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VIEWS OF WOMEN IN THE SCHOOLS OF RABBI AKIVA AND RABBI ISHMAEL

CATHY FELIX

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INTRODUCTION

In this study, I will examine the teachings of Rabbi Akiva and Rabbi Ishmael, contemporary leaders in first century Judea. I will compare their rulings on women to determine if they form a consistent position about women's legal status and roles, and whether there are differences in the positions of the two Rabbis. I will then extend the analysis and examine the teachings of the two Rabbis' outstanding disciples: Rabbi Jonathan and Rabbi Josiah of Rabbi Ishmael's school, and Rabbi Simon ben Yohai, Rabbi Judah ben Ilai and Rabbi Meir of Rabbi Akiva's school. Analysis of these students' traditions and views will show the extent to which the students reflected and amplified the point of view of their teachers regarding women.

BACKGROUND

In the Bible, women's legal position is clearly inferior to that of men. The society is built on patriarchy. A woman is usually under a man's aegis, first her father's, then her husband's, and the transfer of authority is marked by the payment of the mohar, the bride price (Ex. 22.15). Her primary task is to bear children (Gen. 25.21). In this role, she is accorded respect (Lev. 20.9, Deut. 27.16). Much effort is expended to guarantee a man the exclusive use of a woman. Punitive measures like the sotah ritual for wives suspected of infidelity attempt to assure the man that he is the father of his wife's issue. If a man is dissatisfied with his wife, he may summarily divorce her or take another (Deut. 21.15).

Within the covenant, women had practically the same responsibilities as men. They were equally subject to the death penalty (Deut. 17.2, 5) and could offer their own sacrifices for lesser crimes (Num. 5.2-4). Only men, however, were obligated for the three annual pilgrimages (Ex. 23.17, 34.23; Deut. 16.16).

Women did not participate fully in cult activities; there were no orders of priestesses. Women were present at weddings and funerals though (II Sam. 1.24), and women were commonly associated with magic and divination (Ex. 22.17; I Sam. 2.22). In addition to conditions of impurity which devolved upon both men and women, a woman was considered ritually impure during her menstrual flow (Lev. 15.1-ff).

SOURCES AND METHOD

The rabbis of Mishnaic times accepted the Bible as their base. At times, however, they interpret it freely enough to circumvent the intent of the text. For example, some surround capital punishment with so many restrictions that they make such a sentence impossible, or Hillel institutes the prosbul to evade the debt cancellation mandated every seventh year, or the eruv tavshilin extends the scope of activities permitted on a holiday. The rabbis are not always bound by Biblical laws. Confronted with texts about women, a Tanna may choose to follow the literal meaning, accept the Biblical framework with modifications, or broadly interpret the text to circumvent its intent. By assessing the options a Tanna chose, the reader can draw a picture of his position on the status of women.

In this thesis, I limited myself to Tannaitic traditions. These

traditions are found in the halachic midrashim, the Mishnah, the Tosefta, and the Talmudic baraitot. This study deals with material from all these sources except from the Talmud.

Though the anonymous sections of the compilations of halachic midrashim, the Mishnah, and Tosefta are attributed to either the school of Rabbi Akiva or the school of Rabbi Ishmael, there is evidence that the extant compilations of halachic midrashim contain material characteristic of both schools, as well as later interpolations. Since the anonymous material is not a reliable guide to the attitude of the school from which it emanated, I will focus instead on statements explicitly attributed to the rabbi under consideration.

This method is not foolproof. One problem is the question of the accuracy of the attributions: just because we have a text which shows Rabbi Akiva as the author of a statement, are we justified in accepting him as the tradent? This problem is mitigated by the criterion of internal consistency: if the collected statements of Rabbi Akiva on women all seem to lean in a certain direction, we can conclude that the Akivan view had this set of tendencies. Once a sense of the overall point of view is attained, statements leaning in a different direction can be noted as anomalous or, possibly, as incorrectly ascribed. A second problem is the paucity of attributed material. There are lacunae in certain areas for different rabbis. Worse, since the Mishnah and Tosefta are, to a great extent, products of the Akivan school, there are only a few decisions of the Ishmaelite school which have been preserved. With such limited information only a general picture of the Akivan and Ishmaelite views about women can be drawn; many specifics are missing. The goal of this paper is to present this general picture by examining these men's teach-

ings about women. The study will show that even as early as the Tanna-
itic period the rabbis took very different positions on the status of
women.

RABBI AKIVA

Rabbi Akiva is conservative in his approach to women's legal issues. In general, he does not interpret Biblical texts in a way which ameliorates women's position, but is content to leave them in a second-class legal status.

RABBI AKIVA'S UNDERSTANDING OF THE SOTAH RITUAL

The humiliating rite of sotah tests a wife suspected of committing adultery. The husband brings the wife and an offering to a priest. The priest prepares a potion of "bitter waters" for the woman to drink which causes the woman to die painfully if she is guilty and leaves her unharmed if she is innocent (Num. 5.11-31). Rabbi Akiva interprets Scripture in a way which increases the rite's rigors, as can be seen from the following passage:

"He shall cause the woman to drink the bitter water" (Num. 5.24). Why is this verse written, since it is already written: "After he made the woman drink the water" (Num. 5.26). What do we learn from the first phrase? That if she erases the scroll and says, "I will not drink," they should scold her and force her to drink against her will. So rules Rabbi Akiva. But the sages say, why is the verse "After he cause the woman to drink" written, since it is already written: "He shall cause the woman to drink...." What do we learn from the first phrase? At three points the ritual can be suspended: before the scroll is erased, before the priest gives the woman the meal offering and before she assents to the vow.

Sifre Bamidbar Nasa 17.21¹

Rabbi Akiva takes a punitive attitude toward the woman. He interprets the verse in a way which deprives the suspected woman of choice and subjects her to verbal abuse. Rabbi Akiva exhibits an unsympathetic attitude to the woman's plight.

RABBI AKIVA'S DISQUALIFICATION OF WOMEN AS WITNESSES

Rabbi Akiva does not permit women to be witnesses, even in the area of providing testimony of a husband's death, an area in which the rabbis are generally more lenient. Rabbi Akiva received a tradition that in such a situation, one person may provide sufficient evidence to permit the wife to remarry:

Rabbi Akiva testified in the name of Nechemiah from Beit Deli that a woman may remarry on the evidence of one witness.

Mishnah Eduyot 8.5 ²

Though one witness is permissible, Rabbi Akiva prohibits a woman from serving as that witness:

Rabbi Akiva said: When I went down to Nehardya to declare a leap-year, I met Nehemiah of Beit Deli. He said to me: "I heard that in Israel, no sage except Rabbi Judah ben Baba permits a woman to remarry on the evidence of one witness." I told him he was correct. He said to me: "Tell them in my name: You all know that the country is in turmoil due to the bands of marauders. I received a precedent from Rabban Gamliel the Elder, that a woman can remarry on the evidence of one witness." When I recounted this story before Rabban Gamliel, he was pleased and said: "We have found support for Rabbi Judah ben Baba." While he [Akiva] was speaking, Rabban Gamliel remembered that some men were killed at Tel Arza and Rabban Gamliel the Elder permitted the wives to remarry on the evidence of one witness, or on the evidence of a witness who heard of the death from another witness, from a slave, from a woman, from a bondwoman.

Rabbi Eliezer and Rabbi Joshua said: A woman cannot remarry on the evidence of one witness.

Rabbi Akiva said: Not on the evidence of a woman, and not on the evidence of a male or female slave, and not on the evidence of relatives.

They said to him: Once some Levites went to Tzoar, City of Palms. On the journey, one of them got sick, so they brought him to an inn. When they returned, they asked the woman who was the innkeeper,

"Where is our companion?" She said to them, "He died and I buried him" His wife was permitted to remarry. They asked him: Isn't a woman of a priestly family as trustworthy as an innkeeper? He answered: Only in such cases as when the innkeeper was believed, for she had brought out his staff and his bag and his personal torah.

Mishnah Yevamot 16.7³

Apparently, the fact that Akiva disqualified women from being witnesses rested not on a received tradition but on his own attitude that women in general are not trustworthy, and are not to be believed unless they can produce subsidiary material evidence. Rabbi Akiva is willing to rule against a received tradition that he knows in order to disqualify women, a serious decision and strong indicator of his views of women.

RABBI AKIVA'S DECISIONS ON THE STATUS OF MARRIED WOMEN

Rabbi Akiva is exacting about the laws of marriage. In his attempts to maintain the purity of marriage, he is willing to put women into the limbo of being agunot, women unable to remarry, because the whereabouts and conditions of their husbands are unknown.

A woman travels with her husband to a country across the sea. If she returns and claims that her husband died, she may remarry and receive her ketuvah, but his other wife may not remarry. If she were an Israelite married to a Cohen, she can eat terumah [the priest's portion] according to Rabbi Tarfon. Rabbi Akiva said: This is not the way to keep her from sin. Rather, she should be forbidden to remarry and forbidden from eating terumah.

Mishnah Yevamot 15.6⁴

While later commentators interpret Rabbi Akiva's remarks as referring to the co-wife, there is no indication from the context that it does not refer to the original wife. If his comment refers to the original wife, he is condemning her to remain unmarried the rest of her life, unlike the first opinion which permits her to indeed, his ruling refers

to a second wife, he refuses to permit her to remarry, and at the same time denies her the benefits of her marriage, that is, the privilege of eating terumah. She is not legally married to her husband, nor legally freed from him. She must live out her life in this twilight status, because a woman's testimony, especially that of a co-wife, is not wholly acceptable.⁵

Akiva rules similarly in the next Mishnah:

If she says, "My husband died, and then my father-in-law died" she may remarry and receive her ketuvah, but her mother-in-law is forbidden to remarry. If she were an Israelite married to a priest, she may continue to eat terumah [the priest's portion] according to Rabbi Tarfon. Rabbi Akiva said: This is not the way to keep her from sin. Rather, she should be forbidden to remarry and forbidden to eat terumah.

Mishnah Yevamot 15.7 ⁶

Again, since he does not accept a woman's testimony, Rabbi Akiva relegates the wife or mother-in-law to the tragic status of being neither married nor free to marry another.

While the majority of sages are willing to ease some of the strict laws of evidence to reduce the number of such unfortunate women, Rabbi Akiva does not agree:

Witnesses testifying to a husband's death are not subject to investigation and cross-examination. Rabbi Tarfon and Rabbi Akiva said: Witnesses testifying to a husband's death are subject to investigation and cross-examination."

Tosefta Yevamot 14.10 ⁷

In his zealousness to prevent bigamy and the resultant tragedy of bastard children, Rabbi Akiva is not willing to grant any leniency to a woman whose husband is missing. He is willing to trade off her certain misery for the slight possibility that her husband may return after she has remarried and has had children by her new husband.

Rabbi Akiva's strict views of marriage are reflected in other judgements:

A man who died without offspring was married to two women. If one of the women marries or is officially released from marrying one of his brothers, the co-widow is exempted [from the levirate marriage obligation]. If one of the widows were related to one of the brothers so that marriage between them is forbidden, even if he formally release her, his action is worthless: the co-widow is not exempted and one of the widows is still obligated to one of the brothers. If the widow were forbidden to one of the brothers by a rabbinic extension of prohibited relationships, or if she were forbidden due to the special marriage rules for priests, but they nevertheless marry, or he formally releases her, the other widow is exempted. A man who remarries a woman he divorced after she was married to another, or one who married a woman he had formally released, or one who married a relative of a woman he divorced is not really married: the marriage is invalid, the woman does not need a get, she is disqualified from marrying a priest and any children are bastards, ruled Rabbi Akiva. The majority ruled: the marriage is valid, in order to divorce she needs a get, she is not disqualified, and the child is legitimate.

Tosefta Yevamot 6.5 ⁸

For Rabbi Akiva, transgressing rabbinic prohibitions in marriage is enough to invalidate the marriage, while the majority does not agree. This exacting concern for the purity of the marriage bond overrides his concern for the individual woman whose status is impaired.

RABBI AKIVA'S OPINION ON THE GROUNDS FOR DIVORCE

Rabbi Akiva's unwillingness to interpret laws to the benefit of women occurs strikingly in his rulings about permissible causes for divorce:

"If he is not pleased with her...he shall write out a bill of divorce...(Deut. 24.1). Rabbi Akiva ruled: Even if he should find another woman prettier than her

[that is sufficient grounds for divorce] as it says,
 "If he is not pleased with her."

Sifre Devarim 289.16 ⁹

Rabbi Akiva emphasizes that a man may issue his wife a divorce arbitrarily and capriciously, even to the point that he may make her leave him if someone else should catch his fancy. He grants the husband great latitude, and, as if in compensation, he complicates the divorce ceremony, to give the man time to rethink the matter. It would be far more sensible to make acceptable reasons for divorce more stringent, so the man has time before the ceremony to rethink the matter. Once the man is set on divorce and after he has fulfilled whatever conditions were set, the ceremony can be simple and quick to prevent any questioning of the correctness of the procedure.

Rabbi Akiva's focus on physical attraction as the basis for a marriage relationship is clearly reflected in another decision.

"...and of her that is sick in her menstrual flow" (Lev. 15.33). The early masters ruled: When she is having her period, she should not use eye shadow or rouge until she has undergone immersion. Rabbi Akiva taught: This is an issue of possible loss of attraction in which the husband may wish to divorce her. Therefore I rule that the phrase "and of her that is sick in her menstrual flow" means that she remains in this state of separation until she undergoes immersion.

Sifre Zavim Peret 9.12 ¹⁰

Though Rabbi Akiva's decision is superficially more liberal than the earlier masters, it is actually degrading. A man's relationship to his wife is based so exclusively upon her looks that if she does not use makeup to enhance her appearance and hide her flaws, his attentions will wander. It is a sad comment on the nature of the marriage bond if it is eye shadow that keeps a husband happy at home. Implicit in this viewpoint is the debasement of the woman into a sexual object for her husband's pleasure. This decision also confirms that Akiva's statements about

grounds for divorce are meant literally, and not as metaphors for the breakdown of communications, as the apologists claim.

THE PROTECTION OF THE MAN IN THE RITE OF CHALITZAH

Another deceptive passage occurs regarding chalitzah, the ritual which frees a childless widow and her brother-in-law from marrying each other. Scripture mandates that the widow must loosen her brother-in-law's shoe, spit in his face, and recite a set passage before the elders. The rabbis debate the necessity of these elements:

...If she took off his shoe and read the proper words, but did not spit in his face, the ritual is invalid according to Rabbi Eliezer. According to Rabbi Akiva it is valid. Rabbi Eliezer said: The text reads, "So shall it be done" (Deut. 25.9), so if any action is improperly done, it invalidates the ritual. Rabbi Akiva answered: My proof is from the same verse: "So shall be done to the man...." The validity of the ritual depends on any action the man must do.

Mishnah Yevamot 12.3 ¹¹

While the effect of Rabbi Akiva's ruling is to make the ceremony easier for both the woman and the man, the rationale is that only what happens to the man is important. The man is thereby spared the humiliation of being spat upon. Similarly, Rabbi Akiva ruled that, after the fact, a private chalitzah ceremony is valid, so the man may be spared the public humiliation of the degrading ritual. Rabbi Akiva's concern for the man's feelings contrasts strongly with his lack of concern for the woman undergoing the sotah ritual ¹² and highlights his negative legal views regarding women.

RABBI AKIVA REGARDS WOMEN AS IRRESPONSIBLE

Other sages were sensitive to Rabbi Akiva's low opinion of women. While the following tradition is not in Rabbi Akiva's name, the sage clearly believed that his explanation was consonant with Rabbi Akiva's attitude toward women:

If a woman went in to bring out bread to a poor man and she came out and found him standing beside loaves for the Temple offering, or if a woman came out and found her neighbor raking coals under a pot in which was the Temple offering, Rabbi Akiva declares it unclean. Rabbi Eleazar ben Pila said: Why did Rabbi Akiva declare it unclean when the sages declared it clean? Because women are gluttons, and she is suspected of uncovering her neighbor's pot to see what she is cooking.

Mishnah Taharot 7.9 13

Women are not to be trusted, neither as witnesses nor to be left alone with a neighbor's pot.

This theme of the irresponsibility of women might possibly be the motivation for the following ruling:

"If a man seduce a virgin who was not betrothed" (Ex. 22.15). Rabbi Akiva said: How do we know this law applies to a widowed or divorced woman? By this reasoning: the father is responsible for cancelling his daughter's vows and for receiving the fine for her seduction. Just as the cancellation of vows applies to a widowed or divorced daughter, so the fine for seduction applies even for a divorced or widowed woman. If so, why does the text state, "who was not betrothed"? In order to permit a ruling by parallel phrases. It says her "who was not betrothed" and it says in Deut. 22.28 "who was not betrothed" regarding a man forcing a woman. Just as in Deut. the man must pay the father fifty shekels, so here he must pay fifty shekels, and just as in that case it must be silver, so in this case it must be silver."

Mechilta 17.308 14

Akiva rules that whenever a woman becomes single, she falls under the guardianship of her father.

RABBI AKIVA DOES NOT CONSISTENTLY DECIDE AGAINST WOMEN CONCERNING VOWS

The one ruling of Rabbi Akiva's which extends the rights of a woman relates to brothers-in-law's authority over the vows of their childless, widowed sister-in-law before her formal marriage to one of them, or her release from that marriage.

A woman whose husband dies before they have children must wait for his brothers to marry or release her from the levirate marriage. Whether there is one or two brothers, Rabbi Eliezer ruled: Either can cancel her vows. Rabbi Joshua ruled: If there is one [brother, he can cancel them] but not [if there are] two. Rabbi Akiva ruled: Neither if there is one nor two. [In neither case can her vows be cancelled.] Rabbi Eliezer said: What! If a man who marries a woman by himself [i.e., of his own volition] can cancel her vows, how much more so can a man whom God has caused to marry [i.e., the Torah laws mandate levirate marriage] cancel her vows. Rabbi Akiva said: No. You cannot reason from a woman whom a man marries by himself and whom no one else has any obligation for, to a woman whom God has caused him to marry and for whom others [the other brothers] have an obligation. Rabbi Joshua said: Akiva, your words apply in the case of two brothers, but what about the case when there is only one brother? He answered: The widow is not wholly under her brother-in-law's responsibility, though a betrothed woman is wholly under the responsibility of her husband.

Mishnah Nedarim 10.6 ¹⁵

Unlike his colleagues, Akiva does not permit a childless widow's brothers-in-law to cancel her vows, since she is not yet completely under their aegis. Akiva here is merely extending the majority opinion of the previous Mishnah, which holds that even if a man is liable for the support of his betrothed, he may not annul her vows until they are actually married. In comparison to his two colleagues, Akiva's extension of the majority's principle gives a widow more rights to establish vows.

Other than in this ruling, Akiva's interest in women's vows is to protect the husband:

If a woman vows, "I will not work for the benefit of my father" or "...of your father" or "...of my brother" or "...of your brother", her husband cannot annul the vow. If she vows, "I will not work for your benefit", her husband does not have to annul it. Rabbi Akiva ruled that he should annul it, lest she produce more than is due to him [and he cannot claim the excess]. Rabbi Yohannan ben Nuri ruled that he must cancel it, so that if he should divorce her, she will not be forbidden to return to him.

16
Mishnah Nedarim 11.4

While the anonymous ruling implies that the husband may renounce his claims to his wife's excess profits by letting her vow stand, Akiva does not want to let the woman take control of her profits, and suggests that the husband annul her vow. So Rabbi Akiva does not rule consistently in favor of women's self-determination, even within the area of vows.

RABBI AKIVA'S RULING ON NIDDAH IS FAVORABLE TO WOMEN

Another lenient decision of Rabbi Akiva's is found regarding niddah:

A woman presented her case before Rabbi Akiva. "I found a blood stain," she said. He said, "Perhaps you had a wound?" "Yes, but it healed," she replied. He said, "Perhaps it reopened and let out some blood." "Yes," she said. Rabbi Akiva then pronounced her clean. He saw that his students were eyeing each other in surprise. He said, "Why is this ruling such a surprise? Didn't the sages intend this matter to be judged leniently and strictly, for it is said, 'If a woman have a discharge and the discharge is from her flesh...' (Lev. 15.19). It is the blood itself and not the stain which renders a woman unclean."

