sup>139</sup> In the Mishnah 'woman' is a "legal hybrid", an anomaly that defies simple classification and this reflects and reinforces an ambivalent attitude toward women.<sup>140</sup> This reaction comes from the desire on the part of the sages to classify everything in a taxonomy that is binary and where everything has a category.<sup>141</sup> Since women do not fit fully in to the category of person or property they are sometimes classified and given the legal rights and responsibilities as the first and sometimes handled and restricted in their role as if they are the second.

Then how does the Mishnah organize women and what do the rabbis focus on?

The Mishnah regulates the point at which women move from one setting and status to

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<sup>136</sup> Romney Wegner 5.

<sup>137</sup> Ibid.

<sup>138</sup> Romney Wegner 8.

<sup>139</sup> Romney Wegner 7.

<sup>140</sup> Romney Wegner 8-9.

<sup>141</sup> Romney Wegner 7.

another, organizing the disorderly so the word *seder* is very appropriate here in understanding the legal project of the Mishnah.<sup>142</sup>

In trying to organize and control women in their dual categories the rabbis make women peripheral to the central activities of society and subordinate to male jurisdiction, especially in aspects most valuable to men.<sup>143</sup> On the one hand women are perceived as sentient, intelligent beings whose reactions resemble men's, on the other they are viewed andocentrically, turning them into an object rather than a subject of law, and as a result the Mishnah maintains strict control of women's activities, especially their sexual and reproductive role in the economy.<sup>144</sup> As objects of law they are passive and have few rights, the law controls them, while as subjects of law they would be more empowered and active members of society.

When the Mishnah makes statements about women it is somewhat, but not completely, uniform in its approach. Tal Ilan notes that although rabbinic literature represents a wide variety of perspectives and authors, they all belonged to a socially and ideologically uniform group whose foundation was Torah study.<sup>145</sup> So despite variant authorship there is in this one respect some consistency related to an approach to women. Ilan asserts that tannaitic literature about women falls into two categories: general statements about women in various matters, and legal and halakhic material which attempts to mold women's social behavior according to their ideals but does not necessarily represent reality.<sup>146</sup> As far as the ways Jews actually lived and practiced Ilan

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<sup>142</sup> Neusner "Mishnah on Women", 95-96.

<sup>143</sup> Romney Wegner 5.

<sup>144</sup> Ibid.

<sup>145</sup> Ilan, Tal. *Jewish Women in Greco-Roman Palestine: An Inquiry into Image and Status*. Germany: J.C.B. Mohr (Paul Siebeck), 1995. P. 32.

<sup>146</sup> Ilan 41.

points out that Jewish society was heterogeneous in the Second Temple period, different communities lived by different versions of Jewish law and tannaitic halakhah was not fully adhered to in this period because it was not fully developed.<sup>147</sup> So the laws of the Mishnah may not have been yet widely accepted and practiced in the period they were redacted. A debate exists amongst scholars to what extent rabbinic literature is descriptive, in some form represents legal and social reality of the time, or whether it is prescriptive, representing the world the rabbis desired but that did not necessarily exist.<sup>148</sup>

Judith Hauptman has a somewhat different perspective on the rabbis' views on women and their legal roles and rights. Hauptman thinks the rabbis were sensitive to the discrimination against women by the laws of *sotah*, inheritance and divorce and tried to rectify some of the social wrongs, and she feels the rabbis struggle to limit discrimination against women by the biblical law.<sup>149</sup> In some areas it does seem that the rabbis allow women more rights, such as with the ketubah and limiting the use of the *sotah* ordeal, but more often it seems to me that when women are given rights or a role as actors in a situation women are the exception to the rule out of necessity and only in certain cases. As we will see when I examine rabbinic texts on women as witnesses. As we saw with the Ancient Near East it seems the older laws were actually more inclusive of women's participation than later and the Bible, while a somewhat later Ancient Near Eastern

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<sup>147</sup> Ilan 228.

<sup>148</sup> For my purposes I am not concerned with whether rabbinic literature described or prescribed reality. In examining the Mishnah's texts about women's public legal roles I am seeking to trace ideas about women in Jewish legal texts and how they changed over time. And while the extra canonical documentary evidence from the Ancient Near East and later (like Qumran and Elephantine) is helpful in understanding women's legal roles as they existed, the rabbinic material is more useful in so far as it demonstrates a shift in thinking from the biblical period, as I will show in this chapter. What is significant is that the rabbis thought and believed about women what they wrote in the Mishnah and their legal writings about women have formulated the basis for Jewish law until today. So whether they were successful in their time in enacting the laws or not does not change an analysis of women's legal status as they purported it nor does it impact an understanding of how it changed over time.

<sup>149</sup> Hauptman, Judith. "Women's Liberation in the Talmudic Period: An Assessment." *Conservative Judaism* 26, no. 4 (Summer 1972) 22-28.

document still has connections to those earlier sources. Does the rabbinic tendency towards egalitarianism she identifies apply in all cases or just some? Hauptman characterizes derogatory statements towards women in rabbinic literature as personal grievances rather than the guiding principles of legislation.<sup>150</sup> Yet if they are not guiding legislation why would they be inserted in the canonized text, where legal cases are being discussed and decided, if they are not guiding principles of legislation? Just because they are not always followed in every case, does not mean the statements did not guide some cases where they are mentioned. Although she makes a case for an egalitarianizing trend Hauptman says that the pervasive attitude of halakhah is that men are more valuable than women.<sup>151</sup>

## **Part Two: Textual Evidence**

Let us now turn to examine and assess women's public legal roles in tannaitic literature I will present examples of texts from the Mishnah, Talmud and Tosefta as well as secondary sources that aim to appraise the legal status of women in these texts and in Jewish legal writing in general.

As we have seen in the previous chapter, the Bible does not explicitly bar women from acting as judges or witnesses and there is evidence from the Bible and documents from the Ancient Near East that give evidence for women being witnesses, having some public leadership roles and acting on their own behalf in legal proceedings. So what does the Mishnah say about women as witnesses?

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<sup>150</sup> Hauptman 28.

<sup>151</sup> Hauptman 22.

The central biblical text used by the Mishnah, Sifre, Baraitot, Talmud, and Maimonides to create the principal to bar women from acting as witnesses is Deuteronomy 19:15. This verse does not explicitly mention women's testimony. It says that there is a requirement for "*shnei edim*", two witnesses. Using a method of biblical interpretation known as a *gezera shava*<sup>152</sup> the rabbis interpret the fact that this phrase appears in the masculine plural to mean that only men are referred to in the mandating of two witnesses, therefore only men can be witnesses. Even though in other cases the rabbis interpret the masculine plural form as a general statement that includes women.

This interpretation of Deuteronomy 19:15 can be found in Sifre Deuteronomy 190.<sup>153</sup> Also, according to Mishnah Shevuot 4:1 the law of oaths of testimony applies to men and not to women, so a woman is not held liable by the rules of the oaths of testimony. It does not say here that a woman cannot be a witness; only that she is not liable to the ordinary rules. The gemara on this Mishnah, quoting a Baraita from Shevuot 30a uses Deuteronomy 19:15 in a different way, to prove that this verse (Deut. 19:15) is concerned with witnesses and not litigants rather than using it to prove men and not women.<sup>154</sup>

In Shevuot 30a the rabbis are trying to codify what is custom and not halakhically based, that women cannot be witnesses. This can be assumed because of the lengths they

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<sup>152</sup> Cohn, Haim Hermann. "Witness." In *Encyclopedia Judaica - CD-Rom Edition*. Israel: Keter Publishing House, Judaica Multimedia, 1997.

