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THE EXPANSION OF WOMEN'S RIGHTS

DURING THE PERIOD OF THE MISHNAH

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Thesis submitted in partial fulfillment
of the requirements for the Degree of
Master of Arts in Hebrew Letters and
Ordination

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Referee, Professor Alexander Guttmann

To the memory of my father

with love and longing--

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Digest

The 400 years between 200 B.C.E. and 200 C.E. saw many changes in Jewish life. During that period control over Judaea switched from Egyptian to Greek to Judaean and finally to Roman hands. The government of internal Jewish affairs passed from the legitimate high priests to the quisling-priests of the Seleucid rulers, to the Hasmonean priest-kings, and finally to the rabbis.

It was mainly the rabbis who developed Judaism by means of the concept of two-fold revelation. They added the oral law to the written which allowed them to re-interpret and even supercede the rule of the Hebrew Bible. Their sagacity enabled Judaism to remain a viable religious system through the convulsions of the tumultuous period which included the destruction of the Second Temple in Jerusalem, the end of sacrifice, and the large-scale emigration of the Judaean population.

During this period women as a class gained significant rights which they had not enjoyed previously. The changes evolved gradually. It is the purpose of this thesis to trace and explain the expansion of women's rights which took place during the Mishnaic period.

The study deals with women's rights: in married life; in regard to personal property; in cases of divorce; in matters of birth control and abortion; in the Sotah

ordeal; in widowhood and in cases of possible levirate marriage. In its final chapter, the thesis posits some reasons for the growth in the status of women during the period under discussion.

Although the terminus of the thesis' consideration is the end of the Mishnaic period, many issues raised during the time of the Mishnah were not resolved until a later date. In some cases, therefore, the view of later authorities has been included.

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In Married Life

Women were once considered the property of their fathers until they were married and the property of their husbands thereafter. It was during the Mishnaic period that Jewish law began to significantly modify the accepted conception of the woman's position.

In Islam, wrote Louis Finkelstein, "Women were too degraded and enslaved to share in any part of cultural life...(They) were to be kept as soulless tools of their husbands."[1] Pharisaic Judaism did not, as Finkelstein claims, make women the "equal of men;"[2] it did, however, give women expanded freedom and a significant role to play in Jewish cultural and religious life.

M. Kiddushin 1:7 relates that women as well as men were responsible for the observance of all positive ordinances not bound up with a stated time and all negative commandments. Women, however, did not have to observe those positive commandments which were bound to a particular time such as laying tefillin, wearing fringed garments, and building a succah.[3]

Alexander Guttmann noted:

> The exclusion of women from participating in certain religious observances was certainly not in line with equity, and the Rabbis were aware of this. They could not abrogate the old, well-established practices, so they reinterpreted them. They avoided saying that the women were "excluded" but used, instead, the word "exempted."

> Then they tried to prove that these exemptions were not of their doing, but of divine origin.[4]

The woman's role in marriage relations was analagous to that which Kiddushin 1:7 assigns to them in religious life: They were not equal participants, but they were not "soulless tools of their husbands" either.

Betrothal

Kiddushin 2:1 affirms the father's right to betroth his daughter up until the age of twelve and a half years.[5] After that age, a girl was legally considered an adult (bogeret) who was free to arrange her own marriage and whom the father did not have the authority to betroth.[6]

Legally, it appears that a girl younger than twelve and a half had to accept the betrothal her father arranged for her. Whether these betrothals were commonly arranged without her consent is not certain from the Mishnaic text. The Talmud, however, advises against marrying off a minor daughter "until she has grown and says, 'I want to marry so and so.'"[7]

The Mishnah is explicit, however, in allowing the girl, upon becoming an adult, the prerogative of refusal over any marriage arranged for her by her brothers or her mother after her fathers death. Even if the girl had consented to a marriage arrangement when she was a minor, she may repudiate that arrangement upon reaching her twelfth birthday

by making a formal statement to that effect before a Bet Din (Jewish court). If she did not consent to the arrangement, she did not even have to formally repudiate the relationship in order to be excused from it.[8] The independence the Mishnah grants to a fatherless girl from the authority of her brothers or her mother in regard to marriage arrangements is reaffirmed in the Tannaitic midrash Sifra.[9]

Ketubah

The provisions which governed individual marriages were set forth in a document known as the Ketubah. The Talmud ascribes the origin of the Ketubah to Simon ben Shetah (first century B.C.E.), but scholars feel the Ketubah originated considerably earlier than Simon ben Shetah's time.[10]

As Louis Epstein described it, the typical Ketubah contained twelve divisions:

1. The marriage clause with the Jewish marriage formula.

2. A promise by the groom to pay the bridal price (mohar) and the pledged gifts (mattan) to his bride.

3. The enumeration of the bride's dowry (nedunyah), and its value.

4. Clauses dealing with the inheritance of the husband's property.

5. The conditions of divorce and the disposition of the property of the pair.

6. A legal clause dealing with the penalty for the husband's mistreatment of his wife.

7. A clause which might restrict the husband from taking additional wives.

8. The husband's promise to give the wife food, clothing, medicine, ransom in case of her capture, burial, and marital satisfaction.

9. The husband's promise to pay his wife's debts.

10. An order on the part of the husband pledging to support the wife and his minor daughters out of the estate after his death.