Mishnah Niddah 8.3 17

Akiva followed the tradition he had received that the sages are lenient about rulings on discharges which cause ritual uncleanness. His leniency is not an original position with him. Indeed, his students' surprise suggests that they expected him to be much stricter in his application of the law, to the detriment of the woman, a pattern that has recurred in different areas. Perhaps this position was taken to allow the woman

to function as a sexual partner for her husband. Akiva's leniency is thus for a male's benefit as well.

SUMMARY

Rabbi Akiva's decisions are generally unfavorable to women: he maintains the harshness of the sotah ritual; he disqualifies women from being witnesses against the directive of a tradition he has received; his decisions on marriage are unfavorable to women, promoting the creation of agunot; he leaves divorce to the whim of the husband; his decisions emphasize the woman's physical appearance as her contribution to marriage; in the rite of chalitzah, formal release from levirate claims, his decisions reflect concern for the man only; he seems to regard women as irresponsible. He does rule favorably to women in one of two cases of vows and about a question of niddah, ritual cleanliness. The majority of his rulings, however, reinforce women's inferior legal position and reflect an indifference, at best, to their concerns.

1.

והשקה את האשה, למה נאמר והרי כבר נאמר ואחר יסקה את האשה
מה ת"ל והשקה את האשה שאם נמחקה המנילה ואמרה אני שותה מצרעים אותה
ומשקים אותה בעל כורחה דברי ר' עקיבא וחכמים אומרים ואחר יסקה את האשה
למה נאמר והלא כבר נאמר והשקה את האשה ומה ת"ל ואחר יסקה את האשה שלשה
דברים מצבים בסיסה עד שלא נמחקה המנילה ועד שלא קרב הקומץ ועד שלא
קיבלה עליה את השכרה. ח.ט. האראווי' 96. סכר' רבי רב.
סכר ואחרון. ירושלים 1966 ע' 21.

2.

ה העיד רבי עקיבא משום נחמיה איש בית דלי, שמשאין
את האשה על פי עד אחד. ח.ט. אלא. שם סכר' נחמיה
ירושלים, מוסד ביאליק. 1959

3.

אמר רבי עקיבא: כשירדתי לנהרדעא לעבר השנה מצאתי
נחמיה איש בית דלי, אמר לי: שמעתי שאין משאין את
האשה בארץ ישראל על פי עד אחד, אלא רבי יהודה בן
בבא. ונמיתי לו: כן הדברים. אמר לי: אמר להם משמי:
אתם יודעים שהמדינה משבשת בגיטות, מקבלני מרבן
גמליאל הזקן, שמשאין את האשה על פי עד אחד. וכשבאתי
והרציתי הדברים לפני רבן גמליאל, שמח לדברי ואמר:
מצאנו חבר לרבי יהודה בן בבא. מתוך הדברים נזכר רבן
גמליאל, שנהרגו הרוגים בתל ארזא, והשיא רבן גמליאל
הזקן נשותיהם על פי עד אחד (והחזקו להיות משאין על פי עד
אחד). והחזקו להיות משאין עד מפי עד, מפי עבד, מפי
אשה, מפי שפחה. רבי אליעזר ורבי יהושע אומרים: אין
משאין את האשה על פי עד אחד. רבי עקיבא אומר: לא
על פי אשה, ולא על פי עבד, ולא על פי שפחה, ולא על
פי קרובים. אמרו לו: מעשה בבני לוי שהלכו לצער עיר
התמרים, וחלה אחד מהם בדרך, והציחוהו בפנדק,
ובחורתם אמרו לפנדקית: איה חברנו? אמרה להם: מת
וקברת - והשיאו את אשתו. אמרו לו: ולא תהא כהנת
כפנדקית? אמר להם: לכשתהא הפנדקית - נאמנת;
הפנדקית הוציאה להם מקלו, ותרמילו, וספר תורה שהיה
בידו.

ibid. Seder Nashim : 73-74

4. האשה שהלכה היא ובעלה למדינת הים, ובאה ואמרה:
'מת בעלי' - תנשא ותטל כתבתה, וצרתה אסורה. היתה
בת ישראל לפהן - תאכל בתרומה; דברי רבי טרפון. רבי
עקיבא אומר: אין זו דרך מוציאה מידי עברה, עד שתהא
אסורה לנשא, ואסורה מלאכול בתרומה

ibid. p. 68

5. Yevamot 15.4

6. אמרה: 'מת בעלי ואחר כך מת חמי' - תנשא ותטל כתבתה,
ותמיתה אסורה. היתה בת ישראל לפהן - תאכל בתרומה;
דברי רבי טרפון. רבי עקיבא אומר: אין זו דרך מוציאה
מידי עברה, עד שתהא אסורה לנשא, ואסורה מלאכול
בתרומה.

Albeck, op. cit., p. 68-69

7. אין נודק עדי נשים בנדרים ובהקדוה ו' טרפון ור' עקיבא אש' נודקן עדי נשים בנדרים ובהקדוה

Zuckerman, Tosefta. Trier, 1882. p. 259

8. ⁵ מי יזהה נשואי שתי נשים ומת
באשה או חליצתה של אחת מהן מותרת צרתה היתה אחת מהן אסורה על אחד מן האוחזין
איסור ערוה חליץ לה לא עשה כלום לא ספר את צרתה אלא או היא או צרתה מתייבמת
לישאר אחין היתה איסור סצוה ואיסור קדושה חליץ לה או בא עליה נפטרה צרתה
המחוד את נרושתו משנישאת והגושא את חליצתה והגושא את קדושת נרושתו אין לו
בה קדושין ואינה צריכה היטנו גם היא ספלה והולד ממנו דברי ר' עקיבא חז' אום יש
לו בה קדושין וצריכה היטנו גם היא כשירה והולד כשר.

ibid. p. 247

9. רבי עקיבא אימר אפילו מצא אחרת טהה הימנה
שנאמר והיה אם לא תמצא חן בעיניו.

א.א. ביקלסטין ספר על ספר דברים. דא מדיט ליבניט באמריקה. ניו יורק 1969 p.288

10. והיה בגידתה
וקנים הראשונים היו אמרים תורה בגידתה לא תכחל ולא תפקס עד
שתבא בנים עד שבא רבי עקיבא ולמד נכנס דרבי לירי איבה והוא מבקש
לרעה. דא מה אני מקיים והיה בגידתה תראה בגידתה עד שתבא בנים:

ב. וו"ס. ספרא דב' רז: הו"א ספר איבג כפנים. וו"ן. 1892. ע' 68:

11.

חלצה ורקקה, אבל לא קראה - חליצתה כשרה. קראה
ורקקה, אבל לא חלצה - חליצתה פסולה. חלצה וקראה,
אבל לא רקקה - רבי אליעזר אומר: חליצתה פסולה.
רבי עקיבא אומר: חליצתה כשרה. אמר רבי אליעזר:
'ככה יעשה' - כל דבר שהוא מעשה מעבב. אמר לו רבי ^{וברים}
עקיבא: משם ראיה? 'ככה יעשה לאיש' - כל דבר שהוא
מעשה באיש.

Albeck, op. cit., p. 56-57.

12. See above, note 1.

13.

האשה שנכנסה להוציא פת לעז, ויצאת ומצאת עומד
בצד בכרות של תרומה; וכו' האשה שיצאת ומצאת את
תברתה חותה נזלים פתח קדרה של תרומה - רבי עקיבא
מטמא, וחכמים מטהרין. אמר רבי אלעזר בן פילא: וכי
מפני מה רבי עקיבא מטמא. וחכמים מטהרין? מפני
שהנשים נרגזות הן. שהיא חשודה לגלות את הקדרה
של תברתה, לידע מה היא מבשלת.

Albeck, op. cit.,
p. 324-325

14.

אשר לא ארשה. ר' עקיבא אומר: מין אפילו נתגרשה ונתארמלה, והדין נותן,
הואל ורשאי בהפר נדריה ורשאי בכסף קנסה, מה בהפר נדריה אפילו נתארמלה או
נתגרשה, אף בכסף קנסה אפילו נתארמלה או נתגרשה, אם כן מה תלמוד לומר אשר
לא ארשה, אלא מופנה להקיש וקדון סמנו נדריה שיה, נאמר כאן אשר לא ארשה
ונאמר להלן אשר לא ארשה, מה להלן חמשים אף כאן חמשים, מה להלן בכסף
אף כאן בכסף.

ת.ס. האראוויץ. י.א. רבין. מביתא דרבי שמעון.
ספר' ואהרן. ירושלים 1960. פ 308

15.

שומרת יבם, בין ליבם אחד בין לשני יבמן - רבי אליעזר
אומר: יפר. רבי יהושע אומר: לא אחד אבל לא לשנים. רבי
עקיבא אומר: לא לאחד ולא לשנים. אמר רבי אליעזר:
מה אם אשה שקנה הוא לעצמו, הרי הוא מפר נדריה -
אשה שהקנו לו מן השמים, אינו דין שיפר נדריה? אמר לו
רבי עקיבא: לא, אם אמרת באשה שקנה הוא לעצמו, שאין
לאחרים בה רשות, ואמר באשה שהקנו לו מן השמים, שיש
לאחרים בה רשות? אמר לו רבי יהושע: עקיבא! דברך
בשני יבמן, מה אתה משיב על יבם אחד? אמר לו: אין
היבמה נמורה ליבם, כשם שהארוסה נמורה לאישה.

Albeck, op. cit., p. 179-180

16.

קָהָם שְׂאִי עוֹשָׂה עַל פִּי אָבָא, וְעַל פִּי אָבִיךָ, וְעַל פִּי אָחִי,
וְעַל פִּי אָחִיךָ – אֵינוֹ יָכוֹל לְהַפְּרֵם. שְׂאִי עוֹשָׂה עַל פִּיךָ –
אֵינוֹ צָרִיךְ לְהַפְּרֵם. רַבִּי עֲקִיבָא אוֹמֵר: יֶפֶר, שְׂמָא תַעֲדִיף
עָלֶיךָ יוֹתֵר מִן הָרָאִי לוֹ. רַבִּי יוֹחָנָן בֶּן נֹרִי אוֹמֵר: יֶפֶר, שְׂמָא
יִגְרַשְׁנָה וְתוֹהִי אֲסוּרָה עָלֶיךָ.

ibid. p. 182-183

17.

מַעֲשֵׂה בְּאִשָּׁה אַחַת שֶׁבָּאת לִפְנֵי רַבִּי עֲקִיבָא, אָמְרָה לוֹ: ג
'רְאִיתִי כְּתָם'. אָמַר לָהּ: 'שְׂמָא מְכָה הָיְתָה בְּיָדֶיךָ' אָמְרָה
לוֹ: 'הִנֵּה, חֲתִיטָה'. אָמַר לָהּ: 'שְׂמָא יְכוּלָה לְהַגְלִיעַ וּלְהוֹצִיא
דָּם? אָמְרָה לוֹ: 'הִנֵּה' – וְסִתְּהָ רַבִּי עֲקִיבָא. רָאָה תַלְמִידֵיךְ
מִסְתַּכְּלִיז וְהָ בָּזָה, אָמַר לָהֶם: 'מָה הַדָּבָר קָשָׁה בְּעֵינֵיכֶם?
שֶׁלֹּא אָמְרוּ חֻקִּים הַדָּבָר לְהַחֲמִיר, אֲלֵא לְהַקֵּל; שְׂנֵאמְרוּ: ^{רַבִּי}
^{שִׁמְעוֹן} וְאִשָּׁה כִּי תִהְיֶה וְכָה דָם יִהְיֶה וְכָה בְּבִשְׁרָה' דָּם – וְלֹא כְּתָם.

ibid. Seder Taharot. p. 399

RABBI ISHMAEL

In Rabbi Akiva's system women are often the accidental victims of his concern over other issues. They are frequently placed at disadvantage by his strict interpretation of laws. They are always under the stewardship of a male, and their legal status is not ameliorated. Rabbi Ishmael's system stands out in sharp contrast. He is more concerned about women and about legislation pertaining to women. Even though a smaller amount of material attributed to him is extant, a greater proportion deals with women. He is willing to interpret the Biblical text in a way that enables him to enfranchise women and to begin to make their legal status on a par with men's.

RABBI ISHMAEL MAKES WOMEN THE EQUALS OF MEN

Rabbi Ishmael uses a combination of linguistic interpretation and hermeneutic devices to enfranchise women. By applying logical categories to the text, he is able to extrapolate the equality of men and women in all cases of damages:

"If two men fight..." (Ex. 21.24). The text says "men." How do we know women are included? Rabbi Ishmael ruled: All cases of damages in the Torah are under one generalization. In one instance, the text specifies that the law applies to women as well as men. This specification therefore applies to all instances of damages in the Torah, that the law applies equally to women and men. ¹
Mechilta Mishpatim 6

By his use of the hermeneutic devices of generalization and specification, Rabbi Ishmael is able to equate men and women in all issues of damages.

A more sweeping principle results from Rabbi Ishmael's interpretation of the word ish as the generic term "adult" rather than "male." As a

result of this interpretation, he is able to permit women to make the ritual purifications involved with the sacrifices:

"And a ritually clean ish [man] shall gather the ashes of the heifer and put them outside the camp in a spot which is ritually clean and they shall be kept for purifying water for the congregation of Israel" (Num. 19.20). Why does the text specify a ritually clean ish? Since we find that the matter of the heifer has been entirely handled by a priest, one might assume that the gathering of the ashes must also be done by a priest. The text specifies a "ritually clean man" to inform us that anyone can gather the ashes. [The word] ish [is used in order] to exclude minors. One might think that both minors and women are excluded, but the text specifies "ritually clean" to include women. So ruled Rabbi Ishmael. Rabbi Akiva ruled: ish excludes women. One might think that women are excluded, but boys are included, so the text specifies "and put them outside the camp" -- this phrase can only refer to someone with enough intelligence to put them down....

Sifre Bamidbar Hukkat 124²

Rabbi Ishmael's explanation is open to interpretation. If the word ish includes women, why should he need to specify that "ritually clean" includes women? There are two ways of viewing his explanation. First, this might be the beginning of his process of interpreting ish to include women. Since he is not yet sure of all the ramifications of this interpretation, and since he is phrasing his interpretation in the negative (that ish excludes minors, not that ish includes women) he wants to emphasize the inclusion of women, so adds the fact that they are included under the rubric "ritually clean". Another possibility is that Rabbi Ishmael is responding to Rabbi Akiva's interpretation; even if Rabbi Akiva interprets ish to exclude women, he still must interpret the words "ritually clean", which include women. Thus, according to Rabbi Ishmael, women should be included in this ritual, even under Rabbi Akiva's system. Rabbi Ishmael permits women to participate in this purification ritual by his interpre-

tation of ish as "adult." In direct contrast, Rabbi Akiva explicitly excludes women from participating.

Rabbi Ishmael might have been beginning the process of interpreting ish as "adult" in the tradition above, since elsewhere he interprets "any man" (ish ish) as including only men, though he ends by equating the obligations of men and women:

"Honor your father and mother" (Ex. 20.12). What does this text teach us, when it already states "any man who curses this father or mother shall be put to death" (Lev. 20.9). This statement, however, only refers to men explicitly. How do we know that women, people with undeveloped genitals, and hermaphrodites are bound by this law? The text says, "Honor your father and mother" for any person. Just as for honoring there is no distinction drawn between men and women, so for fearing there is no distinction between men and women, according to Rabbi Ishmael.

Mechilta Yitro 8³

For the two sets of filial obligations, those defined as honoring one's parents and those defined as fearing one's parents, women have an equal obligation with men, according to Rabbi Ishmael.

RABBI ISHMAEL AMELIORATES THE SOTAH ORDEAL

Besides equating men and women in certain areas, Rabbi Ishmael also attempted to ameliorate women's position in other areas. Though he is not willing to deny sotah, the ritual to test a wife suspected of adultery, he does try to soften its severity. Ben Zakkai is attributed with its abrogation. By the time of Sifre Bamidbar, the idea that the rite tests not only the woman, but also her husband, has become accepted and the idea is stated anonymously in the text. This notion goes far to remove the basic inequalities of the rite: a husband will only press charges if has been faithful.

Rabbi Ishmael continues the process of reinterpretation:

"The priest shall uncover the woman's hair" (Num. 5.18). The priest should turn behind her and uncover her hair, in order to help her fulfill the commandment of uncovering, according to Rabbi Ishmael.

Sifre Bamidbar Nasa 17⁴

Rabbi Ishmael is not willing to let the woman forgo the humiliation of having her hair uncovered, but at least he interprets it as a commandment which will accrue to her merit when it is performed. Though he will not delete elements of the rite, he is willing to add to it to help the woman:

"[The priest should say], 'If no man has slept with you...'" (Num. 5.19). Rabbi Ishmael ruled: At the beginning, they should inform her of the power of the bitter waters and tell her: My daughter, let me tell you of the bitter waters. What do they resemble? A dry poison which when placed on healthy flesh does no damage, but when placed on an open wound it takes effect. So if you are innocent, you may drink without fear.

Sifre Bamidbar Nasa 12.18⁵

Rabbi Ishmael directs the priest to reassure the woman that if she is innocent of the charges, no harm will befall her. He eases the frightfulness of the ordeal for her.

Rabbi Ishmael's most significant ruling on the sotah ordeal is that the rite is not mandatory:

"If an attitude of jealousy pervade the husband and he is jealous about his wife" (Num. 5.14). It is not obligatory [that he make his wife undergo the sotah ordeal] according to Rabbi Ishmael. Rabbi Eliezer ruled that it was obligatory.

Sifre Bamidbar Nasa 7.12⁶

If a husband suspected his wife of adultery, he could confront her, or let the matter pass or handle it any way he chose, according to Rabbi Ishmael. The sotah ordeal would then be a last resort if other attempts to relieve his suspicions failed. According to Rabbi Eliezer, if a husband suspects his wife, he must bring charges against her and make her undergo the sotah

ordeal. Rabbi Ishmael's ruling gives the woman leeway to justify herself without recourse to the public embarrassment of the sotah ordeal, and is much more lenient.

In light of Rabbi Ishmael's concern for the woman and Rabbi Akiva's harsher attitude about the rite of sotah, the following comment is puzzling:

"[And if the woman is innocent] she will conceive" (Num. 5.27). If she were barren, she now would conceive, said Rabbi Akiva. Rabbi Ishmael said: If so, every barren woman would disgrace herself in order to be granted a child and the one who would not cheapen herself would lose out. Rather "she will conceive" means that if she gave birth with difficulty and pain, she would now give birth more easily, that if previously she had girls, she would now have boys, that if previously she had single births, she now would have twins, if previously she had dark children, she now would have fair, if previously she had short children she now would have tall ones.

Sifre Bamidbar Nasa 19⁷

It seems uncharacteristic of Rabbi Ishmael to think that women would deliberately go through the public humiliation of the sotah ordeal just to have children, and to think that it is a suitable compensation to have boys instead of girls. It is possible that in the transmission of the story, the tradents' names were mixed. This idea is supported by the fact that in the Tosefta Sotah 2.3, this tradition is attributed to Rabbi Judah in the name of Rabbi Elazar ben Matya and is more consistent with his teachings on women. An earlier version of the Mechilta might have attributed this teaching to "Rabbi Y" which a later scribe mistook for Rabbi Yshmael instead of Rabbi Yahudah.

RABBI ISHMAEL IMPROVES THE POSITION OF THE WIFE IN MARRIAGE

Rabbi Ishmael's decisions ameliorate a woman's position in marriage:

If a man supports his wife through a third party, he must not provide her with less than two kab of wheat or four kab of barley. Rabbi Yosi said: Only Rabbi Ishmael who lived close to Edom granted her barley....

8
Mishnah Ketuvot 5.8

Though Rabbi Ishmael does not challenge the basic structure in which a wife had to be supported by her husband, within that structure, he is recorded as being more liberal with the wife's allotment.

Like Rabbi Akiva, Rabbi Ishmael sees a woman's physical appearance as having a major role in a man's reasons for marriage:

If a man vowed that he would not marry a certain woman because she were ugly, yet she was really pretty, or because she were dark, when she was really fair, or because she were short, when she was really tall, he is permitted to marry her, not because she was ugly and became beautiful, or was dark and became fair, or was short and became tall, but because the vow was made in error. Once, a man vowed to receive no benefit from his sister's daughter, so they brought her to Rabbi Ishmael's house and made her beautiful. Rabbi Ishmael said to the man, "My son, did you vow against this woman?" He answered, "No." So Rabbi Ishmael absolved him. At the same time, Rabbi Ishmael wept, saying: Israelite women are beautiful, but poverty disfigures them.

9
Mishnah Nedarim 9.10

Rabbi Ishmael sees that a woman is sometimes dependent on her looks to catch a husband, but this knowledge gives him compassion for women.