<sup>153</sup> Except Sifre uses the masculine plural form of the "*shnei*" to prove that it refers to women rather than a *gezera shava*.

<sup>154</sup> Maimonides in the *Mishneh Torah* Edut 9:1 lists ten classes of ineligible and whoever belongs to one of these groups is disqualified from giving evidence. The ten are: women, slaves, minors, mentally deficient, deaf mutes, blind, transgressors, self-abased, kinsman, and interested parties. In Edut 9:2 he follows the earlier rabbis in bringing Deuteronomy 19:15 as the proof text for his inclusion of women in his list of those who cannot give testimony. In Exodus 18:21 Jethro outlines the qualities of a judge with have nothing to do with learning, only with character. This shows the changing needs of the community in this period. The rabbis wanted to be the judges and judgment was based on knowledge of the law and not the ability to make good decisions.

go to force Deuteronomy 19:15 to be about gender when it is really about number. The rabbis use the *gezera shava* to make the word *edim* in the biblical verse into *anashim* by comparing 19:15 to 19:17. In Deuteronomy 19:17 the verse refers to litigants, it says *shnei anashim*, two “men” who are litigants and in 19:15 it says *shnei edim*, two witnesses. So the rabbis use the principle of *gezera shava* to say that because the “two” appears in front of both the witnesses must be *anashim*, which they take to mean men and not women, even though it is sometimes used to mean “people” not in a gender specific sense. The rabbis could thus easily have used this same *gezera shava* to show that women are included if they interpreted *anashim* as “people”. It is a forced interpretation because the rabbis require that two litigants are in fact two witnesses. The forced nature of this interpretation is noted in the gemara in Shevuot 30a. It is an unnecessary interpretation except that it is invoked in order to exclude women because “*edim*” in Deuteronomy 19:15 could easily be understood to refer to all persons called witnesses, male or female. This whole exercise is only to prove women are excluded.

Towards the end of this Talmudic passage the rabbis include a verses from Psalm 45. Here we find another forced reading. They are trying to show that this Psalm is saying that women should not take a public role because of propriety and modesty, but read in context it is about a woman’s beauty. These stretches of interpretation show that the rabbis wanted to exclude women from being witnesses as a principle, one that did not exist in the biblical text, and they used tools of interpretation to read in and support their views on women’s legal roles and codify it into their legal texts.

I did not find a text whereby women are explicitly prohibited from acting as judges in the Mishnah. In Yebamot 101a-102a there is a reference to the judge of the

*halitzah* ceremony in the masculine form, but it does not explicitly exclude women. Paul Flesher claims that women have no role in court offices in the Mishnah.<sup>155</sup> Maimonides, in the *Mishneh Torah* Sanhedrin, chapter four says to be a judge one must be: ordained to keep the chain of tradition, competent, qualified to discharge judicial duties, in possession of adequate knowledge, and given the authority to act as judge from the Exilarch. Also here there is no specific mention of women either permitted or banned from being judges. However, since women did not have access to the necessary learning, the rabbis did not have to ban women from being judges; it was not really possible for them to be judges because they were already banned from the learning required. Women are however included in the law of damages and act as litigants. In Bava Kamma 15a using the text of Mishnah Bava Kamma 1:3, the gemara explains that women are included in the laws of damages, meaning they may claim compensation and are liable to pay damages. This meant they could be litigants because they had a right to claim compensation for damages done to their property and they could be defendants and be forced to pay damages.

When formulating the legal principle the rabbis say women cannot serve as witnesses but when it comes to particular situations and application of the laws we find a number of examples where women's testimony is legitimate and acceptable. In a discussion of the qualifications of a witness in Sanhedrin 27b the gemara quotes a Mishnah from Rosh Hashannah 1:8 (or 22b) that lists those who are not eligible to be witnesses because they are people not considered trustworthy because of the dishonest nature of their professions and includes slaves. From this Mishnah the gemara states a general principal that all evidence that a woman is not able to bring, those in the list also

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<sup>155</sup> Flesher 222.

cannot bring. This seems to imply that women are not banned from all types of testimony, because it does not say that these people are banned from all testimony, only that which women are not able to give. It can be inferred here that women are able to bring certain types of testimony, but not so grave as that of the coming of the New Moon for Rosh Hashannah, which this passage is addressing specifically. If along side this passage we also examine Tosefta Sanhedrin 5:2 the picture becomes clearer. In this text we find the same list of people ineligible to give testimony about the new moon because of the bad reputations of their professions but this time it says that they are able to give valid testimony in the cases where a woman is able to give valid testimony, so the assumption is here that there are situations in which a woman can give testimony and it is comparable to the situations in which unsavory characters are able to testify. Read with the previous text this completes the picture by offering the reverse, when these individuals can give testimony it is comparable to when a woman can give it. Now that I have shown that there is an exception to the principle whereby women cannot testify, when can a woman give testimony?

I found numerous textual examples where women are able to act as witnesses and their testimony is fully accepted as legal evidence, even in serious matters. In the Mishnah on Yebamot 93b a woman who says her husband has died may marry another man and may be taken in Levirate marriage. In Mishnah Yebamot 15:1 a woman may testify that her husband is dead and she may remarry based only on her sole testimony. In the Mishnah on Ketubot 72a a woman may attest to whether she is ritually pure for sexual intercourse and she is believed. In Mishnah Bava Kamma 10:2 we find that a woman can testify to where a swarm of bees left from which relates to damages incurred

from it. In Mishnah Yebamot 16:5 and 16:7 it says any woman can testify to the death of a woman's husband so she can remarry and in Mishnah Yebamot 15:1 a woman can also testify to her own husband's death and on just her testimony remarry. In Mishnah Ketubot 2.9 a woman may testify to the chastity of a woman war captive, and no man may give evidence. In Mishnah Sotah 6:2 a woman may testify to the defilement of a woman, and the accused woman does not have to drink the *sotah* water if another woman says she was not defiled by another man. In Tosefta Bava Batra 7:2 a midwife can testify which twin is the elder if she helps with delivery, either when there is no contesting opinion or if she was witness to it. In Mishnah Ketubot 1:6 a woman can testify to her own virginity, but only according to the opinion of R. Eliezer, R. Joshua says she needs to bring proof.

There are also texts in the Mishnah that deal with the validity of a woman's testimony. In Tosefta Yebamot 14:1 Rabbi Nehemiah said, in every instance in which the rabbis permitted it, a woman's testimony was on equal footing with that of a man and the same laws of majority apply. So when women's testimony is accepted it was subject to the normal rules of evidence. In Yebamot 117b it quotes a Baraita that says wherever the Torah believes a single witness follow the majority of opinions. So the gemara is saying that in a case where two women testify it stands against one man just like when two men overrule one man, so even women's testimony, when in the majority, is believed over a man's, even though women cannot testify in all cases. When a woman can act as a witness her testimony is fully accepted and subject the same rules of evidence as fully accepted testimony.

Women's testimony about herself in personal matters is one of the areas that the rabbis allow women to be witnesses. In doing so they break another legal principle of testimony of requiring two witnesses. There are exceptions made to this rule, as there are to women's testimony being unacceptable. It is interesting to note that in some situations both these rules are suspended. The texts argue that a woman may testify about herself in personal matters when she has no interest in lying or it would be easily disproved because she has already admitted to some aspect of it, like having been married or taken captive. Some textual examples that illustrate this are as follows. In Mishnah Ketubot 2.5 it says women may testify to having been divorced or taken captive and not been sexually violated and in 2:6 it says women who were taken captive and testify on each other's behalf is acceptable, but not if they testify on their own behalf. In Tosefta Ketubot 2.2 it says a woman can testify about her own marital status and is believed, and if she was taken captive and says she is pure she is believed. In Mishnah Eduyot 3:6 a woman can take of the priest's due if she testifies that she is clean even if she has been taken captive.