What a contrast to Rabbi Akiva's statement that a man may divorce his wife if he meets a prettier woman! Both are aware of the importance of a woman's looks, but Rabbi Akiva permits her looks to be exploited.

Rabbi Ishmael indicates his disapproval of a man marrying a second wife:

"If a man have two wives, one beloved and another hated..." (Deut. 21.15). Rabbi Ishmael said: Such is the way of the world that the text describes. It tells that [if a man marry two wives] he will come to hate one and love the other.

10
Sifre Devarim Ki Tetze 215

While he does not forbid a man to marry a second wife, he considers it an unwise deed, since the husband will likely come to hate one of his wives.

WHEN DIFFERENCES OCCUR IN DISPUTES, RABBI ISHMAEL IS MORE FAVORABLE TO WOMEN THAN IS RABBI AKIVA

In several passages in which Rabbi Akiva and Rabbi Ishmael argue, both come to the same conclusion, but employ a different method to reach their conclusion. So, for example, both conclude that a marriage can be contracted by means of money:

From whence do we know that a wife may be acquired by money? Rabbi Ishmael said: Kal V'homer: if a Canaanite maid-servant who cannot be acquired by sexual intercourse is acquired by money, an Israelite woman who can be acquired by sexual intercourse, so much the more can she be acquired by money. Rabbi Akiva said: It says, "If he take another woman" (Ex. 21.10). Since the same language is used, the rules for the two cases are the same: just as the servant is acquired by money, so a wife is acquired by money.

Mechilta Mishpatim 3 ¹¹

Here, though Rabbi Ishmael and Rabbi Akiva use different hermeneutics, they arrive at the same conclusion, that a wife can be acquired by money.

Yet in addition to the cases cited above, there are other arguments between the two in which their conclusions differ, and in these cases, Rabbi Ishmael's decision is more favorable to the woman. So in the case of vows:

"Her husband may let [her vow] stand or he may annul it" (Num. 30.4). If she swears concerning figs and grapes and her husband confirms the part of the vow about figs, he confirms the entire vow. If he annuls the part concerning the figs, the vow is not annulled until he also annuls the part concerning the grapes, according to Rabbi Ishmael. Rabbi Akiva ruled: If he confirmed the part about figs but not about grapes, or if he confirmed the part about grapes and not about

figs, or if he voided the part about grapes but not the part about figs, or if he voided the part about figs but not about grapes, one might think that the entire vow is cancelled. The text says "Her husband establishes it" [which implies] by sections "or he may cancel it" [which also implies] by sections.

Sifre Bamidbar Matot 207 ¹²

According to Rabbi Akiva's understanding of the text, the husband may cancel the entire vow or any section of the vow his wife makes. Rabbi Ishmael understands the text differently. He rules that in order to void his wife's vow, he must void all its parts, a limitation of the husband's power over his wife. By making the process of voiding a wife's vows more exacting, it becomes difficult for the husband to do it correctly, and effectively limits the possibility of the husband's cancelling his wife's vows. Rabbi Ishmael thereby extends the wife's power over herself.

The two rabbis' attitudes about women are also reflected in their rulings concerning the case in which a man takes both a woman and her mother as wives:

"In fire you shall burn him and them" (Lev. 20.14). One of the women, according to Rabbi Ishmael. Rabbi Akiva ruled: Both of the women should be burned, for if a man marry a woman and have intercourse with her daughter, he is guilty, or if he married the daughter and had intercourse with the mother, he is guilty.

Sifre Perek 9.18 ¹³

The two rabbis conceptualize the case differently. For Rabbi Ishmael, the man is legitimately married to one of the women. At the point he has intercourse with the mother or daughter of that woman he has committed a capital offense. Only one of the women must be killed, therefore, since only one relationship was illegitimate. Rabbi Ishmael might also be playing with the word "them" -- ethen -- reading it as et hen, with

hen being the Greek word for "one". The text would then read: "You shall burn him and one." This play reenforces his decision. Rabbi Akiva conceptualizes the case differently. For him, the case is a capital offense only if the man has intercourse with both women, regardless of whom he was married to. Since the offense was produced by both women, both should be killed. Though their differences may stem from different theoretical considerations, it is not surprising that Rabbi Ishmael's decision is more lenient concerning the women involved.

It is clear from both separate rulings of each of the rabbis, and from their rulings on the same cases, that Rabbi Ishmael shows more concern about women and rules more consistently to extend their powers and privileges beyond the narrow limits of Biblical law. Rabbi Akiva is more willing to maintain the Biblical inequities women endured in their personal, social, and economic lives.

1. וכי יריבון אנשים, אין לי אלא אנשים, נשים מנין.
זה רבי ישמעאל אומר, הו"ל וכל הנזקים שבתורה חתם ופרט הכתוב כאחד מהם
שעשה בו נשים באנשים, אין פירט אני לכל הנזקים שבתורה לכשות בהם נשים
באנשים: ת.ש. הארכאולוגי 96 - י.א. רבין. מכילתא דרבי יוחנן. סכר' טוהרמן
ירושלים. 1960 p. 269

2. ואסף איש מהור, לפי שמציע שכל מעשה פרה כבדן שומע אני אין אסירת
האמר תהיה ככהן ת"ל ואסף איש מהור מציד שאסירת האמר כשרה בכל אדם:
ואסף איש להוציא את הקמן. משמע מוציא את הקמן ומוציא את האשה ת"ל מהור
להביא את האשה דברי ר' ישמעאל, ר' עקיבא אומר ואסף איש להוציא את האשה
<משמע מוציא את האשה> ומביא את הקמן ת"ל והניח מחוק למתנה לאמרתה אלא
במי שיש בו דעת להניח מהור שר' ישמעאל אומר מהור למה נאמר הוא עד שלא יאמר
יש לי בדין אם המזה מהור האוסף לא יאמר מהור הוא מה ת"ל מהור מהור מכל
מומחה וא"ו זה זה מכול דם. ח.ש. הארכאולוגי 96. סכר' 27. סכר' טוהרמן
ירושלים. 1966 p. 157

3. כבד את אביו ואת אמו. ד"א כבד את אביו, לפי שנאמר איש איש כי יקלל אביו וקלל
אמו, אין לי אלא איש, אשה שומעו ואנדרוניטם מנין, ת"ל כבד את אביו ואת אמו.
מכל מקום, מה כבוד לא חלק בו בן איש לאשה שומעו ואנדרוניטם, אין מורא לא
תחלוק בו בן איש לאשה שומעו ואנדרוניטם. דברי רבי ישמעאל.
Horowitz and Rabin, op. cit., p. 231

4. ופרע את ראש האשה, כך נפנה לאחוריה ופרעה כ"ל לקים בה מצות
פרעה דברי ר' ישמעאל Horowitz, op. cit., p. 18

5. אם לא שכב איש אותך. רבי ישמעאל אומר בתחילה מדינה כוחן
של מים המרים אומר לה בדי אומר לך המים המרים האלו למה הם חמים לסם יבש
הציתן על גבי בשר חי ואין מוסיף כשהוא מוצא מכה מתחיל לחלחל אין את אם מדורה
את שתי ואל תמנע ואם ממנה את הנקי ממי הכרים המאירים האלה
ibid. p. 18

6. ועבר עליו ורוח קנאה וקנא את אשתו, רשות דברי ר' ישמעאל ר' אליעזר
אומר חובה. ibid. p. 12

7. ונורעה ורע, שאם היתה עקרה נפקדת דברי ר' עקיבא אומר לו ר' ישמעאל אם
כן ילכו כל העקרות ויקלקו בשביל שיפקדו וזו שישבה לה הפסדה אלא מה תלמוד
לומר ונקתה ונורעה ורע שאם היתה יולדת בצער יולדת בריחה נקבת יולדת זכרים
אחד יולדת שנים שחורים יולדת לבנים קצרים יולדת ארוכים ibid. p. 19

ח המַשְׁרָה אֶת אִשְׁתּוֹ עַל יְדֵי שְׁלִישׁ, לֹא יִפְחַת לָהּ מִשְׁנֵי קֶבֶץ חֹסֶן, אוֹ מֵאַרְבָּעָה קֶבֶץ שְׁעוּרִים. אָמַר רַבִּי יוֹסִי: לֹא פָסַק לָהּ שְׁעוּרִים אֲלָא רַבִּי יִשְׁמַעֲלֵל, שֶׁהָיָה סָמוּךְ לְאֶדְוִם.

ח. א. א. פ' נקט' 30 נ. 30 א. 1959 30 נ. 30 א. 106 p

9. קֹנָם שְׁאִידֵי נִשְׂא אֶת פְּלוֹתֵית כְּעוֹרָה, וְהָרִי הָיָה נָאָה; שְׁחוּרָה, וְהָרִי הָיָה לְבָנָה; קֶצֶרָה, וְהָרִי הָיָה אֶרְכָּה - מִתֵּר בָּהּ. לֹא מִפְּנֵי שֶׁהָיָה כְּעוֹרָה וְנַעֲשִׂית נָאָה, שְׁחוּרָה וְנַעֲשִׂית לְבָנָה, קֶצֶרָה וְנַעֲשִׂית אֶרְכָּה, אֲלָא שֶׁהִנָּדָר טַעוּת. וּמַעֲשֶׂה בְּאֶחָד שֶׁנָּדָר מִבֵּית אֲחֻחוֹ הִנָּה, וְהַכְּנִסוּהָ לְבֵית רַבִּי יִשְׁמַעֲלֵל, וְיָפְתָה. אָמַר לוֹ רַבִּי יִשְׁמַעֲלֵל: בְּנִי! לֹו נִדְרָתָּ? אָמַר לוֹ: לֹא! וְהִתִּירוֹ רַבִּי יִשְׁמַעֲלֵל. בְּאוֹתָהּ שָׁעָה בָּכָה רַבִּי יִשְׁמַעֲלֵל, וְאָמַר: בָּנוּת יִשְׂרָאֵל נָאוֹת הֵן, אֲלָא שֶׁהָעֲנִיּוֹת מַעֲלִתֶּנּוּ. וְכַשְׁמַת רַבִּי יִשְׁמַעֲלֵל הָיָה בָּנוּת יִשְׂרָאֵל נִשְׂאוֹת קִינָה, וְאוֹמְרוֹת: בָּנוּת יִשְׂרָאֵל אֵל רַבִּי יִשְׁמַעֲלֵל בְּכִינָה. וְכֵן הוּא אוֹמֵר בְּשָׁאוֹל: 'בָּנוּת יִשְׂרָאֵל אֵל-שָׁאוֹל בְּכִינָה'.

ibid. p. 177-78

10. רַבִּי יִשְׁמַעֲלֵל אוֹמֵר בְּדֶרֶךְ אֶרֶץ הַכְּתוּב מְדַבֵּר מִגִּיד שְׁסוּפֵי לְהִיּוֹת שׁוֹנֵא אוֹתָהּ וְאוֹהֵב אַחֶרֶת. ח. א. א. פ' נקט' 30 נ. 30 א. 1969 248 p.

11. וּמִנֵּן שְׁתֵּי נִקְיִת בְּכַסְיָה, הִיא רַבִּי יִשְׁמַעֲלֵל אוֹמֵר, קִיז וְמָה אִם שְׁטַחָה בְּעֲנִיּוֹת שְׁאִידָה נִקְיִת בְּכַסְיָה, נִקְיִת בְּכַסְיָה, בֵּית יִשְׂרָאֵל שְׁהָיָה נִקְיִת בְּכַסְיָה, אִינוּ דִּין שְׁתֵּי נִקְיִת בְּכַסְיָה; וּמִנֵּן אֵף בְּשִׁטָּה, תִּלּוּל יְהוֹלָכָה וְהִתְהַוָּה, מִקִּישׁ הוֹוִיָה לְהוֹלִיכָה, מָה הִלְכָתָהּ בְּשִׁטָּה, אֵף הוֹוִיָה בְּשִׁטָּה. - ר' עֲקִיבָא אִמְרַה, הָרִי הוּא אוֹמֵר, אִם אַחֶרֶת יִקַּח לָהּ, בְּקִישׁ תַּחְתּוּנָה לְעִלּוּנָה מָה עִלּוּנָה בְּכַסְיָה, אֵף תַּחְתּוּנָה בְּכַסְיָה.

Horowitz and Rabin, op. cit., p. 256

12. אִישָׁה יְקִימְנוּ וְאִישָׁה יִפְרִנוּ, נִדְרָה מִן הַתֵּאֲנִים וּמִן הַעֲנָבִים קִיִּים בְּתֵאֲנִים כּוֹלֵי קִיִּים. הַיִּפְרָה לְתֵאֲנִים אֵין מוֹפֵר עַד שִׁיפֵר אֵף לְעֲנָבִים דְּבָרִי ר' יִשְׁמַעֲלֵל. ר' עֲקִיבָא אוֹמֵר קִיִּים לְתֵאֲנִים וְלֹא קִיִּים לְעֲנָבִים <אוֹ קִיִּים לְעֲנָבִים וְלֹא קִיִּים לְתֵאֲנִים הַפֵּר לְעֲנָבִים וְלֹא הַפֵּר לְתֵאֲנִים אוֹ הַפֵּר לְעֲנָבִים וְלֹא הַפֵּר לְתֵאֲנִים יִטּוֹל כּוֹלֵי מוֹפֵר> תִּלּוּל אִישָׁה יְקִימְנוּ בְּמִטָּה וְאִישָׁה יִפְרִנוּ בְּמִטָּה. נִדְרָה מִן הַתֵּאֲנִים וּמִן הַעֲנָבִים וְנִשְׁאֵלָה לְחַכֵּם וְהִתִּיר לָהּ לְתֵאֲנִים וְלֹא לְעֲנָבִים, לְעֲנָבִים וְלֹא לְתֵאֲנִים כּוֹלֵי מוֹתֵר. אִסֵּר לָהּ לְתֵאֲנִים וְלֹא לְעֲנָבִים, לְעֲנָבִים וְלֹא לְתֵאֲנִים כּוֹלֵי אִסֵּר. הַפֵּר לָהּ בְּעֵלָה לְתֵאֲנִים וְלֹא לְעֲנָבִים לְעֲנָבִים וְלֹא לְתֵאֲנִים כּוֹלֵי מוֹפֵר. קִיִּים לָהּ לְתֵאֲנִים וְלֹא לְעֲנָבִים, לְעֲנָבִים וְלֹא לְתֵאֲנִים כּוֹלֵי קִיִּים.

Horowitz, op. cit., p. 207-8

13.

באש ישרופו אותו ואתה את אחת סתן דברי רבי ישמעאל. רבי
עקיבא אומר אתה עד שיהיו שתיהן שאם היו נשוי אשה ובא על בתה
חייב. בתה ובא על אמה חייב.

א ו"ס. סג"ל רז' רז: הוא סג"ל גורג כנ"ל. ח"ן. 1892. ע' כז:

RABBI JOSIAH AND RABBI JONATHAN

Rabbi Ishmael's major disciples were Rabbi Josiah and Rabbi Jonathan. Little is known about them and only a mere handful of their teachings are extant. There are no statements by either of them on women in the Mishnah, nor in the Tosefta nor in Sifra, though their absence from these Akivan works is not surprising. Despite the paucity of material available, found mainly in the Mechilta of Rabbi Ishmael's school, their preserved statements indicate that they followed Rabbi Ishmael's policy of equalizing the rights and responsibilities of women and men.

In the Mechilta there is a series of civil cases in which Rabbi Josiah and Rabbi Jonathan equate women and men for cases of damages, following their teacher's precedent:

"If men fight..." (Ex. 21.18). Rabbi Ishmael ruled: "...for all cases of damages, women are equal to men. Rabbi Josiah said: "Man or woman" -- why is this said [in the statement, "When a man or woman commits any human crime, to sin against the Lord, and that person be guilty, he shall confess his error ...and make restitution" (Num. 5.6-7)]? Since the text reads: "If a man open a pit..." (Ex. 21.33), from here one can only infer about men. How then, do we know women are included in this law? The text later says: "A man or woman" (Num. 5.6-7). The text thereby equates men and women under the law of damages.

Rabbi Jonathan said: This reasoning is not necessary. The text has already said: "The owner of the pit shall make restitution..." (Ex. 21.34). "The one who lit the fire shall make restitution" (Ex. 22.5). The text says "a man or a woman" to teach something else.

Mechilta Nezikin 6 ¹

While Rabbi Josiah and Rabbi Jonathan differ as to the process, both agree that women are equal under the law in cases of damages. This same passage is quoted in conjunction with a series of other verses in the Mechilta and in Sifre Bamidbar.² Rabbi Josiah and Rabbi Jonathan's

positions on the equality of women and men in all cases of damages is firmly documented.

THE TWO RABBIS' RULINGS ON VOWS INCREASE A WOMAN'S RESPONSIBILITY FOR HER OWN VOWS

Rabbi Josiah's and Rabbi Jonathan's teachings on a woman's vows limit the father's right to cancel his daughter's vows:

"If her father disallow her on the day that he hears, none of her vows nor oaths she took upon herself shall stand..." (Num. 30.6). If her father cancel her vows, they are cancelled, and if not, they are not cancelled. She might say, "I know that my father will cancel all my vows he hears, so I will assume that he will cancel this one." Therefore the text says: "If her father cancel," to specify that if he cancel it, it is cancelled, but if he does not cancel it, the vow is not cancelled. If he says to an administrator, "Any vow my daughter makes from now until I return from my trip, cancel it," one might assume that he could cancel it. However, the text says, "If her father cancel" to specify that only her father can cancel her vow. So Rabbi Josiah ruled. Rabbi Jonathan ruled: We find consistently that a person's agent is his equivalent."

Sifre Bamidbar 153³

Both rabbis decide that a father cannot cancel all his daughter's vows automatically and unconditionally, but rather, that he must cancel each vow she makes explicitly in order for it to be voided. The father's power over his daughter is limited. Rabbi Josiah would limit the father's power one further step, by ruling that the father himself must void the vow and not an agent he appoints. Rabbi Jonathan does not concur, because of his desire to maintain the usual rules of agency. Their decisions to limit the father's power over his daughter's vows is paralleled by their decisions to restrict the power of a husband over his wife's vows:

"If her husband voided her vows on the day he heard them [whatever she said concerning her vows and whatever oaths she had taken upon herself shall not stand]" (Num. 30.13). [This wording] excludes an administrator. "Her husband voids them." If her husband annuls them they are annulled, but if not, they are not annulled. She might say, "I know that my husband will cancel any of my vows which he hears, so I will assume he will cancel this one." Therefore the text says, "Her husband cancels them," to specify that if he cancelled them, they are cancelled, but if not, they are not cancelled. If he says to an administrator, "Any vow my wife makes from now until I return from my trip, cancel it," one might assume that he could cancel it. However, the text says, "Her husband cancels them" to specify that only her husband can cancel her vow. So Rabbi Josiah ruled. Rabbi Jonathan ruled: We find consistently that a person's agent is his equivalent.

Sifre Bamidbar Matot 154 ⁴

As in the case of the father, Rabbi Josiah extends the restrictions specified anonymously in the Ishmaelite text and further limits the husband's power over his wife's vows. He states that only the husband, and not his agent, may cancel his wife's vows. Again, Rabbi Jonathan differs in order to maintain the usual rules of agency. The woman in both cases is given more responsibility for herself, since she is not permitted to assume that her father or husband will automatically cancel her vows. She cannot vow lightly -- she might have to fulfill the promise she makes.

Rabbi Jonathan objects to awarding the power of voiding a vow to the husband but not to his agent. He limits the husband's control of his wife's vows in another way:

"If she is her husband's and she vowed or made any binding promise..." (Num. 30.7). This is a betrothed woman. One might think that this text refers to a married woman, yet the case of a married woman is stated starting with "If she vows in her husband's house..." (verse 11). This case is clearly that of a married woman. Therefore this verse [7] deals with a betrothed woman, so ruled Rabbi Josiah. Rabbi Jonathan ruled: The two cases both refer to a married woman, and differ as to whose aegis she is under. // Whenever she is living in her father's

house, both her father and her husband must cancel her vows for it to be void, and if one of them permits it to stand, the vow stands. If she marries, her father cannot cancel her vows. //

Sifre Bamidbar Matot 153 ⁵

In this passage, Rabbi Jonathan increases the likelihood that a woman's vows will stand, by ruling that both her father and her husband (or betrothed) must declare those vows voided before they are annulled, if she is living in her father's house. The father's and husband's control of the woman is thus decreased.

RABBI JOSIAH AND RABBI JONATHAN RULE THAT A WIFE IS ENTITLED TO CERTAIN RIGHTS IN MARRIAGE

The two rabbis accept the Biblical institution of marriage, in which a man supports his wife in exchange for certain services, and in which a man may marry more than one wife. Within that framework, they work to secure the woman a set of basic entitlements. So the rabbis discuss the rights of a Jewish servant woman who marries:

"If he designate [a Jewish servant] for his son, he shall treat her as a daughter" (Ex. 21.9). What is the significance of "as a daughter"? The phrase relates to the next verse: "her food, clothing, and conjugal rights shall not diminish." Just as it shall not diminish for a servant woman, it shall not diminish for a free Jewish woman. So ruled Rabbi Josiah. Rabbi Jonathan ruled: The verse seems to refer to a Jewish servant woman. Though it seems to refer to a Jewish servant, might it not refer to a free Jewish woman, as it is written "If he marry another" (Ex. 21.15)? From this you can deduce that this verse refers to a free Jewish woman. Then to whom does the phrase "treat her as a daughter" refer? It refers to a servant.

Mechilta Nezikin 3 ⁶

Though the two rabbis differ in their techniques for interpreting the verses, their conclusions are similar. For Rabbi Josiah, verse

nine is a continuation of verse eight: if the son marries a servant, she is entitled to the level of support and sexual relations guaranteed to all wives, even if her husband should take another wife. If this condition applied to a wife who had been a servant, how much more should it apply to the wife who was a free Jew. Rabbi Jonathan reads the verses separately: If a servant is married to the son of her master, she is legally the equal of a free Jewish woman who married. A free Jewish woman who marries, and whose husband takes a second wife, is entitled to the same level of support and sexual relations which she had been receiving before the second marriage. Though they interpret the verses differently, both rabbis accord the wife a set of basic rights, whether she is a servant or a free Jew before marriage. They then proceed to discuss the nature of those entitlements:

"If a husband take a second wife, her sh'er, her kasut, and her onah shall not diminish" (Ex. 21.10). Sh'er means her food, as it is written, "who eats the flesh [sh'er] of my people" (Micah 3.3), and "He rained meat [sh'er] upon them like dust" (Ps. 78.27). Her covering [kasut] is meant literally, and her onah, that is sexual relations, as it is written, "...and he slept with her and had intercourse with her [yeane-ha]" (Gen 34.2). This is Rabbi Josiah's interpretation. Rabbi Jonathan ruled: sh'erah kasutah means clothes [kasut] which have become leavings [sh'erah]. If she is a young girl don't give her those of an old lady, if an old lady, don't give her those of a young girl. Her onah [lit. "time periods"] means that he should not give her summer clothes during the rainy season, nor things for the rainy season during the summer, but give her each item according to the season. Where is it decreed that a wife is entitled to food? It is derived from reasoning: a husband is not allowed to withhold things which are not essential to life; how much the more so is he not permitted to withhold food, which is essential to life. Where is it decreed that a wife is entitled to sexual relations? It is derived from reasoning: the husband is not permitted to withhold from her things for which she did not originally marry; therefore the husband is not permitted to withhold sexual relations from her, which is one of the reasons for marriage.

Both rabbis agree that the wife is entitled to food, clothing and sexual relations from her husband. Rabbi Jonathan makes the further conditions that she be given what is appropriate for her age and for the season. The discussion reflects their interest in delineating the rights of a wife and clarifying what she is entitled to under law, within the existing structure of marriage.

THE TWO RABBIS' RULINGS AMELIORATE THE RITUAL OF SOTAH

There are a few extant comments by Rabbi Josiah and Rabbi Jonathan on the issue of the wife suspected of adultery. Among them are these:

"And the priest shall say to the woman..." (Num. 5.19). Rabbi Josiah ruled: In any language she understands. It might be derived by reasoning: a widow who must marry her husband's brother is only established in marriage by the Hebrew language, so a woman suspected of adultery, whose case is much more severe, might need a ritual in Hebrew. Therefore the text specifies "and he shall say" [which implies] in any language she understands. Rabbi [Jonathan] (Ishmael) ruled: This reasoning is not necessary, since the text has already said: "The woman answers, 'amen, amen'" (Num. 5.22). If she did not understand, how could she answer, "amen, amen?" Maybe she says this about the oath when he says, "The Lord make you a curse and an oath among your people" (Num. 5.21). This refers to the oath, and it says, "The priest will say to the woman" to imply that the priest must teach her the order of the oath.

Sifre Bamidbar Nasa 12.18⁸

To make this unit conform with all other units on Rabbis Ishmael, Josiah and Jonathan, wherein Rabbi Ishmael's comments come first, followed by Rabbi Josiah's comments, followed by Rabbi Jonathan's and in which Rabbi Jonathan often replies to Rabbi Josiah that his method of derivation is not necessary, I have emended the text to read Rabbi Jonathan instead of Rabbi Ishmael as the second tradent. This confusion

of the two names is easily explainable, since the manuscript might have just said "Rabbi Y" with a later copyist or printer misunderstanding the "Y" as Ysmael instead of Yochanan (Jonathan).

The force of this text is clear, though the last part might be obscure. Both Rabbi Josiah and Rabbi Jonathan agree that the woman must be told of the charge against her in a language she understands. This decision reflects a large measure of consideration for a woman undergoing a strange and humiliating ritual. In addition, the rabbis limit the categories of women who may be subjected to the sotah ritual:

"This is the law of jealousy, when a woman goes to another instead of her husband and is defiled" (Num. 5.29). "Instead of her husband" is written to exclude betrothed women. It might exclude betrothed women and widows who must marry their husband's brother, but the text says, "If any man's wife goes astray" (Num. 5.12), to include the levirate wife. So ruled Rabbi Josiah. Rabbi Jonathan ruled: "If any man's wife go astray" excludes the levirate wife. It might exclude the levirate wife and include the betrothed woman, so the text reads "instead of her husband" to exclude the betrothed woman.

Sifre Bamidbar Nasa 20.24⁹

Rabbi Josiah excludes betrothed women from the sotah ritual, while Rabbi Jonathan excludes both betrothed women and levirate wives. Though they acknowledge the ritual's eternal applicability, both limit the categories of women who may be subjected to it.

SUMMARY

Following their teacher, Rabbi Ishmael, Rabbi Josiah and Rabbi Jonathan interpret the law to extend women's rights and powers. They rule that she is equivalent to men in all cases of damages; they limit the extent to which her father and husband can cancel her vows; they rule

that a Jewish servant woman who marries is entitled to the same rights as a free Jew, and outline a liberal set of basic rights for a wife; they limit the categories of women liable for the ritual of suspected adultery and ease the ritual's terror by insisting that it be done in a language the woman understands. These decisions imply a positive attitude toward women and their position as equals under the laws of the Torah.

1. וכי יריבון אנשים, אין לי אלא אנשים, נשים מנן, היה רבי ישמעאל אומר, הואיל וכל הנזקים שבתורה סתם ופרט הכתוב באחד מהם שצעה בו נשים כאנשים, אין פירש אני לכל הנזקים שבתורה לעשות בהם נשים כאנשים; רבי יאשיה אומר, איש או אשה, למה נאמר, אלא לפי שדוא אומר כי יפתח איש בור, אין לי אלא איש, [אשה מנן, ת"ל איש או אשה, השוה הכתוב אשה לאיש לכל הנזק שבתורה; רבי יונתן אומר, אינו צריך, והלא כבר נאמר יבעל הבור שלם – שלם שלם המבצר את הבערה, הא מה ת"ל איש או אשה, לתלמודו הוא בא. ח.ש. האראוויטץ. "א. רבין. מכ' לתא דרבי' שמועאל. סכר' ואהרמן. ירושלים. 1960. p. 269]
2. On Exodus 21.20:
 ו כי יכה איש את עבדו, או נכדו ושפתיו בכלל, שנאמר מכה איש ומת, והרי הכתוב מצינו מכללו להקל עליו, שהוא נזון בזים או ימים, לכך נאמרה פרשה זו. – וכי יכה איש, אין לי אלא איש, אשה מנן, היה רבי ישמעאל אומר, הואיל ונאמר כל הנזק שבתורה סתם ופרט לך וכו', רבי יאשיה אומר, איש ואשה למה נאמר וכו', רבי נתן אומר אינו צריך וכו', כדכתיב לעיל.
 ibid. p. 271
 (The Oxford ms, Munich ms. and Yalkut all read "Raobi Jonathan" in place of "Rabbi Nathan")
- On Exodus 21.26:
 וכי יכה איש, אשה מנן, היה רבי ישמעאל אומר וכו', רבי יאשיה אומר איש ואשה למה נאמר וכו', רבי יונתן אומר, והלא כבר נאמר בעל הבור שלם וכו', כדלעיל.
 ibid. p. 278
- On Exodus 21.22:
 וכי ינצו אנשים, אין לי אלא אנשים, נשים מנן, היה רבי ישמעאל וכו' כדלעיל. – רבי יאשיה אומר, איש איש למה נאמר וכו', רבי יונתן אומר, אינו צריך, והלא כבר נאמר בעל הבור שלם וכו' כדלעיל.
 ibid. p. 275
- On Numbers 5.6:
 רבי יאשיה אומר איש או אשה למה נאמר לפי שהוא אומר וכי יפתח איש בור או כי יכרה איש בור (שמות כאלו) אין לי אלא איש אשה מנן ת"ל איש או אשה להשוות אשה לאיש לכל חטאות וזמקם שבתורה רבי יונתן אומר אינו צריך שכבר נאמר בעל הבור שלם ואמר שלם שלם המבצר את הבערה (שם) מה ת"ל איש או אשה לתלמודו הוא בא. ח.ש. האראוויטץ. סכר' רבי. סכר' ואהרמן. ירושלים. 1966. p. 5

3. כי הניא אביה אותה. ואם הפך האב מופר ואם לא אין מופר. אמרה יודעת אני שכל נדרים שהיה אבא שומע היה מיפך שומע אני יהיה מופר ת"ל כי הניא אביה אותה ואם הפך האב מופר ואם לא אין מופר. אמר לאפוסטרופוס כל נדרים שתהא בתי נודרת מיכן ועד שאבוא ממקום פלוני הפך לה והפך לה שומע אני יהיה מופר ת"ל ואם הניא אביה אותה ואם הפך אביה מופר ואם לאו אינו מופר דברי ר' יאשיה. ר' יונתן אמר מציע בכל מקום ששלוחו של אדם כמותו.
ibid. p. 202

4. ואם הפך יפך אתם אישה כיום שמעו מצד > שנתנה תורה רשות להפך כל הזמן: כל מוצא שמתיה לנדריה ולא יפך נפשה לא יקום אישה הפךם להוציא את אפוסטרופוס אישה הפךם אם הפך הבעל מופר ואם לאו אינו מופר אמרה יודעת אני שכל נדרים שהיה בעלי שומע היה מופר שומע אני יהיה מופר ת"ל אישה הפךם אם הפך הבעל מופר ואם לאו אינו מופר. אמר לאפוסטרופוס כל נדרים שתהא אשתי נודרת מיכן עד שאבוא ממקום פלוני הפך לה והפך לה שומע אני יהיה מופר ת"ל אישה הפךם אם הפך הבעל מופר ואם לאו אינו מופר דברי ר' יאשיה. ר' יונתן אמר מציע בכל מקום ששלוחו של אדם כמותו:
ibid. p. 205

5. ואם היו תהיה לאיש ונדריה עליה וזו ארוסה אתה אומר זו ארוסה או אינו מדבר אלא בנשואה כשהוא אומר ואם בית אישה נדרה הרי נשואה אמורה הא מה ת"ל ואם היו תהיה לאיש ונדריה עליה וזו ארוסה דברי ר' יאשיה. ר' יונתן אומר אחת זו ואחת זו לא בא הכתוב לחלוק אלא רשותו שכל זמן שהיא בבית אביה אביה ובעלה/מפירין נדריה ניסת אן האב מיפך את נדריה/

מפירין וס"ל מ מפירין והפך

האב ולא הפך הבעל הפך הבעל ולא הפך הבעל אינו

מופך עד שיפיר שניהם וכן צריך לומר קיום אחד שיהא

אינו קיים נשואה וס"ל

ibid. p. 203

For the material between the slash marks, the variant reading in the Midrash Chachamim is clearer.

6. כמשפט הכנות. וכי מה למדנו על משפט הבעות, אלא הרי זה בא ללמד ונמצא למה, מה זו שארה כמותה וזו נשואה לא יפך, אף בת ישראל שארה כמותה וזו נשואה לא יפך, דברי רבי יאשיה. רבי יונתן אומר, בעבריה הכתוב מדבר, אתה אומר כן, או אינו אלא כבת ישראל, כשהוא אומר אם אחרת יקח לה, הרי בת ישראל אמרה, ומה ת"ל כמשפט הבעות, בעבריה הכתוב מדבר. Horowitz and Rabin, op. cit., p.258

7. שארה. אלו מוונתיה, וכן הוא אומר ואשר אכלו שאר עמי, וכתוב זיכרון עליהם כעפר שאר; כמותה, כמשפט; וזו נשואה, זו דרך ארץ שנאמר זיכרון עליה וזו נשואה, דברי רבי יאשיה. - רבי יונתן אומר, שארה כמותה, כמות שהיא נפלה לשארה, אם היתה ילדה, לא יתן לה של וקנה וקנה, לא יתן לה של ילדה; וזו נשואה, שלא יתן לה של ימות החמה בימות הגשמים, ולא של ימות הגשמים בימות החמה, אלא נותן לה כל אחד ואחד בעונתה; מוונתיה מכן, אמרת קיו ומה דברים שאין קדם נפש, אי אתה רשאי למנע ממנה, דברים שהם קדם נפש, דין הוא שלא תהא רשאי למנע הימנה; דרך ארץ מכן, אמרת קיו ומה דברים שלא נשאת עליהם מתחלה, אינו רשאי למנע הימנה, דברים שנשאת עליהם מתחלה, דין הוא שלא יהא רשאי למנע הימנה.
ibid. p. 258-259

8. ואמר אל האשה, בכל לשון שהוא שומעת דברי ר' יאשיה שהיה ברין ומה אם יבמה קלה לא עשה בה כל הגשונות כלשון הקודש כוונה חמורה את רין שלא נעשה בה כל הגשונות כלשון קודש ת"ל ואמר אל האשה בכל לשון שהוא שומעת דברי ר' יאשיה ר' ישמעאל אומר את צריך שדרי כבר נאמר ואמרה האשה אמן אמן אם אתה שומעת כצד אמרה אמן אמן או אתה אמרת <אלא על אלה> כשהוא אומר יהן זה אותך לאלה ולשכנשה ברוך עמך הרי שכנשה אמרה הא מה ת"ל ואמר הכהן לאשה לימדה כהן מדר שכוונה Horowitz, op. cit., p. 18

9. תחת אישה, להוציא את הארוסה משמע מוציא את הארוסה ומוציא את היבמה תל איש איש כי תשמה אשתו להביא את היבמה דברי ר' יאשיה ר' יונתן אומר איש איש כי תשמה אשתו להוציא את היבמה משמע מוציא את היבמה ומביא את הארוסה תל תחת אישה להוציא את הארוסה
ibid. p. 24

RABBI SIMON BEN YOHAI

Rabbi Simon ben Yohai was close to Rabbi Akiva and had no other teacher. Though he served him thirteen years, he is occasionally quoted in disagreement with him. Rabbi Simon characteristically formulated unifying generalities about laws, and was not particularly known for his decisions about women. He follows his teacher in the area of women's halacha, i.e., he places women in a second-class legal status.

RABBI SIMON REQUIRES AN OATH TO SUBSTANTIATE A WOMAN'S WORD

Like his teacher Rabbi Akiva, Rabbi Simon does not accept a woman's word as legally valid. His decision in the case of a woman receiving her ketuvah indicates this:

How can a woman jeopardize her ketuvah? If her ketuvah were a thousand zuz and her husband says to her, "You have already received your ketuvah" but she claims to have received only one maneh [100 zuz], she may not be paid until she takes an oath. What of the case that one witness swears she had been paid in full? If her ketuvah were a thousand zuz and he said, "You received your ketuvah" but she claimed she did not receive it, and one witness testified that she was paid in full, she may not be paid until she takes an oath... Rabbi Simon ruled: Whenever a wife claims her ketuvah, the heirs cannot demand that she take an oath.

Mishnah Ketuvot 9.8¹

By formulating the several Mishnah cases into a general rule, Rabbi Simon extends the law to include all cases not expressly mentioned. For Rabbi Simon, even if a husband has exempted his wife from having to swear an oath before the heirs, the heirs may force her to vow anyway in order for her to receive the property or money due to her. Her plain word is not accepted; she must take an oath.

Similarly, Rabbi Simon does not totally accept women's testimony on signs of puberty:

All women who are examined are only examined by women... Rabbi Judah ruled: Before and after puberty women examine them, but during puberty women may not examine them, since doubtful cases cannot be married on the basis of women's testimony. Rabbi Simon ruled: Even during puberty a woman's testimony is believed in order to exact a stringency, though not for leniency. A woman is believed if she claims she is a minor so she can't be released from levirate marriage, or that she is an adult so she can no longer refuse her betrothed, but she is not believed if she claims she is a minor, so she can still refuse her betrothed, or an adult so she may be released from levirate marriage.

Tosefta Niddah 6.8 ²

For Rabbi Simon, a woman's testimony is only acceptable if it places restrictions on another woman, and is not acceptable if it is favorable to another woman. A woman's word is acceptable when it is against the freedom of action of another woman in a "required marriage", but not for her right to act freely in regard to such a marriage. Basing the acceptability of testimony on the effects of that testimony seems arbitrary, and also works to the detriment of the woman who is subject to the effects of the testimony.

RABBI SIMON EXEMPTS WOMEN FROM RITUAL OBSERVANCES

Rabbi Simon restricts women's participation in religious rituals.

He exempts women from the obligation to wear tzitzit:

"The Lord spoke to Moses saying...make tzitzit for them" (Num. 15.37-38). Women are included. Rabbi Simon exempts women from tzitzit because it is included in the category of positive, time-bound commandments. This is the principle according to Rabbi Simon: All positive time-bound commandments apply to men but not to women, apply to fit people and

not to disqualified people....

Sifre Bamidbar 115³

Since tzitzit are only worn during the day, Rabbi Simon ruled that they are included in the category of time-bound commandments. Therefore, women are exempt from wearing them, though according to the first statement in the text -- which being anonymous Sifre Bamidbar material may reflect the Ishmaelite school -- women are obligated to wear them. Since women are not responsible for wearing this visible symbol of the commandments, according to Rabbi Simon, they are denied the responsibility granted to men. More importantly, this ruling implies that Rabbi Simon is responsible for the generalization that women are exempt from all positive time-bound commandments. Rabbi Simon thereby systematically excludes women from most public rituals like Hallel, lulav, Sukkot and so on.

RABBI SIMON'S ECONOMIC DECISIONS ON WOMEN ARE MIXED

Rabbi Simon is content to maintain women in a disadvantaged economic situation as well as a second-class ritual status:

A woman's ketuvah is paid out of the worst land of the estate. So ruled Rabbi Judah. Rabbi Simon said: Why is it said that a woman's ketuvah is paid out of the worst land of the estate? It is because a woman wants to be married more than a man wants to marry; the shame of being a single woman is greater than the shame of being a single man. Given these facts, the ketuvah was devised since the woman is divorced by her free will or against her free will, but a man only divorces by his own free will.

Tosefta Ketuvot 12.3⁴

Rabbi Simon provides a rationale for a negative ruling: since the woman wanted the marriage more than her husband, and suffers more shame being

divorced, she should therefore only be entitled to the worst land. This reasoning is peculiar; Rabbi Simon is saying that since the woman is under the greatest disadvantage in regard to her status, she should be further penalized economically. The rabbinic concern for the oppressed and disadvantaged apparently does not extend to women.

Rabbi Simon also restricts the economic rights of a widow:

A woman who became a widow either after betrothal or after marriage may sell without the need of a court's approval. Rabbi Simon ruled: After marriage she does not need the consent of the court, but if she were widowed after betrothal, she may not sell except with the consent of a court. This is so because she has no claim to support and anyone with no right to maintenance may only sell with the consent of a court.

Mishnah Ketuvot 11.2 ⁵

While the anonymous decision permits a woman widowed after betrothal the right to dispose of her property at her own discretion, Rabbi Simon denies her this freedom and insists that a court must approve of her sale.