Women's testimony related to her husband's impotence is accepted while her husband's is not even though the rabbis are somewhat reluctant to admit it into evidence. This is referred to in Mishnah Ketubot 7:10, Ketubot 77b, Mishnah Nedarim 11:12, Nedarim 91a and Yebamot 65a.

Scholars have written about women's ability to testify and judge in Tannaitic texts. It is helpful here to bring in further material to supplement the understanding of women's public legal roles in these texts in a broader fashion that contextualizes some of the materials in their greater legal setting and allows us to make some conclusions about women's public legal roles in this period.

Ilan asserts women were involved in the legal system not only as defendants but their capacity to give testimony and have other legal roles is complex and, as we have seen from the above examples, the specific law disqualifying women as witnesses is a general halakhic principle but many exceptions arose in custom and practice.<sup>156</sup> He says that testimony by women was accepted when it could not otherwise be obtained.<sup>157</sup> If we look at the textual evidence I presented above it appears that one of the reasons for accepting women's testimony is when there was no one else, such as when a woman can testify to her husband's death if they were abroad or to her own virginity if captured. In some cases the text did not specify that no one else was present such as the case of witnessing to a swarm of bees, but lack of other witnesses does seem to be a factor in many of the examples. Paul Flesher concludes, in his analysis of the circumstances under which women can testify, that women can testify about other their own class and lower, like about other women or slaves, or about her husband but not about a free Israelite male who is not her husband.<sup>158</sup>

Even if it is the case that a woman's testimony was only used in cases where they needed testimony and no one else could provide it, the rabbis still felt a woman's testimony, in the cases they would allow it, was as legitimate, accurate and reliable as a man's therefore they did not think women were incapable of the rational and mental capacities it required. Which begs the question why were women generally not allowed to act as witnesses? This question I will address in the next section. It is also not the case that women were only allowed to testify about trivial matters. In fact it is just the

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<sup>156</sup> Ilan 163 & 165.

<sup>157</sup> Ilan 165. Romney Wegner also asserts that these examples show that a woman's testimony is permitted only when there is no other testimony available and no one else to tell what happened. Romney Wegner 122.

<sup>158</sup> Flesher 222.

opposite. The examples I brought of textual evidence for women acting as witnesses are cases of grave importance in Jewish law. Testifying to virginity or ritual purity was of great concern to the rabbis for sexual intercourse could not happen under cases of ritual impurity. A woman testifying to her husband's death is immensely important because it meant she was free to remarry. If her husband were alive any offspring of the second marriage would be considered illegitimate which had legal and social implications for the child. The matters women could testify about are central to the ritual and social institutions of rabbinic society. That may explain why women were allowed to testify in these areas, testimony was needed for the society to function. Ilan also points out that although the Mishnah has particular views on women's testimony in the second temple period the Jewish judicial system was not monolithic and in some sectors of Jewish society women's testimony in court was perfectly acceptable.<sup>159</sup> So here we have a case of the rabbinic view of the world versus the actual world.

The examples I presented give what appears to be a mixed approach to women in the Mishnah. They cannot be witnesses, except when they can. Their testimony is not valid, except when it is, and then subject to the normal rules of evidence. This brings us back to Romney Wegner's approach to the Mishnah of women as persons and property that I described in the opening section of this chapter. She says, the sages actively or implicitly bar women from public roles, particularly religious, and women automatically possess inferior legal status but they also often treat women as virtually equal to men and ascribe them the same rational minds, practical skills and moral sensibilities and they acknowledge a woman's competence to own property, conduct business, engage in lawsuits, present legal testimony on specified matters, and (if autonomous) to manage her

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<sup>159</sup> Ilan 166.

personal affairs, including her sex life, without male guidance or control.<sup>160</sup> This accurately describes the situation of women as witnesses in the Mishnah. They are inferior to men, cannot automatically be witnesses in all cases, but they are considered as having rational capacities and in the cases where they can give testimony they are treated as virtually equal. Women are restricted in their legal rights, but as I have shown the text to say, women can bring or defend a lawsuit and women are included in the laws of damages. A woman can sue for damages or resist the claims brought against her, and can bring or defend a suit and as a property owner a woman has enforceable rights but as a sexual distraction she must stay out of the public forum and enforce her rights by male proxy.<sup>161</sup> A woman may bring a suit but she cannot usually testify in person and male witnesses can testify on her behalf.<sup>162</sup>

What does this say about women's public legal roles? Women could sometimes act as witnesses, but generally could not, they could own property and act as litigants or plaintiffs in cases involving damages, when acting as witnesses they were subject to the rules of evidence. It would seem women had an active role in the public legal sphere and were not totally confined to the domestic realm. Romney Wegner does not see private and domestic as the same in terms of women's sphere. She says a contract of sale is not domestic but is also not public, so a public/private dichotomy obscures the fact that in the Mishnah women could conduct commercial transactions and legal claims but are still excluded from the public domain, because these things are not public acts, they are

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<sup>160</sup> Romney Wegner 6.

<sup>161</sup> Romney Wegner 119.

<sup>162</sup> Ibid. Here Romney Wegner does not give textual evidence but assumes that a male would testify on her behalf if a woman were unable to testify but could bring a suit. If her assumption is wrong then we may have evidence here that women could testify because they could bring a claim to court. There is no textual evidence either way.

private litigation and do not accord women a place in the public domain.<sup>163</sup> She says the Mishnah does allow women to conduct private litigation and financial business but without a place in the public domain. Here Romney Wegner calls into question my presumption that legal transactions and financial business do equal public legal roles. I agree and disagree with her. I agree that private and domestic are not the same and that a private legal transaction is not the same as holding a communal leadership responsibility but it is a type of witnessing and it is not domestic so I think it does say something about women beyond the domestic sphere in a quasi public role. Although a contract may be between two private parties, making a contract is a kind of public act because that transaction exists in a communal legal context and can be used to bring a complaint before the communal court. Whether women's legal roles are public or private in the Mishnah I do agree with Romney Wegner when she says, the fact that most women in traditional societies have time-consuming domestic responsibilities neither justifies nor explains their exclusion from the public domain because the Mishnah excludes autonomous as well as independent women from active participation in communal worship and study of sacred texts, which precludes them from attaining the position of judge which depends on mastery of sacred texts.<sup>164</sup> Rules in Mishnaic law embody social-structural arrangements that keep women from participation in the intellectual and spiritual life of the community where the highest powers of the society reside.<sup>165</sup> Since women cannot be judges, or even have access to the learning necessary to be judges, and are kept from leadership roles they are not in positions of power in the society, even if they can testify in certain situations that does not give them real access to leadership.

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<sup>163</sup> Romney Wegner 189.

<sup>164</sup> Romney Wegner 190.

<sup>165</sup> Romney Wegner 191.

As we have seen there are some changes that occur in women's public legal roles from the ancient Near East through the biblical period and into rabbinic law as we have it in Tannaitic literature. I will provide a further outline analysis of the changes in my conclusion. I am proposing that there was an external influence on the rabbis who produced the Mishnah that influenced their ideas about women's status and public legal roles and caused them to ban women from participation as a principle. That influence may have come from the surrounding world in which the rabbis lived, particularly the Roman Empire. It is difficult to determine exactly what the impact was. To understand some of the importance of the greater culture's impact on rabbinic Judaism I will present some evidence that we have of this influence and some arguments for a connection between rabbinic Judaism and the Greco-Roman culture as well as some examples from Roman law about women's public legal roles in this period.