In contrast to the cited legislation, Rabbi Simon does occasionally extend women's economic rights. He rules partly in a woman's favor, for example, regarding her right to keep the fine that a seducer must pay:

If a girl were seduced, her indemnity for disgrace and injury, and compensation for the seduction, belong to her father, also compensation for pain if she were raped. If she won the case before her father died, these fines belong to her father. If her father were dead, the fines belong to her brothers. If her father died before she won the case, the fines belong to her. If she won her case before she became an adult, the fines belong to her father. If her father died, the fines belong to her brothers. If she became an adult before she won her case, she receives the fines. Rabbi Simon ruled: If she did not collect the fines before her father died, she receives them. Her earnings and whatever lost property she found belong to her brothers even if she had not collected them before her father died.

Mishnah Ketuvot 4.1 ⁶

According to the anonymous opinion, if a girl wins a case before her father dies, the fines belong to the father, and are inherited by her brothers when he dies, regardless of the time that the money is finally collected. Rabbi Simon ruled that in those cases in which the father dies before the money is collected, the girl receives it herself. He is quick to limit this decision to the one case of fines for seduction, while uncollected earnings and found property are still inherited by the brothers.

RABBI SIMON IS STRICT ABOUT REQUIREMENTS FOR CHALITZAH

Rabbi Simon's lack of sympathy for women surfaces again in conjunction with chalitzah:

"Thus shall be done" (Deut. 25.9). ...Rabbi Simon ruled that untying the shoe is indispensable and spitting is indispensable...."

Sifre Devarim 291⁷

This ruling is all the more striking since Rabbi Akiva, Rabbi Simon's teacher, had ruled that if the woman did not spit at the man, the ritual was still valid. In insisting that the woman spit on the man, Rabbi Simon makes the ritual more humiliating for the man. This increases the possibility that he would choose either to marry the woman, thus limiting her freedom to choose her own mate, or to ignore his obligation to her completely, thus leaving her widowed but forbidden to remarry.

RABBI SIMON RULES UNFAVORABLY TOWARD WOMEN IN THE AREA OF VOWS

Even for the area of vows, in which Rabbi Akiva occasionally ruled to increase a woman's responsibility for her own vows, Rabbi Simon rules

oppositely:

"If her husband not object from day to day to his wife's vow, then it stands" (Num. 30.15). One might assume that he has twenty-four hours to annul her vows, but the text reads, "...he confirms all the vows she has undertaken because he did not object in the day he heard them" (ibid). Rabbi Simon ben Yohai said: He has twenty-four hours in which to annul them, since the verse says, "...from day to day...".

Sifre Bamidbar 156.208⁸

The anonymous ruling of the first part of the text is that the husband can annul his wife's vows only in the day he heard them. Because this is anonymous Sifre Bamidbar material, it may reflect the Ishmaelite school. However, Rabbi Simon ruled that the husband has twenty-four hours, from when he heard her make the vow, in which he can decide to annul it. Rabbi Simon's ruling extends the power a husband has over his wife and limits her self-reliance.

RABBI SIMON VIEWS WOMEN AS TEMPTRESSES

There is an implicit judgment in Rabbi Simon's lenient ruling about men and women being alone together:

A man should not be alone with two women. One woman can be alone with two men. Rabbi Simon ruled: One man can be alone with two women as long as his wife is with him, and he may sleep with them in an inn since his wife watches over him. A man may be alone with his mother or daughter, and can sleep with them with their bodies in contact, but if they are adults, they both must sleep in their clothes.

Mishnah Kiddushin 4.12⁹

The whole notion that a man cannot be alone with two women is insulting to men as well as women, and testifies to a society in which men and women were rigidly segregated. Yet there were situations, such as traveling, in which it was both cheaper and safer if a lone male were

permitted to lodge with the women in the caravan. Rabbi Simon's ruling that a man may share a room with two women if one is his wife benefits women as well as men. However, no reason is given for the original prohibition. Perhaps the two situations the mishnah describes were just seen as a waste of time, situations in which no Torah study or exchange can occur or in which no business could be conducted. Rabbi Simon clearly interprets the prohibition as being sexually oriented: it is not a sin for a man to be with two women per se, but the situation is conducive to sexual impropriety. If one of the women is the man's wife, there is no fear of sexual misbehavior, so the situation is permitted.

Rabbi Simon's view of woman as seducer is epitomized in a ruling on taking security pledges:

"You shall not take a widow's clothes as pledge..."
 (Deut. 24.17). Rabbi Simon ruled: Articles that
 are taken as security from a man should not be re-
 turned to his wife. Thus one is not [found] visit-
 ing her, so she does not get a bad reputation. 10
Sifre Devarim 281.298

For Rabbi Simon, women are basically sex objects, and men and women relate to each other primarily through their sexuality. Therefore, if a man is seen visiting a woman, even for an innocent reason like returning her husband's pledge, anyone who saw them would jump to the obvious conclusion that there was a sexual liason between them. In order to protect her reputation, a woman should not receive her husband's pledges, but should remain cloistered from public, economic and religious life. By defining women's primary mode of relating to men as sexual, and then by censuring that sexuality, Rabbi Simon has constructed a logical rationale for denying women access to public affairs and for maintaining their second-class legal status.

AN AMBIGUOUS RULING ON BETROTHAL

Rabbi Simon also seems to ~~accommodate~~ women in his ruling on betrothal:

If a man says to a woman, "Be betrothed to me with this stone" and when he gives it to her, she says, "I thought you were a Cohen, but you are only a Levite" or "I thought that you were rich but you are poor" she is betrothed nonetheless. This is the general principle: once a woman has received into her possession the item signifying the marriage, whether he deceived her or she deceived him, they are betrothed. Rabbi Simon ruled: How can this be? If a man betroth a woman with a dinar of silver and it is found to be gold, she prefers silver, or if he betroth her on condition that he is poor and it turns out that he is rich, she prefers a rich man, but Rabbi Simon agrees that if he deceives her with regard to his family status, she is not betrothed.

Tosefta Kiddushin 2.5 11

While this tosefta includes a quote of Rabbi Simon's position, his remark makes better sense in terms of the parallel Mishnah Kiddushin 2.2, in which the pair is not betrothed if the man had substituted one item for another, or on a condition which was untrue, whether or not the difference accrued to the woman's benefit. Combining the two texts yields the following:

...in all such cases, even though she said, "It was in my heart to become betrothed to him" she has not become betrothed. Rabbi Simon ruled: If he deceived her to her benefit, she is betrothed....

Reading the text this way, Rabbi Simon's statement of the cases in which a woman is betrothed, even under false circumstances, makes more sense as the exception to the general principle. In this context, Rabbi Simon's ruling can be analyzed. At first glance, it seems liberal, but upon deeper thought, it is an insult. It is degrading to a woman to permit a man to test her love, for example, to the point where he makes his poverty an explicit condition of the betrothal when he is really a rich man. It is more respectful of a woman not to permit a man who intends to marry

her to deceive her at all. What about her personal preferences -- perhaps she prefers silver to gold. Worse, what later deceptions might her husband indulge in "for her own good." Rabbi Simon's distinction is condescending to women.

In summary, Rabbi Simon's position regarding women is consistent. His rulings reenforce women's inferior legal, economic, and spiritual status in the community. His attitude was no doubt influenced by his mentor's attitude toward women, though he takes Rabbi Akiva's negative attitude one step further.

Footnotes

1.

הפוגמת כתבתה כיצד? היתה כתבתה אלף וזו, ואמר לה: "התקבלת כתבתך, והיא אומרת: לא התקבלתי אלא מנה - לא תפרע אלא בשבועה. עד אחד מעידה שהיא פרועה, כיצד? היתה כתבתה אלף וזו, ואמר לה: התקבלת כתבתך, והיא אומרת: לא התקבלתי, ועד אחד מעידה שהיא פרועה - לא תפרע אלא בשבועה. מנכסים משעבדים כיצד? מכר נכסיו לאחרים, והיא נפרעת מן הלקוחות - לא תפרע אלא בשבועה. מנכסי יתומים כיצד? מת והניח נכסיו ליתומים, והיא נפרעת מן היתומים - לא תפרע אלא בשבועה. ושלא בסניז כיצד? הלך לו למדינת הים, והיא נפרעת שלא בסניז - אינה נפרעת אלא בשבועה. רבי שמעון אומר: כל זמן שהיא תובעת כתבתה, היורשין משביעין אותה; ואם אינה תובעת כתבתה, אין היורשין משביעין אותה.

ח. אלקין, ששה סדר' משנה, ירושלים, אוסר ד'אלף, 1959.
פ 121 נשם 130

2.

כל הנבדקות אינן נבדקות אלא בנשים וכן היה ר' אליעזר סוטר לאשחור ור' ישמעאל סוטר לאמר ר' יהודה אומר לפני הפרק ולאחר הפרק נשים בודקות אותן תוך הפרק אין הנשים בודקות אותן משאין ספיקות על פי נשים ר' שמעון אומר אף תוך הפרק נאמנת אשה להחמיר אבל לא להקל נאמנת אשה לומר קטנה היא שלא תחלוץ וגדולה היא שלא תמאן אבל אין נאמנת לומר קטנה היא שחמאן וגדולה היא שתחלוץ:

M.S. Zuckermendel. Tosefta. Trier, 1802. p. 647.

3.

ויאמר ה' אל משה לאמר דבר אל בני ישראל ואמרת אליהם ועשו להם ציצית, אף דגשים במשמע. רבי שמעון פוסק את הדגשים מן הציצית מפני שמצות עשה שהזמן גרמא נשים פטורות שזה הכלל אמר ר' שמעון כל מצות עשה שהזמן גרמא נשים פטורות ודעת ר' שמעון נכשירים ולא בפסולים.

ח. e. באוראוויל, סדר' ד'ק' 27, ספר' ואהרמן, ירושלים, 1966, פ 124.

4.

3 כתובת אשה בדיבורי דברי ר' יהודה אמ' ר' שמעון פסגי מה אמרו כתובת אשה בדיבורי שיותר שהאיש רוצה לישא אשה רוצה להינשא ועוד בושחה של אשה מרובה משל איש אם כן לא תרא לה כתובה אלא שהאשה יוצאה לרצונה ושלא לרצונה והאיש אינו מוציא אלא לרצונה

Zuckermendel. op. cit., p. 274.

5.

כ אלמנה, בין מן הארוסין בין מן הנשואין, מוכרת שלא בבית דין. רבי שמעון אומר: מן הנשואין - מוכרת שלא בבית דין; מן הארוסין לא תמכר אלא בבית דין, מפני שאין לה מונוח, וכל שאין לה מונוח לא תמכר אלא בבית דין.

Albeck, op. cit., p. 126

6.

נערה שנפתחה - בשתה ופגמה וקנסה שלאביה; והצער בתפוסה. עמדה בדין עד שלא מת האב, הרי הן שלאב. מת האב, הרי הן שלאחין. לא הספיקה לעמוד בדין עד שמת האב, הרי הן שלעצמה. עמדה בדין עד שלא בנה, הרי הן שלאב. מת האב, הרי הן שלאחין. לא הספיקה לעמוד בדין עד שבנה, הרי הן שלעצמה. רבי שמעון אומר: אם לא הספיקה לגבות עד שמת האב, הרי הן שלעצמה. מעשה דיה, ומציאתה, אף על פי שלא נבנתה, מת האב - הרי הן שלאחין.

ibid. p. 99

7.

בכה יצשה לאיש דבר שמעשה באיש רבי שמעון אומר חליצה מנכבת ורקיקה מנכבת.

א.א. פינקלשטיין. ספר' אל ספר דגלים. ק"א מורש לורנים באמריקה.
נ"ו'ורק. 1969 p. 310

8.

מיום אל יום, שומע אני מצת לצת תיל כל אמריה אשר עליה הקים אותם כי החריש לה ביום שומעו. ר' שמעון בן יוחי אומר מצת לצת שהרי אמרה תורה מיום אל יום

Finkelstein, op. cit., p. 208

9.

לא יתיחד אדם עם שתי נשים, אבל אשה אחת מתיחדת עם שני אנשים. רבי שמעון אומר: אף איש אחד מתיחד עם שתי נשים, בזמן שאשתו עמו, וישן עמהם בפנדק, מפני שאשתו משמרתו. מתיחד אדם עם אמו ועם בתו, וישן עמהם בקרוב בשער. ואם הגדילו - זו ישנה בכסותה, וזו ישן בכסותו.

Albeck, op. cit., p. 328-329

10. ולא תחבל בגד אל מנהרבי שמעון אמר דברים שאתה חובל באיש אין אתה מחזיר
לאשה שלא תהא הולך ובא אצלה שלא להשיאה שם רע

Finkelstein, op. cit. p. 298.

11. התקדשי לי בסלע זה ומשנלטו סידו ואמרה סבורה הייתי שאחה כהן ואי אחה
אלא לוי שאחה עשיר ואי אחה אלא עני הרי זו מקדשת זה הכלל כיון שקיבלה
קדושין לחוד ידה בין שהיטעה ובין שהיטעתו הרי זו מקדשת ר' שמעון אומר אם היטעה
לשבת סמון מקדשת כיון צד בדינך של כסף ונמצא של זהב רוצה היא בזהב
יותר מכסף על מנת שאני עני ונמצא עשיר רוצה היא בעשיר יותר מכעני ומזה
ר' שמעון שאם היטעה לשבת יוחסין שאינה מקדשת:

Zuckerman, op. cit., p. 337-8

RABBI MEIR

Rabbi Meir studied under both Rabbi Ishmael and Rabbi Akiva, first with Rabbi Akiva, then with Rabbi Ishmael, and later with Rabbi Akiva again. He did not receive semikha at their hands, but from Rabbi Judah ben Baba. His decisions are characterized by strictness; he forbids what other rabbis will permit.¹

Besides his formal training, there is another influence in Rabbi Meir's decisions on women -- his wife Beruria. Beruria was one of the few women the tradition records as being so well educated in Jewish jurisprudence that her legal decisions were accepted as authoritative.²

Given this set of contrasting influences, it is not surprising that Rabbi Meir's decisions are mixed. Overall he does advance women's legal position in the community.

RABBI MEIR'S DECISIONS ON THE KETUVAH BENEFIT WOMEN

In view of his propensity for strictness, Rabbi Meir's lenient views on women are even more striking. He is lenient in defining the term "virgin" for purposes of the ketuvah:

If an adult has sex with a girl, or if a boy has sex with an adult woman, or if a woman's hymen broke before she had had intercourse, in all these cases, the ketuvah is 200 zuz. So ruled Rabbi Meir. The sages ruled that a woman whose hymen broke before she had had intercourse has a ketuvah of one maneh [100 zuz].
Mishnah Ketuvot 1.3³

Rabbi Meir is willing to grant the amount of money given to a virgin to women who had sexual intercourse with a partner who was a minor and to women whose hymens broke accidentally. The majority rule that in the

last case a woman is no longer considered a virgin, so she is not entitled to the full sum of a ketuvah.

Rabbi Meir not only extends the categories of women who are entitled to a higher sum in the ketuvah. He also interprets these sums as legal minimums:

Though the sages say that a virgin can claim 200 zuz in her ketuvah, and a widow one maneh in her ketuvah, if her husband wishes to add to this amount even 100 more manehs, he may do so. If the wife then becomes widowed or divorced, she receives the entire sum stipulated, whether she were married or betrothed. Rabbi Elazar ben Azariah ruled that she receives the entire sum only after they had been married, but if they were only betrothed, the wife receives 200 zuz if she were a virgin and one maneh if she were a widow, because her husband assigned her the additional sum only on condition that they marry. Rabbi Judah ruled: If a man so desired, he may write a contract for 200 zuz for a virgin and she may write, "I have received one maneh from you" or he may write a contract for one maneh for a widow and she may write, "I have received 50 zuz [1/2 maneh] from you." [So she forfeits half of her ketuvah.] Rabbi Meir ruled that anyone who designates less than 200 zuz to a virgin or one maneh to a widow renders his intercourse illegitimate.

Mishnah Ketuvot 5.1 ⁴

Though Rabbi Judah ruled that a woman can forfeit up to half of the money she is entitled to in her ketuvah, Rabbi Meir ruled that the amounts stipulated by the sages are absolute minimums which her husband cannot reduce under any circumstances. He thereby protects a divorced or widowed woman's one sure economic resource. He further advances a woman's economic interests in the granting of the ketuvah:

Claimants for damages are compensated out of the choice land, creditors are compensated out of average land, and the wife's ketuvah is paid out of the poorest land of an estate. Rabbi Meir ruled that a wife's ketuvah is also paid out of medium-quality land.

Mishnah Gittin 5.1 ⁵

While the sages, identified as Rabbi Judah and Rabbi Simon in Mishnah Ketuvot, 12.3, ruled that a woman's ketuvah is paid out of the worst land, Rabbi Meir stated that it should be paid out of the medium-quality land, a clear advantage for her no matter if she decides to farm it or sell it.

The following tradition is in striking contrast to Rabbi Meir's other rulings on women's ketuvah:

A husband divorces his wife because she is sterile. She marries another and has a child and then demands her ketuvah from her first husband. They said in the name of Rabbi Meir [or Rabbi Judah ben Batera]: She should be told that her silence is better than speech....⁶

Tosefta Gittin 4.3

The Vienna manuscript attributes the ruling to Rabbi Judah ben Batera instead of Rabbi Meir. Indeed, this attribution makes more sense, because the passage is so inconsistent with Rabbi Meir's other decisions.

A WOMAN UNDERGOING THE SOTAH ORDEAL DOES NOT HAVE TO CURSE HERSELF

Rabbi Meir's regard for women is also apparent in his rulings on rituals. In the sotah ordeal for wives suspected of adultery, the priest recites an incantation over the water, and the woman answers "amen."

"The woman answers, 'Amen, amen'" (Num. 5.22). "Amen that I was not defiled, amen that I will not be defiled." So said Rabbi Meir. But the sages do not agree. Rather, "Amen, that I was not defiled, amen that if I were defiled this curse come upon me. Amen if done with this man, amen if done with another. Amen if betrothed, amen if married, amen if I am waiting to marry my brother-in-law, amen if I have already married him."⁷

Sifre Bamidbar 15.20

Though Meir is not willing to deny the efficacy of the rite, nor to limit

its application, in the course of the rite itself his interpretation is more lenient. The sages have the woman cursing herself, ("Amen, if I were defiled, the curse come upon me.") while Rabbi Meir projects the apparently redundant second "amen" into the future. ("Amen, that I will not be defiled.") The woman, therefore, is not cursing herself.

RABBI MEIR IS LENIENT ON PERMISSIBLE CAUSES FOR DIVORCE

Rabbi Meir's stand on marriage issues is mixed. However, he is lenient about releasing the female partner when the husband has a defect she cannot bear:

These are the defects for which they force a husband to give his wife a divorce: if he has a skin disease or a tumor in his nose, if he collects dog excrement or is a copper-smelter or a tanner, whether he had the defect before they were wed or whether it developed after marriage. About all of them, Rabbi Meir ruled, even if she had explicitly agreed to marry him despite the defect, she can say, "I thought I would be able to endure it, but I can't bear it." But the sages rule that she must put up with it against her will, except in the case of a man with a skin disease, because she weakens him.

Mishnah Ketuvot 7.10⁸

Rabbi Meir slightly widens the narrow set of situations in which a woman may demand that her husband issue her a divorce. He ruled that if a husband has one of a small set of liabilities, his wife may decide at any time that she cannot bear living with such a man and sue for a divorce. The majority ruled that if she married him knowing that he had that liability, she cannot sue for divorce. While he does not address the fundamental inequality in the divorce law, Rabbi Meir does increase the scope of women's power a bit. That his concern is not extending women's power per se, but with facilitating divorce if one partner has a defect,

can be seen from an earlier mishnah:

If a woman had a defect while she was still in her father's house, and her father produces proof that the defect arose after she was betrothed, then it becomes the husband's loss. If she were already the responsibility of her husband, [to avoid paying the ketuvah] the husband must bring proof that she had the defect before she was betrothed, so that he betrothed her under false pretenses. This is the opinion of Rabbi Meir. The sages ruled: This is the case for a defect which is in hidden parts, but in the case of defects which are obvious, he cannot lodge a complaint. If there were public baths in the same city, then even in the case of defects that were not manifest he cannot lodge a complaint, because he could have investigated about her through his female relatives.

Mishnah Ketuvot 7.8⁹

In this case, the majority decision is more favorable to the woman, permitting her husband to divorce her without her ketuvah only if her defect is on her privates and there is no public bath in the city. Otherwise, if he divorces her, he must pay her the sum she is entitled to in her ketuvah. Here Rabbi Meir is less protective of the woman. If she were still living at her father's home, the burden of proof falls upon her and her father to demonstrate that she only developed the defect after being betrothed, a matter that might be difficult to prove. Once she is living in her husband's house, he may at any time attempt to find proof that she had developed her defect before betrothal, so that he can divorce her without paying her her ketuvah. It is much easier to divorce a woman without having to pay her ketuvah under Rabbi Meir's system than under that of the majority. In light of this second mishnah, it is clear that Rabbi Meir is not only interested in protecting the woman, but in both cases is seeking to make divorce easier for the spouse who cannot live with his or her partner's defect.

RABBI MEIR'S RULINGS ON CHALITZAH BENEFIT WOMEN

Rabbi Meir rules in favor of a woman's right of choice in marriage when he adds exemptions to the levirate requirement:

If the lower sign of puberty appears before the upper signs, the girl must go through the ceremony of release from the levir or be taken in levirate marriage. If the upper signs develop before the lower signs, although this is unlikely, Rabbi Meir says she neither has to perform the rite of release from the levir nor be taken in levirate marriage. The majority rule that she must either perform the rite of release from the levir or levirate marriage, because they ruled that it is possible for the lower sign to appear before the upper one, but it is not possible that the upper sign should develop before the lower one.

Mishnah Niddah 6.1 ¹⁰

Rabbi Meir differs with the majority in the case of a girl who has developed the "upper signs" of puberty and not the lower one. Rabbi Meir rules that she is still a girl and exempt from levirate claims. The majority rule that she is an adolescent and is obligated to be married or released by her dead husband's brother. Similarly, Rabbi Meir is lenient in another case:

What about the case of a man whose brother was born after he died -- what is the status of the widow? Two brothers were living at the same time and one died without having a child. A third brother was then born before the widow had completed the agreement to marry the second brother. Later, the second brother died. The wife of the first brother is exempt from any levirate obligations to the third brother because this is the case of a man whose brother was born after he died. [The original wife of the second brother undergoes either levirate marriage or release with the third brother.] If the widow of the first brother had completed arrangements for marriage to the second brother, but the marriage had not been consummated before the third brother was born, and later the second brother died, the widow of the first brother is exempt from any levirate obligations to the third brother because this is the case of a man whose brother was born after he died. The widow of the second brother must

receive release from the third brother, and does not marry him. Rabbi Simon ruled: the levirate marriage or release of the first wife exempts the second wife. If the first wife was released by the second brother, she should undergo release by the third.

If the widow consummates the levirate marriage with the second brother and then a third brother is born, or if a third brother is born and then the levirate marriage is if the second brother dies, both widows are exempt from levirate marriage or release to the third brother. So ruled Rabbi Meir. Rabbi Simon ruled: Only one of them is forbidden to him. If either would have been permitted to him singly, one must undergo levirate marriage or release to exempt the second.

Tosefta Yevamot 2.1 ¹¹

It is the last case in which Rabbi Meir and Rabbi Simon differ. In that case a brother dies and his widow marries her brother-in-law, her levir. A third brother is born, then the levir dies. The question is whether the second brother's original wife or his sister-in-law, whom he married under the levirate law, are obligated to undergo levirate marriage or release from the third brother. The rabbis have already ruled that a woman only has to undergo levirate marriage or levirate release once. By this rule, when the levir dies, the widow he married is exempt from all further levirate obligations. Rabbi Meir rules that since she is exempt, she in turn exempts her sister-in-law. Neither woman in his opinion has a levirate obligation with the third brother. Rabbi Simon conceptualizes the case differently. He does not see the exemption as applying to both women jointly. Thus, if the first widow had not involved her brother-in-law in levirate claims, the original wife of this brother-in-law would still be obligated to the third brother. Therefore, if the marriage of the original wife of the second brother with the third brother would not involve breaking any rabbinic prohibitions under normal circumstances, then one of the two widows must undergo levirate marriage or release from the third brother. Both women have a levirate obligation

with the third brother, until one exempts the other, in Rabbi Simon's opinion. Rabbi Meir's decision exempting both women from any levirate claims is more favorable to women: the two women are immediately free to marry anyone else, with no ties to the third brother.

RABBI MEIR IS STRINGENT ABOUT ACCEPTING TESTIMONY REGARDING A HUSBAND'S DEATH

While Rabbi Meir grants some license to widows in the two cases above, he is stringent about accepting testimony about a husband's death:

If one wife claims that her husband is dead, but his other wife claims that he is still alive, the one who swears her husband is dead may remarry and claim her ketuvah, but the one who swears he is alive may not remarry and may not claim her ketuvah. If one claims he died, and the other claims he was killed, Rabbi Meir ruled that since they contradict each other, neither can remarry. Rabbi Judah and Rabbi Simon ruled that since both agree the husband is no longer alive, they both may remarry.... 12
Mishnah Yevamot 15.5

In this case, Rabbi Meir's ruling dooms the wife who says her husband died as well as the wife who says that he had been killed, to the status of the agunah, a woman who cannot remarry though her husband is presumed to be dead. In a society based on marriage, the agunah could not lead a normal life nor does she have a clear status.

RABBI MEIR IS STRINGENT REGARDING THE LEGITIMACY OF MARRIAGES

Rabbi Meir differs with the majority about the status of a marriage of a woman who is not legally permitted to remarry:

If a woman were pregnant by a previous husband or nursing a child by a previous husband [since she is

prohibited from marrying until the child is twenty four months old] she cannot be made to submit to the sotah ordeal nor does she receive her ketuvah, according to Rabbi Meir. The sages ruled that the second husband should separate from her and return to her after the set period [of twenty four months].

Mishnah Sotah 4.3¹³

According to Rabbi Meir, a woman who has remarried too soon after the end of her previous marriage must be divorced from her new husband, she cannot be made to submit to the sotah ordeal nor does she receive the ketuvah from the new husband because the marriage is not licit. Since this marriage was not legitimate, they may never marry each other, even after she becomes eligible to remarry. According to the majority, however, the couple must be separated until the child is two years old, at which point they can be reunited. The more lenient view of the majority is particularly significant in light of the fact that a woman with a small child is at a disadvantage in the marriage market, so that she might have a difficult time finding another man to marry. Rabbi Meir's ruling leaves the woman in a more precarious position.

In summary, Rabbi Meir's legislation on women does not form a consistent whole. In general, his rulings on matters pertaining to the ketuvah extend women's economic position. He generally eases divorce if one spouse has a defect. He limits the application of the levirate obligation so more widows could marry whom they chose, but he sets tighter limits on testimony that will permit a widow to remarry, thereby condemning more widows to be agunot, legally unable to remarry, and is more stringent in his ruling on an illegitimate marriage. His position affirms existing social structures, but offers women a little more power, by and large, within the system.

Footnotes

1. ר"ז פראנקס. דרכי המשנה. מה 3 יאנואר 1923. 112 p
2. cf. Tosefta Kelim, BM 1.6
3. : הגדול שבא על הקטנה, והקטן שבא על הגדולה, ומכת עץ - כתבתן מאתים; דברי רבי מאיר, ותקמים אומרים: מכת עץ כתבתה מנה.
ח. אלבק. שם סדר משנה. ירושלים. מוסד ביאליק. 1959. סדר נשים. p 90
4. אף על פי שאמרו: בתולה נזכה מאתים ואלמנה מנה - אם רצה להוסיף אפילו מאה מנה, יוסיף. נתארמלה, או נתגרשה, בין מן הארוסין בין מן הנשואין - נזכה את הכל. רבי אלעזר בן עזריה אומר: מן הנשואין - נזכה את הכל; מן הארוסין - בתולה נזכה מאתים, ואלמנה מנה, שלא כתב לה אלא על מנת לכנסה. רבי יהודה אומר: אם רצה כותב לבתולה שטר של מאתים, והיא כותבת: התקבלתי ממך מנה; ואלמנה מנה, והיא כותבת: התקבלתי ממך חמשים זוז. רבי מאיר אומר: כל הפוחת לבתולה ממאתים, ואלמנה ממנה - הרי זו בעילת זנות.
Albeck, op. cit., p. 103-4
5. הנזקק שמין להם בעדית, ובעל חוב בביענית, וכתבת אשה * בזבורת. רבי מאיר אומר: אף כתבת אשה בביענית.
ibid. p. 285
6. המוציא את אשתו משום אילנית ונשאת לאחר וילדה ואחר כך תובעת כתובתה מן הראשון משום ר' מאיר אמרו אוסרין לה שתיקות יפה מדיבורך
M.S. Zuckermann. Tosefta. Trier. 1882. p. 327
7. ואמרה האשה אמן אמן, אמן שלא נטמיתי אמן שלא אטמא דברי ר' מאיר ואין חכמים מודים בדבר אלא אמן שלא נטמיתי ואם נטמיתי יבא לה אמן עם איש זה אמן עם איש אחד אמן אם ארוסה אמן אם נשואה אמן אם שומרת יבם אמן אם משתיכמתי
ח. באראוויטץ. סדר גז' רב ספר' ואהרמן. ירושלים. 1966. p 20

8.

ואלו שכופין אותן להוציא: מכה שחץ, ובעל פוליסוס, והמקמץ, והמצרף נחשת, והברסי - בין שהיו בם עד שלא נשא, ובין משנשא נולדו. ועל כן אמר רבי מאיר: אין על פי שהתנה עמה, יכולה היא שתאמר: סבורה הייתי שאני יכולה לקבל, ועכשיו איני יכולה לקבל. וחכמים אומרים: מקבלת היא על כרחיה, חוץ ממכה שחץ, מפני שממקתו. מעשה בצידון בברסי אחד שמת, והיה לו אח ברסי - אמרו חכמים: יכולה היא שתאמר: לאחיי הייתי יכולה לקבל, ולך איני יכולה לקבל.

Albeck. op. cit. p. 113

9.

היז בה מומין ועודה בבית אביה - האב צריך להביא ראיה, שמצנתא רסה נולדו בה מומין הללו, תסתחפה שדהו. וכןסה לרשות הבעל - הבעל צריך להביא ראיה, שעד שלא נתארסה היז בה מומין אלו, והיה מקחו מקח טעות; דברי רבי מאיר. וחכמים אומרים: במה דברים אמורים? במומין שבסתר, אבל במומין שבגלוי, אינו יכול לטעון. ואם יש מרחץ באותה העיר - אף מומין שבסתר אינו יכול לטעון. מפני שהוא בודקה בקרובותיו. *ibid.* p. 113-114

10.

א בא סימן הפחתה עד שלא בא העליה, או חולצת או מתיבמת. בא העליה עד שלא בא הפחתה, אף על פי שאי אפשר - רבי מאיר אומר: לא חולצת ולא מתיבמת. וחכמים אומרים: או חולצת או מתיבמת. מפני שאמרו: אפשר לתחתה לבא עד שלא בא העליה. אבל אי אפשר לעליה לבא עד שלא בא הפחתה. *ibid.* Seder Taharot. p. 392.

11.

כאיה צד אשת אחיו שלא היה בעולמו שני אחים בעולם אחד ומת אחד מהן בלא ולד עמד השני הזה ולא הספיק לעשות מאמר כינסתו עד שנטל להם אח ואחר כך מת הראשונה יצאה משום אשת אחיו שלא היה בעולמו ושניה או חולצת או מתיבמת עד שמת הראשונה יצאה משום אשת אחיו שלא היה בעולמו ושניה חולצת ולא מתיבמת ר' שמעון אומ' ביאתה או הליצתה של אחת מהן מותר צדחה אם הלך לבעלת מאמר חלק לראשונה כנסה ומת ואחר כך נולד להן אח או שנטל להם אח ואחר כך כנסה ומת שתייהן מותרות מן ההליצה ומן הכנסה דברי ר' מאיר ר' שמעון אומ' החל ולא נאסרה עליו אחת מהם בא ומצא שתייהן בהיתר ביאתה או הליצתה של אחת מהן מותר צדחה איזה הוא מאמר הרי את מקדשת לי בנקש ובשמה כסף ובשפור איזה הוא שפור אני סלוי בן סלוי מקבל אני עלי סלויית יבמתי לזון ולטרנס כראי ובלכד שחורא כחובתה על נכסי בעלה הראשון כשם שקדושין אין קנין באשה אלא מדעת שתייהן כך מאמר אין קנה כינסה אלא מדעת שניהם מה בין קדושין למאמר שהקדושין טמין ומאמר אינו נטיר:

Zuckermann. op. cit.

12.

ה אחת אומרת: 'מת', ואחת אומרת: 'לא מת' - זו שאומרת
'מת' תנשא ותטל כתבתה, וזו שאומרת 'לא מת' לא תנשא
ולא תטל כתבתה. אחת אומרת: 'מת', ואחת אומרת:
'נהרג' - רבי מאיר אומר: הואיל ומכחישות זו את זו, הרי
אלו לא ינשאו. רבי יהודה ורבי שמעון אומרים: הואיל וזו
חז מודות שאינו קים - ינשאו. עד אומר: 'מת', ועד אומר:
'לא מת'; אשה אומרת: 'מת', ואשה אומרת: 'לא מת' -

הרי זו לא תנשא. Albeck, op. cit. Seder Nashim
p. 68.

13.

מעברת חברו ומצקת חברו לא שותות ולא נטלות כתבה;
דברי רבי מאיר. וחכמים אומרים: יכול הוא להפרישה,
ולהחזירה לאחר זמן. אילונית חקנה ושאינה ראויה לילד -
לא שותות ולא נטלות כתבה.

ibid. p. 243-244.

RABBI JUDAH

Rabbi Judah ben Ilai was a student of both Rabbi Akiva and Rabbi Tarfon, whom he quotes often. His statements are characterized by citations of earlier authorities and by the use of Kal Vehomer argumentation. He is generally considered to be lenient in his interpretation of the law, for example, he deals a death blow to the possibility of prosecuting a rebellious son by limiting the law to the case in which the father and mother are identical in appearance, voice, and height (Mishnah Sanhedrin 8.1-4). His general leniency makes his harsh position on women even more striking. Among Rabbi Akiva's students, his decisions are authoritative. Thus, if he and Rabbi Meir or Rabbi Simon disagree, the law follows Rabbi Judah.¹

RABBI JUDAH RULES UNFAVORABLY TO WOMEN ON ECONOMIC ISSUES

Rabbi Judah's rulings on the ketuvah weaken a woman's economic position. The ketuvah is to be paid from the worst land on the estate:

A woman's ketuvah is paid from the worst land of estate. These are the words of Rabbi Judah...²
Tosefta Ketuvot 12.3²

A widowed or divorced woman, already at a disadvantage, is placed at a further disadvantage by being stuck with the worst land. While a woman may have to live off her ketuvah for years, Rabbi Judah permits her to accept less than half of this important resource.

Though it was ruled that the ketuvah of a virgin is 200 zuz and of a widow is one maneh [100 zuz] if her husband wants to, he may increase that sum even by 100 manehs....Rabbi Judah ruled that if her husband wanted to, he could write out a contract for 200 zuz for a virgin and she could write that she re-

ceived one maneh [100 zuz] from him. He could write one maneh for a widow, and she could write, "I have received fifty zuz [1/2 maneh] from you."

Mishnah Ketuvot 5.1 ³

Rabbi Judah decides here that a woman is entitled to forfeit up to half of her ketuvah. This ruling obviously opens the way for abuse since a woman is economically dependent upon her husband, and might prefer to gamble that she would not need to use her ketuvah rather than remain unmarried. This unfairly takes advantage of the "embarrassment" caused by a woman's single state in order to pressure her to cede her rights.

Rabbi Judah further rules to limit the cases in which a woman may receive her ketuvah:

If a man betroth his daughter and she is divorced, and he betroth her again and then she is widowed, he receives her ketuvah. If he married her off and she were divorced and he gave her in marriage [again] and she was then widowed, she receives her ketuvah, from both marriages. Rabbi Judah ruled, "The father gets the ketuvah from the first marriage." But the majority answered that after a father has given his daughter in marriage, he has no authority over her.

Mishnah Ketuvot 4.2 ⁴

This Mishnah refers to a girl who is still a minor. If she is divorced or widowed while only betrothed, her father receives the ketuvah money. If she were actually married and divorced while she were still a minor, the majority rules that she is no longer under her father's aegis, so she receives her ketuvah money herself and is responsible for herself. Rabbi Judah, on the other hand, rules that she returns to being under her father's aegis, so that he collects her ketuvah. He does not grant her independence. Even if she immediately remarries, her father is still entitled to the first ketuvah.

Even within the marriage, Rabbi Judah's rules grant a wide latitude to the husband's claims on his wife's property:

If a husband states in writing to his wife: "I have no right nor title to your property," he is entitled to the proceeds of it in her lifetime and inherits it if she dies. Why then did he need to state in writing "I have no claim to your property"? So if she sold it or gave it away, her act is valid. If he declares in writing: "I have no claim to your property or to its profits," he may not use the proceeds during her lifetime, but if she dies, he inherits it. Rabbi Judah ruled: In any event, he had the use of the profits from the proceeds of her property, unless he specifies in writing: "I have no claim to your property, to its produce, or the profits of the produce forever...."

Mishnah Ketuvot 9.1 ⁵

Rabbi Judah interprets a husband's waiver of use of his wife's property tightly so as to enable the husband to have the greatest possible use of his wife's land unless he specifically stipulate otherwise. Rabbi Judah's concern and sympathy is over the husband's continued use of the property, not with the wife's control over her own property.

RABBI JUDAH IS RELUCTANT TO ACCEPT TESTIMONY FROM WOMEN

Rabbi Judah places stringent conditions on a wife who comes to give testimony of her husband's death:

A woman went with her husband to a foreign land and there was peace between them and peace in the world. If she returned and claimed her husband died, she may remarry or contract a levirate marriage. If there was peace between them but war in the world, or if there were strife between them, but peace in the world, and she returned and claimed her husband died, she is not believed. Rabbi Judah ruled: She is never believed except if she returns weeping and with her clothes rent. The majority answered him: It doesn't matter how she appears, she can remarry.

Mishnah Yevamot 15.1 ⁶

Unless the woman comes into court in the throes of grief, crying and with her clothes torn in mourning, Rabbi Judah will not accept her testimony that her husband died. If, out of respect for the court, the woman

composed herself before presenting her case before it, according to Rabbi Judah, her testimony is not accepted. Demanding that the widow appear in court while suffering intense feelings of grief and loss is a cruel condition to attach to the acceptability of her testimony. However, such a requirement is consistent with Rabbi Judah's propensity not to accept women's testimony. That propensity is reflected in yet another source which states:

All women to be examined for signs of puberty are only examined by women. So Rabbi Eliezer turned to his wife and Rabbi Ishmael turned to his mother. Rabbi Judah ruled: Before and after reaching puberty women examine them, but during puberty woman may not examine them, since doubtful cases cannot be married on the basis of women's testimony. Rabbi Simon ruled: Even during puberty a woman's testimony is believed in order to exact a stringency, though not for leniency. A woman is believed if she claims she is a minor so she can't be released from levirate marriage, or that she is an adult so she can no longer refuse her betrothed, but she is not believed if she claims she is a minor, so she can still refuse her betrothed, or an adult so she may be released from levirate marriage.

Tosefta Niddah 6.8 7

Rabbi Judah takes the most extreme position against accepting women's testimony in marital cases which need information regarding entrance into puberty. While Rabbis Ishmael and Eliezer accept the testimony of women regarding other women, even about the onset of puberty, and Rabbi Simon accepts the testimony only when it leads to stringency, Rabbi Judah will not accept women's testimony about the onset of puberty at all.

RABBI JUDAH RULES UNFAVORABLY ABOUT WOMEN IN RITUAL MATTERS

Rabbi Judah forbids women to be involved with ritual purification:

If a reed pipe were cut to hold the ashes of the sin offering, Rabbi Elizer ruled: It must be immersed immediately. Rabbi Joshua ruled: If it becomes unclean it is immersed. Everyone is qualified to mix the ashes with the water, except for a deaf person, one who is mentally ill, or a minor. Rabbi Judah ruled that a minor is qualified, but invalidates a woman and a hermaphrodite.