### **Part Three: Hellenism and Rabbinic Judaism**

The majority culture of the time of the writing and redaction of the Mishnah in the Land of Israel in the first centuries of the common era was Hellenistic, that is, a Greco-Roman culture also influenced by the peoples living under Roman rule. It included assimilation of Greek speech, manners and culture from the fourth century before the Common Era until the first centuries of the Common Era.<sup>166</sup> The Hellenistic influence pervaded everything even where Judaism was strongest, it affected: the organization of the state, art, law, science, industry and social organization, and the Jews began to share

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<sup>166</sup> Gottheil, Richard and Carl Siegfried. "Hellenism" In *Jewish Encyclopedia.com*. [www.JewishEncyclopedia.com](http://www.JewishEncyclopedia.com), 2002.

this world culture of the Greeks.<sup>167</sup> Hellenism had an appreciable influence on Judaism for many centuries.<sup>168</sup> Hellenism is also used to refer to the cultural tradition of the Greek-speaking part of the Roman Empire between Augustus and Justinian and/or the Greek influence on Rome, Carthage, India and other regions not part of the Empire and to refer to the penetration of Greek civilization into Judea, Persia and other territories, which were subject to Greek and Macedonian rule but successfully preserved their national culture.<sup>169</sup> Even in the various definitions and understandings of the word Hellenism we can see the pervasive attitude that the Greco-Roman culture had a large influence on the communities it ruled over.

There is no uniform agreement as to the exact nature and extent of the Hellenistic influence on rabbinic Judaism but there is much evidence to a fairly significant impact. Jews in this period were not citizens of the Empire and were allowed to maintain some communal structural autonomy. Arnaldo Momigliano asserts that The Jews were an exception to how most peoples accommodated to the Greek state. Some Jews, when confronted with Greek ideas attempted to combine Greek intellectual values with their own, but ultimately Jews organized their political life and culture on their own terms. Jews took an interest in Greek ideas but the larger world did not take much of an interest in Jewish ideas so Jewish intellectual life remained independent.<sup>170</sup> It would seem then that Jews had their own culture and values and political organization so therefore remained somewhat independent, but did take an interest in Greek ideas.

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<sup>167</sup> Ibid.

<sup>168</sup> Ibid.

<sup>169</sup> Momigliano, Arnaldo Dante. "Hellenism" In *Encyclopedia Judaica - CD-Rom Edition*. Israel: Keter Publishing House, Judaica Multimedia, 1997.

<sup>170</sup> Ibid.

Although Momigliano plays up independence and plays down the influence of Hellenism, other scholars focus more on the impact of the Greco-Roman world on Rabbinic Judaism. Louis Feldman notes that Palestine, being part of Hellenistic kingdoms for two centuries, made Greek influence on Jewish life and thought inevitable and influence existed in language, use of Greek art and architecture, names, legal institutions, literature and philosophy.<sup>171</sup> The most obvious influences are seen in Jewish literature of the Hellenistic period. Striking parallels have been noted between Platonism and the methods of dialectic of the rabbis and parallels with the thought of the Epicureans and influence of the terminology of Hellenistic rhetoric.<sup>172</sup> There is also evidence from papyri of Greek legal influence on Jewish business life, using of common Hellenistic law, some even in violation of Jewish law, in loan documents and divorce documents.<sup>173</sup> Here we see that the influence was not only cosmetic but also meaningful.

Resistance to Hellenism is also an important aspect of proving it influenced Rabbinic culture, literature and law. The Rabbinic concept of *seyag l'torah*, putting an additional safeguard around a law to keep further from transgressing it, which we find in Mishnah Avot (1:2?), was created to keep Jews from succumbing to the larger culture. Resistance to Hellenism took many forms, including halakhic, literary, and ideological (ie. martyrdom), was encouraged and intensified by literature, thereby creating a greater variety of literary forms and sources as well.<sup>174</sup> If Hellenism were not in fact making an

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<sup>171</sup> Feldman, Louis Harry. "Hellenism: Hellenism and the Jews" In *Encyclopedia Judaica - CD-Rom Edition*. Israel: Keter Publishing House, Judaica Multimedia, 1997.

<sup>172</sup> Ibid.

<sup>173</sup> Ibid.

<sup>174</sup> Fischel, Henry Albert. "Hellenism: Spiritual Resistance" In *Encyclopedia Judaica - CD-Rom Edition*. Israel: Keter Publishing House, Judaica Multimedia, 1997.

impact on Jewish life that was felt by the rabbis they would not have tried so hard to resist it in these ways.

Although the Mishnah was written in the Land of Israel the Diaspora Jewish community was important in this period of the Greco-Roman world. Jews lived in all parts of the Roman Empire and a distinguishing feature of the Greco-Roman period was the existence of the Diaspora.<sup>175</sup> The bulk of the Diaspora was influenced by Hellenistic and Hellenistic-Roman civilization and Jews did at times turn to non-Jewish law courts.<sup>176</sup> Hellenism heavily influenced the Diaspora Jewish communities.

Rabbinic literature is a valuable source to use to evaluate Hellenism's impact on Rabbinic Judaism. Rabbinic literature is full of information about the customs, manners and life of the ancient Mediterranean and the Jews of Palestine were by no means isolated from this world, they shared many of its general beliefs, conceptions and patterns of behavior.<sup>177</sup> Rabbinic exegesis of the Bible is related to Greek logic, for example the use of *zecher ledavar*, when the rabbis derive a new law from the Torah that is not borne out by the actual meaning in scripture is parallel to a Greek method of derivation.<sup>178</sup> Saul Lieberman writes that there is no basis to the idea that the Rabbis banned Greek wisdom nor did they ban the teaching of the Greek language except to children.<sup>179</sup> Homer is also mentioned by name by the rabbis,<sup>180</sup> so they were aware of Greek philosophy. At the beginning of the second century of the Common Era, under the auspices of the Patriarch, an academy of Greek wisdom was established to facilitate relations between the House of

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<sup>175</sup> Stern, Menachem. "Diaspora" In *Encyclopedia Judaica - CD-Rom Edition*. Israel: Keter Publishing House, Judaica Multimedia, 1997.

<sup>176</sup> Ibid.

<sup>177</sup> Lieberman, Saul. *Hellenism in Jewish Palestine*. New York: Jewish Theological Seminary, 1962. P. 19.

<sup>178</sup> Lieberman, *Hellenism in Jewish Palestine* 57, 62-63.

<sup>179</sup> Lieberman, *Hellenism in Jewish Palestine* 100-101.

<sup>180</sup> Lieberman, *Hellenism in Jewish Palestine* 105.

the Patriarch and the Roman government, but we do not know from rabbinic sources what they considered Greek Wisdom.<sup>181</sup> Jewish leaders also thought Greek philosophy was useful in religious discussions, but only a few outstanding rabbis knew it, the majority only possessed second hand knowledge of "Greek Wisdom".<sup>182</sup> The rabbis use Greek words that are concepts, or technical terms, including legal terms in rabbinic literature and sometimes they used Greek law, literature and proverbs to elucidate verses of the Bible.<sup>183</sup> This shows their knowledge was intimate enough to use Greek legal terms in the formulation of their own legal literature, so they had to be impacted by Greek law since they were using its technical language in their own legal documents. Egyptian Greek papyri can help us understand the Palestinian Talmud, there are many parallels and there is a similarity of certain economic and legal conditions in Palestine and Egypt.<sup>184</sup> Lieberman is convinced of a close contact between Jewish Palestine and the Hellenistic world in general.<sup>185</sup>

Adopting or having a working knowledge of the language of the culture is an important and necessary vehicle for adoption of many aspects of that culture. If Jews, particularly the rabbis, understood the languages of the greater culture in Hellenistic times, Greek and Latin, then an argument for influence is more viable. Rabbinic literature tells us about use of Greek and Latin by the rabbis. But how much Greek and Latin the rabbis knew is subject to scholarly controversy.<sup>186</sup> The data we have that shows knowledge of Greek language and culture is: Greek words that appear in the Talmud,

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<sup>181</sup> Lieberman, Saul. *Greek in Jewish Palestine: Studies in the Life and Manners of Jewish Palestine in the II-IV Centuries C.E.* New York: Philipp Feldheim, 1965. P. 1.