Mishnah Parah 5.4⁸

The anonymous part of the Mishnah implies that women are permitted to mix the ashes of the red heifer with water to make the mixture used to purify people who were impure because of contact with a corpse. Rabbi Judah, however, refuses to let women or hermaphrodites, that is, people who might be women, prepare this mixture.

In another Temple ritual, that of the sotah ordeal, Rabbi Judah also rules unfavorably to women:

"And uncover the woman's head..." (Num. 5.18).
Rabbi Judah ruled: If her chest is attractive, it should not be uncovered and if her hair is attractive, it should not be loosened. If she were dressed in white clothes, dress her in black clothes, if she were dressed in fine black clothes, strip them from her and dress her in ugly clothes. If she were wearing gold jewelry, necklaces, earrings, rings, remove them from her so she may be disgraced. Rabbi Yohanan ben Barokah ruled: The daughters of Israel should not be disgraced more than is specified in the Torah.

Sifre Bamidbar 11.17⁹

Rabbi Judah interprets sotah as a ritual which should be humiliating to women, so he adds strictures humiliating women even beyond what is specified in the text.

Rabbi Judah is also less liberal about women's obligation for the Passover sacrifice:

The sacrifice for Passover is slaughtered for a woman on her own behalf, but for the second Passover, she should accompany others. So ruled Rabbi Judah. Rabbi Yosi ruled: The second sacrifice for Passover is slaughtered for a woman on her own behalf, and it goes without saying that the same holds for the first sacrifice. Rabbi Elazar, son of Rabbi Simon ruled:

For the first Passover sacrifice, a woman should accompany other people, and she does not make the second Passover sacrifice at all.

10
Tosefta Peshachim 8.10

The rabbis' decisions on a woman's obligation for the two Passover sacrifices are widely divergent. Rabbi Yosi expresses the view granting women the greatest participation. In his ruling, women are full participants in the sacrifices for Passover or for "second Passover". Rabbi Elazar, following his father's attitudes about women, grants a woman only the barest responsibility. Rabbi Judah's position falls between the two: a woman participates in her own behalf for the first Passover sacrifice, but is only an ancillary to a man for the "second Passover" sacrifice.

Rabbi Judah's tendency to exclude women from the Temple rituals is further reflected in his strict rulings on women's ritual impurity:

If a woman aborts an unidentifiable embryo, she becomes ritually unclean if there were blood with it, but if there were no blood, she is clean. Rabbi Judah ruled that in either case she is unclean.

11
Mishnah Niddah 3.1

While the anonymous ruling decides that a woman is unclean only if blood appears with the embryo, Rabbi Judah ruled that any time a woman loses an embryo, she is rendered ritually unclean.

His ruling on menstruation is similar:

If a woman has her period coincidental with other physiological signs, she is considered unclean. Thus, she invalidates any activities she performed, which required ritual cleanness, when those physiological signs appeared. If she has her period at the end of these signs, she is considered clean for any activities [requiring ritual cleanness] which she performed when those signs appeared. Rabbi Yosi ruled: The beginning of her period may be according to regular days or hours, for example, if her period usually came at sunrise, she is forbidden to have intercourse only after sunrise. Rabbi Judah ruled: She must wait a whole day [after the day her period was due, before she can have intercourse].

12
Mishnah Niddah 9.9

The anonymous decision of this mishnah is that a woman is considered ritually clean until her period actually begins, even if other signs have appeared. Rabbi Judah ruled more strictly, that she should not have intercourse on the day her period is due. As in the previous mishnah, his ruling extends the time of a woman's ritual impurity.

THE WIFE AS ACCOUTREMENT

Rabbi Judah's rulings on marriage, divorce, and personal status arise not out of his concern for women, but out of concern for the man or for other reasons. The woman often gets shortchanged in the balance. One striking case is that of the High Priest:

Seven days before Yom Kippur, the High Priest left his own house and went to the Counsellors' Chamber in the Temple. Another priest was also prepared, in case he became ineligible. Rabbi Judah ruled that they should also prepare another wife for him, lest his own wife die, for the Torah says: "He shall make atonement for himself and for his house" (Lev. 16.17), and "his house" means his wife. The majority answered: "If so, there is no end to the matter."

Mishnah Yoma 1.1 ¹³

Since the High Priest must offer atonement for himself and his "house", i.e., his wife, Rabbi Judah ruled that a woman must be found to be betrothed to the High Priest in case his own wife die before Yom Kippur. The majority ruled that such a possibility was not likely and that another woman did not have to be found. For Rabbi Judah, the ritual is more important than the personal feelings of the man or his wife in seeing her replacement in front of her, or of the woman to be betrothed on the condition that the wife die.

Rabbi Judah rules similarly about kings:

"Nor should he multiply wives" (Deut. 17.17), [he may have] only eighteen. Rabbi Judah ruled: He may have as many as he wishes, provided that they do not turn his heart away from Judaism. Rabbi Simon answered: If he wanted to marry only one woman, but she would turn his heart away, he may not marry her. If so, why does it say: "Nor should he multiply his wives"? Even if they be as righteous as Abigail.

14
Mishnah Sanhedrin 2.4

For Rabbi Judah, the honor of the king is primary. He may therefore take as many wives as he wishes, even against the plain meaning of the Biblical text. Rabbi Judah is oblivious to the possibility of insult to women contained in the idea of the harem.

WOMAN'S IDEAL ROLE IS CHILDBEARER FOR A MAN

Rabbi Judah is more concerned that a man have children than with the fate of a sterile woman:

If a husband divorces his wife because she is barren, Rabbi Judah rules that he may not remarry her, but the majority rules that he may remarry her. If she marries another man, has children with him, and returns to her first husband to demand her ketuvah, Rabbi Judah said, "Tell her that her silence is more becoming to her than speech."

15
Mishnah Gittin 4.8

For Rabbi Judah, a man may not remarry a woman he has divorced because she was sterile, presumably even if he discovers that the defect is in him and not in her. If the woman remarries and is able to have children by the second husband, Rabbi Judah will not permit her to claim her ketuvah money which was forfeited because of her alleged barrenness. Instead, he tells her insultingly that her demand is not becoming, and she should leave well enough alone. His unfavorable law ends with a direct insult to the disfavored party.

Rabbi Judah also legislates humiliation of a man who chooses to

release his brother's widow so she can marry whom she pleases:

"...and his name shall be called in Israel 'The house of him who had his shoe loosened'" (Deut. 25.10). This is a commandment for the judges and not for the disciples. Rabbi Judah ruled: It is a commandment for everyone present to say, "The man who had his shoe loosened, the man who had his shoe loosened."¹⁶
Mishnah Yevamot 12.6

Rabbi Judah ruled that all people present at the rite of chalitzah which releases a widow from the levirate marriage must call out insults to the levir. By adding this humiliating twist, Rabbi Judah makes the rite less palatable and so increases the chance that the brother will refuse to perform it. The brother is pressured to marry the widow and have children for his brother. If he refuses, his brother's widow will remain an agunah, a woman who may not remarry though her husband is dead. Rabbi Judah's ruling increases the likelihood that the widow will become an agunah.

In another issue of remarriage, Rabbi Judah is more lenient. He waives the three month waiting requirement for childless widows:

A childless widow must wait three months before marrying her husband's brother or being formally released by him. Similarly, all women must wait three months before being betrothed again or remarried, whether they are virgins or not, whether they were divorced or widowed, whether they were married or betrothed. Rabbi Judah ruled: Those who had been married may be betrothed, those who had been betrothed may marry immediately, except for a woman betrothed in Judah, since her fiancé has been intimate with her. Rabbi Yosi ruled: All women may be betrothed immediately, except for a widow because of her mourning.
Mishnah Yevamot 4.10 ¹⁷

The rabbis in this Mishnah are concerned with establishing the paternity of the children. They therefore prohibit a woman from remarrying within three months after the end of her first marriage, enough time to see if she had been impregnated by her first husband. Paternity is an important

issue for determining inheritance and the need for levirate marriage. Here it has the effect of discriminating against women since a man may remarry immediately. Within this patriarchal structure, Rabbi Judah's ruling is more lenient. He recognizes that even if a woman is betrothed immediately after her first marriage, she would not have sexual relations until after marriage, which would not take place within the three months. Similarly, a betrothed woman, who was still a virgin, may remarry immediately, since it is certain that she is not pregnant by her first fiancé. In Judah, apparently, it was the custom to permit physical contact between a betrothed couple, so if the betrothal was ended, the woman would still need to wait the three months. In Rabbi Judah's system, the issue is clearly and solely that of paternity. Rabbi Yosi rejects the entire requirement of delaying betrothal except for widows, presumably also because a betrothed couple is not intimate, so any pregnancy would be attributable to the first husband.

RABBI JUDAH IS MORE LENIENT ABOUT ACCEPTING DIVORCES AS VALID.

Rabbi Judah is more lenient about witnesses to the divorce statement:

If one brings a divorce statement from a foreign country and says, "It was written in my presence, but not signed in my presence," or "It was signed in my presence but not written in my presence," or "It was completely written in my presence, but only half of it was signed in my presence," or "Half of it was written in my presence and all of it was signed in my presence," the statement is invalid. If one person says, "It was written in my presence" and another says, "It was signed in my presence," the document is invalid, but Rabbi Judah accepts it as valid. If one person says, "It was written in my presence," and two others say, "It was signed in our presence, it is valid."

Mishnah Gittin 2.1 18

Rabbi Judah accepts the word of one witness to the writing and one to the

signing of the get. He thereby increases the possibility that a get of dubious status will be found to be valid. If the get is valid, the woman receiving such a document is freed to marry another and not left an agunah. The man is free to marry another whether the divorce was valid or not. Rabbi Judah's ruling, therefore, is more lenient for the woman, enabling her to reassume the role he prefers for her, that of wife and mother. He is oblivious to the basic inequities of a system in which issuing a divorce is entirely the prerogative and decision of the man.

Rabbi Judah relieves the woman a bit in the case of a conditional divorce:

[If a husband says,] "Here is your divorce statement on condition that you serve my father" or "on condition that you nurse my son," how long must she nurse his son? Two years. Rabbi Judah ruled: Eighteen months. If the son or the father dies [before the condition is fulfilled] the divorce statement is valid....

Mishnah Gittin 7.6 19

If a husband gives his wife a divorce on condition that she nurse their child, Rabbi Judah sets her responsibility to the child as ending at eighteen months while the majority set the limit at twenty-four months. Rabbi Judah releases her from her obligations six months early, a small concession.

RABBI JUDAH IS GENERALLY LENIENT IN ACCEPTING TESTIMONY ABOUT THE DEATH OF A HUSBAND

In accepting testimony on the death of a husband, in one case Rabbi Judah is more lenient than the anonymous decision:

Even if someone heard women saying that a certain man had died, this is sufficient testimony. Rabbi Judah ruled: Even if someone overheard children

saying, "We are going to mourn and bury so and so," whether his intention was to testify to the death or not, this is sufficient testimony.

Mishnah Yevamot 16.5 ²⁰

Unless a husband's death has been legally established, a woman is not permitted to remarry. What is acceptable as sufficient testimony to declare the husband legally dead becomes a critical issue. Rabbi Judah's acceptance of second-hand information based on the words of children is a major bending of the rules of witnesses for the sake of a woman.

More significant is Rabbi Judah's ruling in which he finds Biblical authorization for the notion that one man's testimony is enough to declare a husband legally dead:

"One witness shall not rise up against a man for any iniquity or for any sin, in any sin he may commit... (Deut. 19.15). From this verse we can only learn about testimony against a man. What can we deduce about testimony about the death of a husband? The text reads, "For any iniquity or for any sin." If it intended to include testimony for a woman about the death of her husband, the text would not have specified "a man". One witness shall not rise up for a sin, but he should rise up to testify for a woman about the death of her husband, so she may marry, according to Rabbi Judah.

Sifre Devarim 188.228 ²¹

Two witnesses are the usual minimum required to give testimony. To enable a woman to remarry and not remain agunah, Rabbi Judah permits the testimony of one witness to be legally binding. By finding Biblical justification for his position, he gives it more authority than if the ruling came only from him. Rabbi Judah's leniency in this area recalls his leniency in abrogating the three month waiting period for remarriage. In his view, women's role is to be married, and he eases the way for them to attain this state.

In a different case, Rabbi Judah leans towards stringency in accepting testimony about a husband's death:

If a man brings a divorce statement from a foreign country and says, "It was written and signed in my presence" he cannot marry the other's wife. If he says, "He died," or "I killed him," or "We killed him," he may not marry the other's wife. Rabbi Judah ruled: If he says, "I killed him" the other's wife may not remarry. If he says, "We killed him" she may remarry.

Mishnah Yevamot 2.9 ²²

According to Rabbi Judah, the evidence of a murderer is not acceptable on the basis that the Torah prohibits accepting testimony from a criminal (rasha). He ignores the possibility that the man killed the husband inadvertently or accidentally, so is not a criminal. He permits her to remarry if the man says, "We killed him" if it is clear that he did not take part in the murder, but was present when it occurred. Given the disastrous consequences of a "mistaken" adultery, it might not be beneficial to allow the woman to remarry on the testimony of a criminal, but Rabbi Judah's decision also rules out the acceptance of testimony of a man who killed inadvertently.

LENIENCIES AND STRINGENCIES IN VOWS

Rabbi Judah does extend a woman's power over herself in the area of vows, in one case:

There are nine categories of women whose vows remain binding; an adult who is an orphan, an adolescent girl who became an adult who is an orphan, an adolescent girl who is not yet an adult who became an orphan, an adult whose father died, an adolescent girl who became an adult and her father died, an adolescent girl whose father died, an adolescent girl whose father died and she became an adult, an adult whose father is living.... Rabbi Judah ruled: Also, if a man married off a daughter who was a minor and she became a widow or was divorced and returned to her father's home, she is considered an adolescent girl [and her vows are valid].

Mishnah Nedarim 11.10 23

"Orphan" here is understood as a technical term meaning a girl whose husband died while she was still a minor, under 12 1/2 years old. To the cases of women whose vows remain binding, because their father can no longer dissolve them, Rabbi Judah adds the case of a girl who is widowed but still a minor, a small but real extension of the list provided in the anonymous section of the Mishnah. Rabbi Judah also grants a measure of reality to a woman's vow, even in a backhand way:

If a woman vowed to become a Nazirite, and then she drank wine or defiled herself by contact with a corpse [against the vow] she must receive forty lashes. If her husband dissolved the vow, but she did not know it, and she drank wine or defiled herself by contact with a corpse, she does not receive forty lashes. Rabbi Judah ruled: If she does not receive the forty lashes, she must receive the "lashes for rebellion."
Mishnah Nazir 4.3 ²⁴

On first glance, the ruling of Rabbi Judah seems harsh. After all, if the woman is bound by no vow, since her husband annulled it, then it should not matter whether or not she holds to it, since it is no longer binding. Indeed, her husband might have publicly annulled it just because he knew she might violate it. Rabbi Judah wants his cake and to eat it too: though the vow is no longer binding, because the woman still thinks it is binding, she deserved punishment for violating it. Rabbi Judah's statement has a general implication: if a wife does not know that her husband has annulled her vow, she must fulfill it, else she risks punishment. Her vows are binding as long as she believes they are binding. Rabbi Judah has given the wife an opening to honor all her vows, but in a backhanded way.

Rabbi Judah takes vows seriously, even finding them more important than women:

If a man divorces his wife because of her bad reputation, or because of her vows, he may not remarry her.

Rabbi Judah ruled: If many people knew of the vow, he may not take her back, but if many people did not know of the vow, he may take her back. Rabbi Meir ruled: If the vow required examination by a sage, he may not take her back, but if the vow did not require examination by a sage [that is, he could annul it himself], he can take her back....

Mishnah Gittin 4.7 25

For Rabbi Judah, the vow is more important than the woman: if the vow has been heard by many people, it is more important that it be allowed to stand rather than be cancelled by the husband. Since the vow remains uncanceled, the husband applies his option to divorce his wife because of excessive vowing. The traditional commentators also understand Rabbi Judah to be concerned with punishing the woman in this case. In contrast, the commentators say that Rabbi Meir is more concerned with the possibility of the invalidation of the divorce. If the husband gives his wife a divorce because of a vow, and then says that if he knew he could cancel her vow he never would have divorced her, her divorce, her subsequent marriage, and her children from the next marriage are all suspect. Rabbi Meir therefore ruled that if the vow required a sage to annul it, the husband could not remarry his wife, so there would be no opportunity of his casting doubt on the divorce later. Any vows that he could annul himself, he could annul and then remarry his former wife. Thus, the woman's status is always clear and she never finds herself in "marital limbo." The positions of the two rabbis clearly reflect their hierarchies of concern: for Rabbi Meir, the woman and the clarity of her marital status are the central issues; for Rabbi Judah the vow is more important.

MISCELLANEOUS RULINGS FAVORABLE TO WOMEN

Rabbi Judah does rule leniently in regard to women in other areas.

On the Biblical text stating that a woman who touches a man's privates should have her hand cut off, Rabbi Judah comments:

"You shall cut off her hand...you shall not pity her" (Deut. 25.12). Rabbi Judah ruled: It says here "do not pity her" and it says there [Deut. 19.21] "do not pity her". Just as there "do not pity her" means a monetary fine, so here it means a monetary fine.

Sifre Devarim 293.312 ²⁶

Rabbi Judah interprets the Biblical text as specifying a monetary fine for the woman as her penalty. This is a major reinterpretation of the text and is clearly of benefit to women.

Another one of Rabbi Judah's decisions expresses concern over a woman after she is dead:

...If a woman is married, the husband has an advantage over her father. Since the husband is entitled to the usufruct of her property during her lifetime, he is liable for her support, her ransom, and her burial. Rabbi Judah ruled: Even the poorest Jews must not provide less than two flutes and a woman lamentor at the funeral of his wife.

Mishnah Ketuvot 4.4 ²⁷

Though Rabbi Judah generally rules against women's economic interests while they are alive, he is considerate enough to provide minimum burial standards for them after they die.

Another concession Rabbi Judah makes to women involves the work a wife is expected to perform for her husband:

...seven types of work are specified and the remainder [her husband] does not have to specify. Once she is married to him...she does not have to grind flour, nor bake, nor wash clothes in a place where it is customary for her not to do one of these. She cannot be forced to do it, nor to do it for his son, nor daughter, nor his brother, nor her brother, nor to give it to his mother-in-law to do. Rabbi Judah ruled: Nor can she be forced to make flax, since that lacerates the mouth and swells the lips.

Tosefta Ketuvot 5.4 ²⁸

Within the framework of a wife's obligations to her husband, Rabbi Judah excludes one type of work which would cause her pain, a kind gesture

which in no way disturbs the basic structure of her responsibilities.

Rabbi Judah's rulings are in general unfavorable to the status of women in the economic, ritual and personal sectors. He grants women an occasional boon to help steer them to their proper role of childbearer and ancillary to their husbands. His narrow view of a woman's role is compatible with the views of his colleagues and is his legacy from Rabbi Akiva.

1. ר'5 בראשונה. דרכי המשנה. מה ש'ס'נאל. וורשה. 1923. p112

2. כתובת אשה בזכויות דברי ר' יהודה.
M.S. Zuckermann. Tosefta. Trier, 1882. p. 274

3. אף על פי שאמרו: בתולה זוכה מאתים ואלמנה מנה - אם רצה להוסיף אפילו מאה מנה, יוסיף. ונתארמלה, או נתגרשה, בין מן הארוסין בין מן הנשואין - זוכה את הכל. רבי אלעזר בן עזריה אומר: מן הנשואין - זוכה את הכל; מן הארוסין - בתולה זוכה מאתים, ואלמנה מנה, שלא כתב לה אלא על מנת לכנסה. רבי יהודה אומר: אם רצה כותב לבתולה שטר של מאתים, והיא כותבת: התקבלתי ממך מנה; ואלמנה מנה, והיא כותבת: התקבלתי ממך חמשים וזו. רבי מאיר אומר: כל הפוחת לבתולה ממאתים, ואלמנה ממנה - הרי זו בעילת נזות.