<sup>182</sup> Ibid.

<sup>183</sup> Lieberman, *Hellenism in Jewish Palestine* 7 & 37.

<sup>184</sup> Lieberman, *Hellenism in Jewish Palestine* 3-6.

<sup>185</sup> Lieberman, *Hellenism in Jewish Palestine* 6.

<sup>186</sup> Fischel, Henry Albert. "Greek and Latin Languages, Rabbinical Knowledge of" In *Encyclopedia Judaica - CD-Rom Edition*. Israel: Keter Publishing House, Judaica Multimedia, 1997.

knowledge of Greco-Roman institutions, historical sources, archeology, epigraphy, and changes in Hebrew.<sup>187</sup> Jews who had socioeconomic ties to the Greek world probably spoke Greek but Latin was little known by the rabbis.<sup>188</sup> The Greek language was known to the Jewish masses and certain formulas of Greco-Roman laws were popular but in Jewish Palestine the influences of Greek culture was not as deeply felt.<sup>189</sup> Language is an important transmitter of culture, sharing a language meant Jews could not wholly resist some Greek influence. Use of Greek words in rabbinic literature is further evidence of close contact.<sup>190</sup>

The influence of the Hellenistic world that I am putting forward here is to show that the rabbis were influenced by sources other than just the biblical text they claimed to be commenting on. In looking at women's roles in the Mishnah we need to look at the Greco-Roman world's attitudes towards women and their legal status and public legal roles and compare this to rabbinic literature. The notion that women were light minded, irresponsible and innately inferior espoused by rabbinic literature could have been further encouraged by contact with the Greek world.<sup>191</sup> While Ilan believes there is no single answer to the question of whether Judaism via Christianity detrimentally influenced the way women were treated in the classical world or if it was the influence of Hellenism that detrimentally influenced the treatment of women in Judaism.<sup>192</sup>

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<sup>187</sup> Ibid.

<sup>188</sup> Ibid.

<sup>189</sup> Lieberman, *Greek in Jewish Palestine* 2.

<sup>190</sup> Lieberman, *Greek in Jewish Palestine* 6.

<sup>191</sup> Archer, Leonie J. *Her Price is Beyond Rubies: The Jewish Woman in Graeco-Roman Palestine*. Sheffield: Sheffield Academic Press, 1990. P. 210.

<sup>192</sup> Ilan.

## Part Four: Roman Law

In many parts of Roman law the condition of women is lower than that of men, but women in the classical period had greater property rights and freedom to divorce than pre-twentieth century American and European women.<sup>193</sup> That is not to say that they were able to act fully in the public sphere. Judith Grubbs asserts that Roman legal sources are an important source of information about women in the Roman world and can present a well-rounded and accurate picture of women's lives, even more so than classical literature.<sup>194</sup>

Roman society was very conscious of status and rank, women could not hold office as senators or magistrates, but they could serve locally as priestesses of public cults.<sup>195</sup> Women were politically excluded and could not attend, speak at, or vote in political assemblies, nor hold office.<sup>196</sup> Elite women had more freedom and influence than lower class women.<sup>197</sup> In Rome, not unlike the ancient head of household, we find the concept of *paterfamilias*, the all-powerful man of the house.<sup>198</sup> Also like in the Ancient Near East a woman could become legally independent if her *paterfamilias* died or freed her, but unlike in the Ancient Near East, she still had to have a guardian and could never become a *paterfamilias*.<sup>199</sup> In one source I found it said the wife and children of the *paterfamilias* owned no property, and she was protected financially only

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<sup>193</sup> Grubbs, Judith Evans. *Women and Law in the Roman Empire: a Sourcebook on Marriage, Divorce and Widowhood*. New York: Routledge, 2002. P. xi.

<sup>194</sup> Ibid.

<sup>195</sup> Grubbs 7 & 9.

<sup>196</sup> King, Helen. "Women" in *The Oxford Classical Dictionary, Third Edition Revised*. Eds. Simon Hornblower and Antony Spawforth. Oxford: Oxford University Press, 2003, 1623-1624. P. 1623.

<sup>197</sup> Lacey, William K. "Women, Position Of" in *The Oxford Classical Dictionary, Second Edition*. Eds. N. G. L. Hammond and H. H. Scullard. Oxford: Clarendon Press, 1977, 1139-1140. P. 1139.

<sup>198</sup> Lacey 1139 and Grubbs 17.

<sup>199</sup> Grubbs 18.

by her position,<sup>200</sup> but in another source it said women owned property in their own right and are found in sources as owners, purchasers, leasers and renters of land.<sup>201</sup> The difference here seems to be the former source is dealing with the earlier Greek period while the latter with the Roman context. So, women had a more active public role under Roman law.

Women were required to have a guardian through whom they conducted business.<sup>202</sup> Women could lay charges and appear in court but only under certain circumstances.<sup>203</sup> If they were under guardianship they could not appear in court without permission and had to appoint someone to represent them, and when they were allowed to appear, women could never represent others, only themselves and still were often represented by a male relative or professional advocate.<sup>204</sup> Women could act legally on a matter pertaining to themselves or their property only.<sup>205</sup> The justification for restrictions on women's legal and public activities came from stereotypes relating to women's inherent "weakness" and legal "inadequacy" even though these were at odds with women's competence and reality of their other activities.<sup>206</sup> This is a different approach than we see in the Mishnah, which does not correlate women's exclusion as witnesses to inherent weakness or lack of capabilities but to a biblical prohibition. But, like the rabbis, the Romans justified women's public exclusion from certain roles because of a concern for protection of female modesty.<sup>207</sup> Womanly weakness was also a justification

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<sup>200</sup> Lacey 1139.

<sup>201</sup> Grubbs 9.

<sup>202</sup> Lacey 1139.

<sup>203</sup> Grubbs 60.

<sup>204</sup> Grubbs 60 & 65.

<sup>205</sup> Grubbs 65.

<sup>206</sup> Grubbs 46 and Arjava, Antti. *Women and Law in Late Antiquity*. New York: Clarendon Press, 1996. P. 235.

<sup>207</sup> Grubbs 48.

in Roman law for leniency of sentencing,<sup>208</sup> while in rabbinic law women are treated equally when it comes to liability.

Women could not serve as judges under Roman law, because as I have shown, they were prohibited from any public political office, including judges<sup>209</sup>, but the question as to whether women could act as witnesses in Roman law does not have a simple answer. Women were excluded from testifying to transactions but could appear in court.<sup>210</sup> While Grubbs states that women could be witnesses in some cases and not others, they could in cases initiated by others and they could not when they had been convicted of adultery, nor could they witness a will.<sup>211</sup> Grubbs also notes that in the fourth and fifth centuries of the Common Era women no longer had the right to appear as witnesses, but this may have pertained only to documents and not court.<sup>212</sup> She references the work of Antti Arjava for this information. These two scholars, Judith Grubbs and Antti Arjava both base their evidence about women as witnesses on the same text. They both rely on the writings of Ulpian and Paul who assume the ban on women witnessing testaments was the exception to the rule allowing women's testimony. Yet Arjava also notes that we find an edict of Constantine that says they knew of a ban on women giving testimony that he attributes to "the ancients" because of women's inherent deficiencies and relating to a woman's inconsistency and frivolity.<sup>213</sup>

We find in the end a somewhat mixed view of women's public legal roles in Roman law. On the one hand they were afforded certain rights that could be seen as

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<sup>208</sup> Grubbs 52.

<sup>209</sup> Arjava 234.

<sup>210</sup> Berger, Adolf. "Testimonium" in *The Oxford Classical Dictionary, Second Edition*. Eds. N. G. L. Hammond and H. H. Scullard. Oxford: Clarendon Press, 1977. P. 1047. And Arjava 235.

<sup>211</sup> Grubbs 71.

<sup>212</sup> Grubbs, footnote 138, page 285.

<sup>213</sup> Arjava 234-235.

progressive for their time, but their role in court proceedings and in representing themselves is more limited than in earlier periods, as we have seen. Since both Arjava and Grubbs base their assumption that women can testify on the same text that assumes an exception to the rule, the evidence for women's role as witnesses is somewhat inconclusive. It seems that they did have some role in testimony, and there is no evidence banning them outright from that role in all cases, only in certain cases. Also, it is probable that the standard and the practice were not one and the same. Given all the restrictions on women in court and public in general, it does seem possible they did not testify often, so the rabbis could have gotten the principle of banning women's testimony from the public legal restrictions on women in Roman Law, but not the idea of banning witnessing itself. The rabbis may have been influenced by the fact that they never saw women participating in court in the greater culture around them.

The rabbis take a somewhat similar approach to the Romans in the end. Women can give certain types of testimony and act as witnesses in some cases but not all, and both do not allow women to serve as judges. In both the Roman and rabbinic world the ideas do not necessarily conform to the reality. So, the influence of the Roman law on the rabbis would have been more related to social experiences and interactions than only written law, but as I showed, the rabbis were aware of Roman written works as well. The rabbis formulation of a principle about women as witnesses came out of their need for order and taxonomy, but the exceptions come out of a need to adapt to reality and its varying circumstances. It is this latter tendency that is operating in the interactions between the rabbinic and Hellenistic worlds.

So to conclude, we have seen the Tannaim create a principle that exclude women from acting as witnesses, thereby banning women's testimony, yet they make exceptions to the principle under certain circumstances, and not just one or two. As I have shown, there are numerous exceptions that can be found in the Mishnah and gemara. There seems to be a principle that applies to the exceptions as well, namely that women may testify about their husbands and in situations when no one else's testimony is possible or available, for example, about their own purity. Since women are able to testify under certain circumstances, this demonstrates that it was not a question of their mental or intellectual capacity to testify. The rabbis also allowed women to own property, and widows could conduct their own business affairs.<sup>214</sup> Again it is not a question of capacity, since some women could act in these roles. We do not find women as judges, probably because they were not allowed access to the learning that was required, but why were they denied access to the learning? These questions are difficult to answer. Romney Wegner has suggested that it had to do with controlling women's sexuality by keeping them from appearing in public. There is indication in the Talmud that there was some concern with propriety. But, I think the issue is more about power as Romney Wegner also discusses. Keeping women from acting as judges keeps power in the hands of the few. Judges in this period could only really be rabbis because judging was based on knowledge of the law, which required vigorous learning and not on character traits as it seemed to be in the Bible. Keeping the number of judges to a select few would certainly consolidate power in the hands of the rabbis. Women serving as witnesses would legitimate their full legal participation in life and may have made it more difficult to restrict their rights as the rabbis did with respect to divorce, for example. If women

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<sup>214</sup> Romney Wegner 138.

were full legal participants it would be difficult to justify giving them lesser status in any aspect of life, legal or ritual. It would have been more difficult to exclude them from ritual and cultic roles if women were full public legal participants and leaders. A woman is able to do what a man can when a male is absent a woman. It is about keeping women in a certain place and not about her inherent abilities or qualities. So, it is really about power.

We can also see that there was a relationship between the rabbis and a greater social milieu. Their principle of restriction for women as witnesses is not biblical in origin, even though they interpret it as such. In the Bible women are not banned from acting as witnesses or judges, the rabbis impose this interpretation on the text. Furthermore, except in the latest periods, we have evidence that women were witnesses in the Ancient Near East, which gives further support to the fact that they were in the biblical period. The rabbis restrict women's legal roles probably as a result of cultural norms in their time. Women had very restricted legal rights in the Greco-Roman period even though they could serve as witnesses some of the time. A shift seems to have occurred from the time of the earliest Ancient Near East material until the later where women's public legal roles were being more restricted. So, leading up to the earliest rabbinic period there was already a cultural norm towards women not being witnesses except under certain circumstances. Judaism seemed to become more restrictive to women in rabbinic times than biblical; it became more hierarchical from within and more focused on the male functions of study and worship.<sup>215</sup> It is not possible to conclusively identify the impact of the general Hellenistic culture or Roman law on the rabbinic statute

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<sup>215</sup> Bronner, Leila Leah. "The Changing Face of Woman From Bible to Talmud." *Shofar: An Interdisciplinary Journal of Jewish Studies* 2, no. 7 (Winter 1989) 34-47. P. 46.

towards women as witnesses, but there seems to have been some influence on the rabbis by the general culture and a general social trend before the rabbinic period away from women's inclusion in public legal roles generally. Outside of the area of witnessing and judges, the rabbis seem more progressive on women's public legal roles than women under Roman law.

## Chapter Three: Extra-Canonical Texts from Jewish Communities

### Part One: Babbatha and Qumran

The Bible and the Mishnah are important sources for tracing women's public legal roles and status in Israelite law and rabbinic Judaism, as are ancient Near East legal documents for enhancing the biblical material, but these are not the only documents available for information on Jewish law and social organization of Jewish communities in the ancient world and late antiquity. Documents from Jewish communities in the second century of the Common Era in the Judean desert give us more information about laws related to testimony and women's legal roles during late biblical times. In surviving documents from Qumran from the early Roman period we get a window into laws relating to testimony and in the documents recovered in the Cave of Letters and other caves in the Judean desert we can read about the legal maneuverings of the widow Babatha to learn about women's legal roles in these communities.

Babatha was a notable resident of Mahoza, born around 100CE.<sup>216</sup> Her ketubah, found in the Cave of Letters from the Bar Kochba period, is one of the earliest known examples of the genre.<sup>217</sup> In another document found in this cave, we have a document whereby Babatha's father leaves gifts to her after his death and allows her to remain on his property, also limiting the rights of his widow, Babatha's stepmother.<sup>218</sup> In her analysis of documents about Babatha Ann Hanson says, although Babatha was a Jewish

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<sup>216</sup> Yadin, Yigael. Jonas C. Greenfield, Ada Yardeni and Barch A. Levine (Eds.). *The Documents from the Bar Kikhba Period in the Cave of Letters: Hebrew, Aramaic and Nabatean-Aramaic Papyri*. Jerusalem: The Israel Exploration Society Institute of Archeology, Hebrew University, Shrine of the Book, Israel Museum, 2002. P. 118.

Hanson, Ann Ellis. "The Widow Babatha and the Poor Orphan Boy." *Law Documents in the Judean Desert*. Ranon Katzoff and David Schaps (Eds.). Boston: Brill, 2005, 85-104. P. 89.