- ח. אולפין. מה ש'ס'נאל. ירושלים. מוסד ביאליק. 1959. ס'נאל. p. 104

4. ב המאיר את בתו, וגרשה, ארסה, ונתארמלה - כתבתה שלו. השאה, וגרשה, השאה, ונתארמלה - כתבתה שלה. רבי יהודה אומר: הראשונה שלאב. אמרו לו: משהשאה - אין לאביה רשות בה.
ibid. p. 100

5. א הכותב לאשתו: 'דין ודברים אין לי בנכסיה' - הרי זה אוכל פרות בחייה, ואם מתה - יורשה. אם כן למה כתב לה 'דין ודברים אין לי בנכסיה' ושאם מכרה, ונתנה - קנים. כתב לה: 'דין ודברים אין לי בנכסיה', ובפרותיהן - הרי זה אינו אוכל פרות בחייה, ואם מתה - יורשה. רבי יהודה אומר: לעולם אוכל פרי פרות, עד שיכתב לה: 'דין ודברים אין לי בנכסיה', ובפרותיהן, ובפרי פרותיהן, עד עולם. כתב לה: 'דין ודברים אין לי בנכסיה', ובפרותיהן, ובפרי פרותיהן, בחייה ובמותה - אינו אוכל פרות בחייה, ואם מתה - אינו יורשה.
ibid. p. 118-19

6. האשה שהלכה היא ובעלה למדינת הים, שלום בית לביתה
ושלום בעולם, ובאת ואמרה: 'מת בעלי' - תנשא; 'מת
בעלי' - תתיבם. שלום בית לביתה ומלחמה בעולם,
קטטה בית לביתה ושלום בעולם, ובאת ואמרה: 'מת
בעלי' - אינה נאמנת. רבי יהודה אומר: לעולם אינה
נאמנת, אלא אם כן באת בוכה ובגדיה קרועין. אמרו לו:
אחת זו ואחת זו - תנשא. *ibid.* p. 66

7. כל הנבדקות אינן
נבדקות אלא בנשים וכך היה ר' אליעזר מוסר לאשתו ור' ישמעאל מוסר לאמו ר'
יהודה. אומר לפני הפרק ולאחר הפרק נשים נבדקות אותן חוץ הפרק אין הנשים נבדקות
אותן שאין כשיאין ספיקות על פי נשים ר' שמעון אומר אף חוץ הפרק נאמנת אשה
להחמיר אבל לא להקל נאמנת אשה לומר קטנה היא שלא תחלוץ וגדולה היא שלא
חמאן אבל אין נאמנת לומר קטנה היא שתמאן וגדולה היא שתחלוץ:
Zuckerman, op. cit., p. 647

8. שפופרת שחטקה לחטאת - רבי אליעזר אומר: יטביל י'
מיד. רבי יהושע אומר: יטמא ויטביל. הכל כשרים לקדש,
חוץ מחרש שוטה וקטן. רבי יהודה מכשיר בקטן. ופוסל
באשה, ובאגדרונינוס. *Albeck, op. cit., Seder Taharot.*
p. 269

9. ופרע את ראש האשה. כן נפנה לאחוריה ופורשה כדי לקיים בה מצות
פרשה דברי ר' ישמעאל ר'א לימר על בעות ישראל שחן מכמות ראשית ואע"פ שאין
ראיה לדבר וכן לדבר ותקח תמר אפר על ראשה (שמואל ב' י' יט) ר' יהודה אומר
אם היה בית חליצתה נאה לא היה מצלהו ואם היה שורה נאה לא היה סותרו היתה
מכוסה לבנים מכמה שחורים היו שחורים נאים לה ממשיתן ומלבישים אותה כשורים
היו עליה כל דוב קמלאת וזמנים וטבעות מסלקם הימנה כדי לעולה ר' יוחנן בן
ברוקא אומר אין מצולים בעות ישראל יותר מזה שכתוב בתורה

ח.ש. בארמון 96 ספר דב' דב' ספר' ואברהם. ירמיה 17. 1966

10. סח ראשון שוחטין על האשה בפני עצמה והיטני עושה אמה מציחה אצל
אחרים דברי ר' יהודה ר' יוסי אומר סח ייני שוחטין על האשה בפני עצמה ואין צריך
לומר סח ראשון ר' אליעזר בר' שמעון אומר סח ראשון האשה עושה מציחה לאחרים
ואינה עושה סח ייני אמרו לו מעשה שהיה ביוסף הבן יהודה את בן בתו לעשות
סח קטן והחזירוהו שם יקבע הדבר הובה אם' לכן לא יקבע הדבר הובה אלא שאין
האשה עושה סח ייני:
Zuckerman, op. cit., p. 169

11. * המפלת חתיכה, אם יש עמה דם - סמאה; ואם לא - סהורה. רבי יהודה אומר: ביז קד ובין קד, סמאה.

Albeck. op. cit., p. 384

12. היתה למידה להיזת רואה בתחלת הוסתות - כל הסהרות ששקטה בתוך הוסתות, סמאות. בסוף הוסתות - כל הסהרות ששקטה בתוך הוסתות, סהורות. רבי יוסי אומר: אף ימים ושעות וסתות: היתה למידה להיזת רואה עם הגז הנמה. אינה אסורה אלא עם הגז הנמה. רבי יהודה אומר: כל היום שלה.

ibid. p. 403

13. שבעת ימים קדם יום הכפורים מפרשין כהן גדול מביתו א ללשכת פלהדרין ומתקנין לו כהן אחר תחתיו, שמא יארע בו פסול. רבי יהודה אומר: אף אשה אחרת מתקנין לו, שמא תמות אשתו, שנאמר: וכפר בעדו ובעד ביתו. ביתו - ביתו או אשתו. אמרו לו: אם כן, אין לדבר סוף.

ibid. Seder Moed. p. 223

14. ירבה' לא ירבה' לו נשים, אלא שמונה עשרה. רבי יהודה אומר: מרבה הוא לו, ובלבד שלא יהו מסירות את לבו. רבי שמעון אומר: אפילו אחת ומסירה את לבו, הרי זה לא ישאנה. אם כן, למה נאמר: ולא ירבה' לו נשים? - אפילו כאביגיל.

ibid. Seder Nezikin. p. 174-75

15. הנוציא את אשתו משום אילונית - רבי יהודה אומר: לא יחזיר. וחכמים אומרים: יחזיר. נשאת לאחר והיז לה בנים הימש, והיא תובעת כתבתה - אומר רבי יהודה: אומרים לה: שתיקוהיך יפה לך מדבוריך.

ibid. Seder Nasilim. p. 248

16. כל הפרשה. 'תקרא שמו בישראל בית חלוץ הנעל' - מצוה בדנין, ולא מצוה בתלמידים. רבי יהודה אומר: מצוה על כל העומדים שם לומר: חלוץ הנעל, חלוץ הנעל, חלוץ הנעל.

ibid. p. 58

17. הַיְכָמָה לֹא תַחֲלִץ, וְלֹא תַתִּיבֶם, עַד שֶׁיְהִי לָהּ שְׁלֹשָׁה חֳדָשִׁים. וְכֵן כָּל שָׂאֵר הַנָּשִׁים לֹא יִתְאַרְסוּ, וְלֹא יִנָּשְׂאוּ, עַד שֶׁיְהִי לָהֶן שְׁלֹשָׁה חֳדָשִׁים. אֶחָד בְּתוּלוֹת וְאֶחָד בְּעוּלוֹת, אֶחָד גְּרוּשׁוֹת וְאֶחָד אֲלֻמְנוֹת, אֶחָד נִשְׁאוֹת וְאֶחָד אֲרוּסוֹת. רַבִּי יְהוּדָה אוֹמֵר: הַנִּשְׁאוֹת יִתְאַרְסוּ, וְהָאֲרוּסוֹת יִנָּשְׂאוּ, חוּץ מִן הָאֲרוּסוֹת שֶׁבִּיהוּדָה, מִפְּנֵי שֶׁלְבוּ גַם בָּהּ. רַבִּי יוֹסִי אוֹמֵר: כָּל הַנָּשִׁים יִתְאַרְסוּ, חוּץ מִן הָאֲלֻמְנוֹת, מִפְּנֵי הָאֲבוּל.

ibid. p. 31-32

18. הַמְבִיא גַם מִמְדֵּינַת הַיָּם וְאָמַר 'בִּפְנֵי נִכְתָּב', אֲבָל לֹא 'בִּפְנֵי נִחְתָּם'; 'בִּפְנֵי נִחְתָּם', אֲבָל לֹא 'בִּפְנֵי נִכְתָּב'; 'בִּפְנֵי נִכְתָּב' כָּלֹּו וּבִפְנֵי נִחְתָּם חֲצִי; 'בִּפְנֵי נִכְתָּב' חֲצִי, וּבִפְנֵי נִחְתָּם כָּלֹו - פָּסוּל. אֶחָד אוֹמֵר 'בִּפְנֵי נִכְתָּב', וְאֶחָד אוֹמֵר 'בִּפְנֵי נִחְתָּם' - פָּסוּל. שְׁנַיִם אוֹמְרִים 'בִּפְנֵי נִכְתָּב', וְאֶחָד אוֹמֵר 'בִּפְנֵי נִחְתָּם' - פָּסוּל; וְרַבִּי יְהוּדָה מְכַשֵּׁר. אֶחָד אוֹמֵר 'בִּפְנֵי נִכְתָּב', וְשְׁנַיִם אוֹמְרִים 'בִּפְנֵי נִחְתָּם' - כָּשֶׁר.

ibid. p. 275-76

19. הָרִי זֶה נֹסֵךְ עַל מַנָּה שֶׁתִּשְׁמַשׁ אֶת אָבָא, עַל מַנָּה שֶׁתִּנְקִי אֶת בִּי - כַּמָּה הִיא מְנִיקְתּוֹ שְׁתֵּי שָׁנִים. רַבִּי יְהוּדָה אוֹמֵר: שְׁמוֹנָה עָשָׂר חֹדֶשׁ - מֵת הַבֵּן אוֹ שְׁמֵת הָאֵב, הָרִי זֶה גַם.

ibid. p. 294

20. אֶחָת אוֹמֶרֶת: 'מֵת', וְאֶחָת אוֹמֶרֶת: 'לֹא מֵת' - זוֹ שְׁאוּמֶרֶת 'מֵת' תִּנָּשֵׂא וְתִסָּל כְּתִבְתָּהּ, חֹו שְׁאוּמֶרֶת 'לֹא מֵת' לֹא תִנָּשֵׂא וְלֹא תִסָּל כְּתִבְתָּהּ. אֶחָת אוֹמֶרֶת: 'מֵת', וְאֶחָת אוֹמֶרֶת: 'נִהְרַג' - רַבִּי מֵאִיר אוֹמֵר: הוֹאִיל וּמִכְחִישוֹת זוֹ אֶת זוֹ, הָרִי אֵלֶּי לֹא יִנָּשֵׂא. רַבִּי יְהוּדָה וְרַבִּי שְׁמַעוֹן אוֹמְרִים: הוֹאִיל חֹו חֹו מוֹדוֹת שְׁאֵינוֹ קִים - יִנָּשֵׂא. עַד אוֹמֵר: 'מֵת', וְעַד אוֹמֵר: 'לֹא מֵת'; אִשָּׁה אוֹמֶרֶת: 'מֵת', וְאִשָּׁה אוֹמֶרֶת: 'לֹא מֵת' - הָרִי זוֹ לֹא תִנָּשֵׂא.

ibid. p. 68

21. לֹא יָקוּם עַד אֶחָד בְּאִישׁ, אֵין לִי אֵלָּא לַעֲדוֹת אִישׁ לַעֲדוֹת אִשָּׁה מִנֵּן תַּלְמוּד לֹמַר לְכָל עוֹן וּלְכָל חֲטָאת בְּכָל חֲטָא אֲשֶׁר יַחֲטֵא, אִם סוֹפֵעַ לְרִבּוֹת אִשָּׁה מִה תַּלְמוּד לֹמַר אִישׁ לַעֲזֹן אֵינוֹ קָם כֵּם הוּא בְּאִשָּׁה לְהִשְׁאִיָּה דְּבְרִי רַבִּי יְהוּדָה

א.א. פִּינְקֶלסְטַין. סֵפֶר עַל סֵפֶר צִדְרִים. הַא מוֹרֵשׁ לְרַבִּינִים. הַאמֶרִיקָה. נְיוֹ יוֹרְק. 1969. p. 228

22. המביא גם ממדינת הים, ואמר: בפני נכתב ובפני נחתם -
לא ישא את אשתו. מת, הרגתו, הרגתו - לא ישא את
אשתו. רבי יהודה אומר: הרגתו - לא תנשא אשתו;
הרגתו - תנשא אשתו.
Albeck, op. cit., p. 23

23. תשע נערות נדרו קמץ: בוערת והיא יתומה; נערה ובגרה
והיא יתומה; נערה שלא בגרה והיא יתומה. בוערת ומת
אביה; נערה בוערת ומת אביה; נערה שלא בגרה ומת אביה.
נערה שמת אביה, ומשמת אביה בגרה; בוערת ואביה קים;
נערה בוערת ואביה קים. רבי יהודה אומר: אף המשא בתו
הקטנה, ותאלמנה או נתגרשה וחזרה אצלו - עדן היא
נערה.
ibid. p. 184-85

24. האשה שנדרה בגזיר, והיתה שותה ביינ, ומשמאה למתים -
הרי זו סופגת את הארבעים. הפר לה בעלה, והיא לא
ידעה שהפר לה בעלה, והיתה שותה ביינ, ומשמאה למתים -
אינה סופגת את הארבעים. רבי יהודה אומר: אם אינה סופגת
את הארבעים, תספוג מכת מרדות.
ibid. p. 204

25. המוציא את אשתו משום שם רע, לא יחזיר; משום נדר - לא
יחזיר. רבי יהודה אומר: כל נדר שידעו בו רבים, לא יחזיר;
ושלא ידעו בו רבים - יחזיר. רבי מאיר אומר: כל נדר
שצריך חקירת חכם, לא יחזיר; ושאינו צריך חקירת חכם -
יחזיר. אמר רבי אלעזר: לא אסרו זה אלא מפני זה. אמר
רבי יוסי בר יהודה: מעשה בצידן באחד שאמר לאשתו:
קוּם אם אני מְגֵרְשֶׁךָ, וְגֵרְשָׁהּ, והתירו לו חכמים שיחזירנה,
מפני תקן העולם.
ibid. p. 283-84

26. וקצתה את כפה, מלמד שאתה חייב להצילה בכפה מנן אם אין אתה
יכול להציל אותה בכפה הצילה בנפשה תלמוד לומר לא תחם עינך, רבי יהודה
אומר נאמר כאן לא תחם עינך ונאמר להלן לא תחם עינך, מה לא תחם עינך
האומר להלן ממון אף לא תחם עינך האומר כאן ממון
Finkelstein, op. cit. p. 312

27.

הָאֵב זָכַי בְּכַח בְּקִדּוּשָׁהּ: בְּכֶסֶף, בְּשֶׁטֶר, וּבְכִרְאָה; חֲכָא
בְּמִצְאָתָהּ, וּבְמַעֲשֵׂה יָדֶיהָ, וּבְהַפְרַת גְּדֵרֶיהָ; וּמִקְבֵּל אֶת
נִשְׁאָה, וְאֵינוֹ אוֹכֵל פְּרוֹת בְּחַיָּיהָ. וְשֵׂאת - יָתֵר עָלֶיז הַבַּעַל
שְׂאוֹכֵל פְּרוֹת בְּחַיָּיהָ; וְחַיֵּב בְּמִזְוֹנוֹתֶיהָ, בְּפִרְקוֹנָהּ, וּבְקִבּוּרָתָהּ.
רַבִּי יְהוּדָה אוֹמֵר: אֶפְלוּ עַי שְׂבִישְׂרָאֵל לֹא יִפְחַת מִשְׁנֵי
חֲלִילִים וּמִקֻּנָּעִת.

Albeck, op. cit., p. 101

28.

⁴ מלאכות שהאשה עושה לבעלה שבעה נופי מלאכות
מנו והשאר לא צרכו להימנות הכניסה לו בין משלו בין משלה לא מוחנת ולא אוסה
ולא מכבדת מקום שנגזר שלא לעשות אותם מכל אילו אין יכול לכוסה אין כוסה לעשות
לבנו ולבנה לאחיו ולאחיה ולהפיל לפני בהמתו אמר ר' יהודה אף אינו כוסה לעשות במשחן
מפני שמסירה את המה ומשרביש את השפתים:

Zuckerman, op. cit., p.266

CONCLUSION

An examination of the decisions of Rabbi Akiva and Rabbi Ishmael and their students reveals that most of their respective decisions form consistent points of view. Rabbi Akiva and Rabbi Ishmael take strikingly different positions on women. Rabbi Akiva's decisions are generally unfavorable towards women, leaving them in the second-class legal status prescribed in the Bible, and frequently extending those Biblical limitations. Rabbi Ishmael, on the other hand, takes a far more pro-feminist stance. His interpretation of the word ish to mean adult rather than "male" has far-reaching equalizing effects. His many rulings limiting the application of the sotah ordeal and reducing the humiliation of the women undergoing it present a sharp contrast to Rabbi Akiva's heaping of insult and humiliation on the woman, who might, after all, be innocent. Rabbi Ishmael consistently grants women more entitlements and powers within existing structures, and even restructures Biblical institutions to benefit women.

The two rabbis' disciples generally follow the outlooks of their respective teachers, though each student adds his own nuances. Only a mere handful of statements by Rabbi Josiah and Rabbi Jonathan are extant. It is clear, however, that they follow the pro-feminist teachings of their teacher, Rabbi Ishmael. Rabbi Akiva's students also tended to follow his views on women. Thus, Rabbi Simon ben Yohai extends his teacher's negative decisions on women, ruling to their disadvantage in economic, ritual, and personal spheres. Though in some areas, for example, women's vows, Rabbi Akiva's decisions were mixed, Rabbi Simon's one recorded decision in this area is unfavorable to women. His decisions suggest that he views women fundamentally as sex objects whom men should otherwise avoid.

This attitude might have been the impetus for his unfavorable rulings on women.

Rabbi Meir's views reflect a mixture of influences. Though he is considered predominantly a student of Rabbi Akiva, he studied with Rabbi Ishmael for a time, and was married to the one female scholar of the Tannaitic period, Beruria. His decisions do not form a consistent whole; at times he rules favorably toward women, for example, regarding the ketuvah, though at other times his decisions place women at a disadvantage, for example, regarding women's testimony. Generally, his rulings maintain existing social structures but grant women more power within the system.

Rabbi Judah's decisions on women are generally unfavorable -- a significant tendency since he is known for his leniency. He views a woman's ideal role as wife and childbearer for her husband. Therefore, he magnifies the insulting elements of levirate release in order to promote the levir's marriage to his brother's widow. He consistently decides unfavorably about women's economic and ritual status, putting them at a level inferior to men. His few rulings which are more favorable toward women suggest that Rabbi Judah is kind and supportive of women so long as they know their place. His system provides strong inducements for women to assume the roles of wife and childbearer, to be dependent on the men in their lives, and tucked quietly away from public responsibilities and power.

The Akivans, then, are satisfied to maintain women at a disadvantaged status, with a few sops thrown in here and there as rewards for compliance and obedience to men; the Ishmaelites are involved in making structural changes to promote women's equality and to ameliorate women's

positions within those biblical structures they maintain.

Unfortunately for women, normative halacha develops through Rabbi Akiva's school and not Rabbi Ishmael's. To wonder about the rabbis' decisions within their original social context is to open up a whole series of questions. How authoritative were these decisions? Were there groups of people, or even whole segments of society, who abided by the Ishmaelite system at one time? Were their decisions on women purely theoretical constructs like their decisions on the destroyed Temple? Does one view more closely correspond to the contemporaneous society's views on women, or do the differences reflect the outlook of different constituencies? Perhaps Rabbi Akiva, a former shepherd who married a wealthy landowner's daughter, made decisions in line with a conservative rural population with traditional role definitions. Rabbi Ishmael may have been responding to an urban populace, which was more heterogeneous in skills and less in touch with the ancient agricultural traditions and hierarchies, and therefore, perhaps, more fluid in its definitions of roles. Alternatively, the differences between the two schools might reflect different, or different combinations of, socio-economic groups, or of different geographic influences. These issues merit a study in themselves.

Whatever the social reality, in this study, the legal material stands on its own. The material shows that the issue of women's equal participation and responsibility under law was a serious problem to the Tannaim. In addressing the problem of women's status, the tradition is not monolithic. There was a wide divergence of views on women at the formative period in Jewish legal history. Some Tannaim favored a system in which women remain in the private sector. Yet the tradition also

includes leaders of great soul and vision who moved the law closer to an ideal of equality for women. Their decisions constitute an important precedent for Jews concerned with the status of women in contemporary society, and an alternative, as well, to normative halacha. The approach of the Ishmaelite scholars remains as testimony to them and as justification for all those promoting the equality of women today.

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