<sup>217</sup> Yadin 119.

<sup>218</sup> Yadin 83 & 105.

woman she had much in common with many women in Rome and Egypt and was not unique; her life pattern was common, she married and was widowed numerous times at a young age.<sup>219</sup> Despite being illiterate and needing male guardians and scribes and a male representative to conduct transactions on her behalf in Roman courts, Babatha actively managed her own business affairs.<sup>220</sup> She worked to secure financial support for herself, and the orphan child she cared for, and to recover a dowry by bringing petitions to the court as well as being engaged in lending money with interest; and she used legal means in order to recover both her dowry and money from her dead husband's estate owed to her as support after his death.<sup>221</sup> Her business dealings were shrewd and she was able to manipulate judicial machinery.<sup>222</sup> Hanson characterizes Babatha as a formidable opponent and a vigorous champion of rights she felt were hers.<sup>223</sup>

In a particular document we find the struggle for money for the support of her son. Babatha was widowed and a guardian had been appointed to manage her son's inheritance of his father's money. In this document we see that Babatha felt the money given by her son's guardian for maintenance of her son was inadequate so she petitioned the court to have an adequate sum fixed.<sup>224</sup> She claimed the amount was not commensurate with the interest on her son's inherited money and property and so Babatha wanted to control her son's money and make it accrue more value.<sup>225</sup> Roman sources from the first century onward attest to the tendency to hand over administration

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<sup>219</sup> Hanson 86.

<sup>220</sup> Hanson 89 & 92.

<sup>221</sup> Hanson 96 & 98.

<sup>222</sup> Hanson 99.

<sup>223</sup> Hanson 103.

<sup>224</sup> Chiusi, Tiziana J. "Babatha vs. the Guardians of Her Son: A Struggle for Guardianship - Legal and Practical Aspects of P. Yadin 12-15, 27." *Law Documents in the Judean Desert*. Ranon Katzoff and David Schaps (Eds.). Boston: Brill, 2005, 105-132. P. 110-111 & 114.

<sup>225</sup> Chiusi 121.

to the mother, so women were “liberated” as independent administrators of their own property.<sup>226</sup> It is not clear if this refers to her son’s property as well or just her own inheritance. It seems Babatha was trying to make use of a provision of Roman law, but scholars have asked why as a Jew she did so? Rabbinic sources from later times frown on using the Roman courts. Some have therefore argued that Roman law gave her greater recourse than Jewish law.<sup>227</sup> Her documents also raise a larger cultural issue of whether provincial practice influenced Roman law or Roman law propagated into the provinces.<sup>228</sup>

Babatha presents an interesting case. Even though she faced some legal restriction on her actions, such as needing a male representative, she was able to take significant legal action on her own behalf and was able to bring claims to court. There may have actually been a closer relationship between Roman and Jewish law than formerly believed. Neusner writes, “Any picture of the Israelite woman in the second century as chattel and dumb animals hardly accords with the actualities revealed in the legal documents of Babatha.”<sup>229</sup> As reading about Babatha suggests, the world outside the frame of the Mishnah may be different from the inside.<sup>230</sup> The Babatha archive thus shows us there were other ways Jewish women functioned in the legal system of this period besides the later system prescribed by the Mishnah. Romney Wegner however disagrees with Neusner. She asserts that the documents that we have from Babatha do not necessarily support the idea that other forms of Judaic culture contemporary to pre-mishnaic Rabbinic Judaism gave women a public role that the Mishnah later did not,

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<sup>226</sup> Chiusi 130.

<sup>227</sup> Chiusi 131.

<sup>228</sup> Chiusi 132.

<sup>229</sup> Neusner, *Mishnah on Women* 90.

<sup>230</sup> Neusner, *Mishnah on Women* 91.

because the Mishnah does in fact allow women to conduct private litigation and financial business.<sup>231</sup> She is saying that the Mishnah's stance is more liberal for women than what we see Babatha doing. For Romney Wegner Babatha is restricted as a litigant while under later Mishnaic law she could have functioned independently. I agree with Neusner that Babatha presents a somewhat different picture. While Romney Wegner is correct when she says that the Mishnah does allow women to conduct private litigation and financial business, there is something unique in the way Babatha functions, which is different than the way the Mishnah addresses women's legal roles. She seems to be active in legal proceedings in a way that women presented or discussed in the Mishnah are not. She takes the initiative in the proceedings while in the Mishnah we do not see women doing that.

Somewhat contemporary to the documents of Babatha are the Dead Sea Scrolls, also from a Jewish community in the Judean Desert, the Dead Sea Scrolls found at Qumran tell us about the legal organization of the community there. In an article about testimony in Qumranic jurisprudence, Ben Zion Wacholder looks at documents dealing with the number of witnesses required for valid testimony. In doing so he provides us with the qualities of witnesses that are unacceptable, these include not fearing God and transgression of a commandment. Anyone who has these qualities cannot provide testimony.<sup>232</sup> There is no mention of women being excluded. Wacholder also notes that in the Qumranic judicial system as a whole, specifically the rules pertaining to testimony, differs radically in many respects from that of the rabbinic Sages and all these laws in the

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<sup>231</sup> Romney Wegner 189.

<sup>232</sup> Wacholder, Ben Zion. "Rules of Testimony in Qumranic Jurisprudence." *Journal of Jewish Studies* 40 (1989) 163-174. P. 172.

Qumran documents reflect a greater stringency than Talmudic legislation.<sup>233</sup> Women are not mentioned in the Qumran documents relating to testimony yet it is a generally more stringent approach to these laws. Since Qumranic jurisprudence is stricter we would expect to have found women excluded and we do not. So the fact that the rabbis have a principle that excludes women may not be a stringency but a departure altogether. This still leaves open the question of how the exclusion of women from testifying by the rabbis of the Mishnah originated. We can also see that other Jewish communities at this time did not subscribe necessarily to the same rules of testimony as the Mishnah and perhaps differed concerning women's participation. Based on the Qumranic texts we find a diversity of approach to women's participation and therefore the rabbinic interpretation is not common throughout this period in Jewish communities, which may lead one to believe the move to ban women from participation in legal roles came from an external source and not from the Bible.

## **Part Two: Elephantine**

There are also surviving documents from another Jewish community, the military outpost in Elephantine Egypt. The Elephantine Papyri, dated from the sixth century before the Common Era, give us additional information on women's legal status of that community. These Jewish communities provide a more complete picture of the Jewish practice prior to the Mishnaic period, and more information about women's actual legal roles.

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<sup>233</sup> Wacholder 171 & 174.

Elephantine is an even earlier Jewish community that began as a military outpost in Egypt in the late fifth and early sixth centuries before the Common Era. We have papyri from this community that gives a window into their legal system. This community can tell us more about early Jewish communities that were not biblical or rabbinic, yet were part of the Jewish legal tradition and influenced by the practices and laws of the Israelite period. In the papyri witnesses to each document are listed. I have found no women listed as witnesses in any of the documents, but there are documents that relate to women's legal rights and status. In document B2.3 a father bequests a house to his daughter because he has no other son, daughter, brother, sister or any other woman or man to give it to, and the daughter is allowed to pass it on to whomever she "loves".<sup>234</sup> This shows that although a woman was not the primary inheritor, when she was given property she could own it and had rights to do with it what she pleased. There is also a document of wifehood (B2.6), which resembles a *ketubah*, guaranteeing a woman property rights and it seems to grant the right of divorce to her or her husband.<sup>235</sup> In the document of wifehood B3.8 it does in fact clearly state that a woman could initiate divorce.<sup>236</sup> Having rights in a marriage could be a sign of more liberal attitudes towards women. Another document that relates to women in the Elephantine Papyri is an exchange of inherited shares drawn up by sisters Salluah and Jethoma (B5.1). It is the earliest from Elephantine (495 BCE) and although the witnesses are male the document is between two women and written at their instruction.<sup>237</sup> In B5.5 we find a mutual quitclaim between two women in which each woman renounced their respective claims to

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<sup>234</sup> Porten, Bezalel. *Textbook of Aramaic Documents from Ancient Egypt: Newly Copied, Edited and Translated*. Jerusalem: Hebrew University Press, 1989. P. 25.

<sup>235</sup> Porten 33.

<sup>236</sup> Porten 82.

<sup>237</sup> Porten 117 & 119.

payments made and received.<sup>238</sup> This document was commissioned by and for women and represents a kind of testimony because of their agreement to withdraw claims one against the other.<sup>239</sup>

We see that in Elephantine women were involved in legal capacities and were able to draft documents, own property and represent themselves in contracts. There is no indication of the need for male representation although to be sure we do not find women as witnesses to these documents. Women could commission contracts to be drawn up and as independent actors they could be plaintiffs and the documents could verify their claims or rights to property as independent actors under the law. So while women are not to be found as witnesses, the Elephantine Papyri allow us to see a Jewish community that predates the rabbinic period, but is not wholly influenced by the Bible. It can serve as a bridge between the biblical and rabbinic periods to show how attitudes towards women's public legal roles were changing from the biblical to the rabbinic period, even before any influence from the Greco-Roman world.

With the documents from these Jewish communities we can expand the analysis of women's public legal roles by bringing further evidence to our discussion. From these recovered documents we see that women had the ability to own property and be involved in legal proceedings and contracts although we do not have clear evidence of their being witnesses in the strict sense. This is further evidence for an approach that sees women's legal roles as expanded and varied despite some restrictions later placed on them by the Mishnah. We can identify roles they were able to have and see that although the Mishnah

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<sup>238</sup> Porten 117.

<sup>239</sup> Porten 127.

restricts women through the creation of principles, women had active participation in legal systems in post-biblical Jewish communities.

## **Conclusion:**

In this study of women's public legal roles I have examined texts within and without Judaism in the biblical and early rabbinic periods to understand women's roles as judges and witnesses. In the first section on the Ancient Near East I found that women were able to be witnesses in many places and times in Ancient Near Eastern cultures. It was only in the latest periods in Mesopotamia that we begin to see that participation being less common and women's public roles more restricted. In the Bible we find no evidence prohibiting women from acting as witnesses, and we have women taking public legal roles as plaintiffs, prophetesses and, in the case of Devora, a Judge. In tannaitic literature we find a principle created by the rabbis banning women from acting as witnesses based on their interpretation of a biblical verse, yet we still find many textual examples when women's testimony is permitted. There is also some evidence an influence of Hellenistic culture and Roman law on rabbinic Judaism and we find that Roman law, while allowing women to be witnesses, bans them from serving as judges and restricts their other public legal roles.

So what are the implications of this study? What conclusions can be drawn from the evidence I have presented? To begin with, women's exclusion from public legal roles is not as old as the rabbis would have us think. Women were not excluded biblically or in the cultures of the Ancient Near East preceding the Bible. The rabbis' exclusion of women does not relate to their inherent capabilities or qualities. This exclusion was not universally applied so we see that there had to be other motivating factors. Power is perhaps one factor (as well as control) in their decision to restrict women's public legal roles as witnesses and leadership capacities as judges. What this study reveals is that

women's roles have changed over time in Judaism. Women's status in law is partly determined by outside cultural influences and changing contexts of understanding. With the need by the rabbis to organize everything into categories, including women's roles and changes we see emerging in the ancient period that show a trend towards women's exclusion combined with the influence of Roman law and Hellenism it is not surprising that the rabbis exclude women from being witnesses through a statement of principle. But even this principle does not operate consistently in the rabbinic framework. The exceptions that allow women's testimony show that practicality won over ideas when a solution was needed to a problem, in this case, the problem of having no one to testify in certain cases when testimony was vital.

The nature of the rabbinic project is of relevance here. The rabbis probably did not innovate as far as women and witnessing were concerned but they also did not suppress what was going on around them. We saw a tendency towards restriction of women's public legal and leadership roles in the later Ancient Near East documents and even earlier, in Elephantine, women do not seem to have been witnesses. So there was something taking place in the ancient world, before Hellenism, whereby women were being excluded, but we do not know why. Perhaps the rabbis took a concept available to them in Roman law, the restriction of women's public legal roles. Their need for a formal and stated principle comes out of the rabbis' need to organize and make categories of everything around them in their system, as I discussed earlier. They did not adapt Roman law wholeheartedly but probably accepted the standard social and legal conventions of their day. The fact that the rabbis base their exclusion of women as

witnesses on the Bible is a hermeneutical necessity for them, but does not make it an historical reality of the biblical text.

Looking at women's public legal roles as judges and witnesses is also a way to gain more insight into women's roles and place generally in a particular culture or society, keeping in mind of course that laws may be more prescriptive than descriptive. In the case of Jewish law we can propose, through this example, that women's roles in other public areas became more restrictive over time from the biblical period through the early rabbinic. Because there are no arguments as part of discussions of women's public legal roles relating to any defect in their innate mental capacities, we can deduce that women's restrictions in certain aspects of Jewish life, including the cult, was not based on their capabilities, but on propriety or was about limiting women's power and maintenance of the social order. That is, should women be doing these things, rather than are women capable of doing them? This tells us about how women were viewed generally as sentient, rational beings along side of men, but ones who did not have equal roles and status in the community.

The role of women as judges was not dealt with explicitly in most of the texts investigated here so it is difficult to deal with this role in as expansive a fashion as that of witness. It appears that it is not discussed because it was not possible for women in the rabbinic period to achieve the level of education required. Ancient Near Eastern law, because it is casuistic does not give us an indication of public leadership roles for women or not. The role of plaintiff for women does give us a more complete picture by showing how women functioned and had access to in the public legal realm of a society and give an indication of their rights as legal actors.

If I could continue this research I would look deeper into other evidence we have for women's social roles in the Ancient Near East. I would expand it beyond witness and judge and look at women in other contexts as well. I would also probe deeper into women as judges and witnesses by extending into the Amoraic period and in later Jewish legal codes and tracing this topic over a broader range of times and places to get an even fuller picture of women's public legal roles in Judaism.

At a certain point the question of the external influence on the rabbis and even of exactly what women's roles were in a given period is not solvable. We can only investigate based on the evidence available and develop theories of the relationship between the rabbis and the Hellenistic world based on that evidence. The Bible is a vast and complex document that spans times and places and reflects social and legal milieus of the Israelite people over the long period of the ancient world. The rabbis views are shaped by a number of factors: their social and legal context, their world view, history, politics and their hermeneutical approach to deriving laws based on the biblical text. Women's roles in Jewish life and law are complex and ever changing. Just as they have evolved in the past they will continue to evolve. Halakhah is not God's stated will in this case, but a human interpretation. Based on the evidence I have presented we need to recognize the fact that there has always been change in Jewish law and adaptation to circumstances and necessities and social contexts. When the rabbis must solve a problem they solve a problem. With that in mind I hope that women's role in Judaism can become ever expanding until they are equal actors in all aspects of legal and ritual law and custom. There is evidence to show that women did not always have the same roles and

we should embrace this tendency toward change and adaptation as a part of Judaism's tradition and history and as a legitimate expression of Jewish life and law.

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