11. A lien on his property for the fulfillment of the Ketubah terms.

12. Any special clauses the couple might agree to include.[11]

Although Simon ben Shetah did not, apparently, originate the Ketubah, he did introduce a monumental reform when he substituted a marriage token with a note of indebtedness for the cash payment of the bridal price. This note made the full marriage price payable to the wife or to her father upon the dissolution of the marriage through death or divorce.[12] Alexander Guttmann writes: "The taqqanah (of Simon ben Shetah) ordering that the property of the

husband serve as security for the Ketubah...represents a most important step toward improving the situation of the Jewish woman and is expressed in every Ketubah document to date.[13]

In answer to those observers who feel the Ketubah makes the Jewish marriage too much like a business arrangement, Louis Epstein wrote:

> The form of marriage is one thing, its content quite another. The Jewish marriage is in content all that romance and union imply. A wife is a God-given helpmate, flesh of her husband's flesh. But the form of the Jewish marriage is more complete. It represents a transaction, a conveyance of rights. If marriage is romance in content, it is purchase in form.[14]

Monogamy

One of the most significant advances for women in Mishnaic times was the move toward almost complete monogamy in Jewish marriages. Despite the Biblical precedents of polygamy among the patriarchs and kings, there is no instance of plural marriage recorded among the more than 2000 sages of the Talmudic period.[15] Although there are Mishnaic references to laws governing inheritance in the case of plural marriages (e.g. Ketubot 10:1 which says that if a man marries two wives and then dies, the marriage settlement of the first wife takes precedence over the marriage settlement claim of the second)[16], "the rabbinic marriage ideal was one of permanent monogamy."[17]

Leviticus 18:18 which reads: "You shall not take

the sister of your wife (ahotah) as a wife to vex her by uncovering her nakedness during her lifetime," was cited as a basis for ending polygamy by the Zadokites in the first pre-Christian century. In making this interpretation the Zadokites understood ahotah, her sister, in the general sense of any other woman.[18]

In practice, Ketubah clauses against polygamy (mentioned above) often protected the Jewish woman from having to contend with a rival wife. Presumably these clauses provided for fines or divorce with marriage settlement for the wife if the husband took another wife.[19]

Ze'ev Falk disagreed with those scholars who contended that polygamy became almost unknown in Jewish life during the Mishnaic period. Falk wrote that only those women "who had a wide choice of possible partners" were able to have a pledge of their husbands' monogamy written into their Ketubot.[20]

In regard to the Mishnaic citations which assume the existence of polygamy, Falk wrote:

> We cannot assume that these examples were merely recited in the academy without the questions arising in real life. Other precepts of the Mishnah would also be unintelligible unless we assume that polygamy existed...Only if a society disapproves of polygamy on principle can that society be considered truly monogamous, whereupon the laws would change to suit the situation.[21]

Despite his protest that polygamy still existed, Falk, too, acknowledged that most people during the Second

Commonwealth remained monogamous.[22]

Solomon Zeitlin also conceded: "There is a possibility that the wealthy class, who may have practiced polygamy, as Herod did, had a separate women's quarters in the houses called Bet Nashim." Zeitlin concluded, though, that such houses "were almost certainly an insignificant minority."[23]

Conditional Betrothals

Another important protection for the Jewish woman in matters of betrothal and marriage is found in the Mishnaic pronouncements concerning conditional betrothals. Kiddushin 3:2 clearly states that a man who betrothes a wife on condition (al menat) that he do certain things, must do those things or the betrothal is void.[24] Kiddushin 2:2 disallows any betrothal which a man may make that is based upon a fraudulent claim. For example, a man who claims to be wealthy and betrothes a woman on that condition, has not effected betrothal if he turns out to be poor.[25]

A man who betrothes a woman on condition that he deliver to her a certain sum within a specified time is considered to have effected valid betrothal. If, however, he fails to deliver his pledge within the specified time, his betrothal becomes void.[26]

Kiddushin 2:5 makes clear that the man too is protected from deceptive claims of the woman, even if the claims are only implied. A woman who is betrothed on the condition

that she has no physical defects, but who in fact does have physical defects is divorced without her marriage settlement. Even if a woman is betrothed unconditionally, but she turns out to have physical defects, she too is divorced without her marriage settlement. The implication is that if a woman has physical defects she must so inform her husband before valid betrothal can take place.[27]

Virginity

Under Mishnaic formulation, the Ketubah of a virgin is twice that of a woman who had previously had sexual intercourse.[28] Should there arise a dispute between a widow and the heirs of her deceased husband over whether or not the woman was a virgin when she was first married, she had to provide witnesses that she entered the bridal canopy in the customary dress and hairstyle for virgins.[29] There would only be a necessity for witnesses, one would imagine, in a case where the Ketubah document itself had been destroyed.

The Biblical precedent for concern with virginity appears in Deuteronomy 22:14 ff. There, the penalty for a woman who claims to be a virgin upon marriage but turns out not to be so is death by stoning.[30] By the time of the Mishnah, the penalty for a non-virgin who claimed to be a virgin when she married is divorce and forfeiture of her Ketubah rights.[31]

The severity of the Biblical punishment was mitigated by the Mishnaic law that a capital crime such as false virginity had to be tried by a Sanhedrin of 23 members. The Sanhedrin lost its authority to inflict capital punishment c. 30 C. E. and ceased to function at all after the destruction of the Second Temple in 70 C. E.[32] Thus, virginity suits were reduced to monetary claims which were tried in small local courts with three judges.[33]

In Judea, it became the custom of an engaged couple to board at the home of the bride's father. This custom, according to Louis Finkelstein, made marriage more feasible for young men whose financial circumstances were not sufficient to establish a home of their own.[34]

With the advent of the custom of the engaged bridegroom living in his father-in-law's house, virginity suits became obsolete. Ketubot 1:5 states that the engaged man who eats (i.e. lives) with his father-in-law in Judea cannot institute a virginity suit against his wife because the presumption is that he had already been alone with her before the actual marriage.[35]

The rabbis further ruled that a man who had been alone with his betrothed girl even once could not sue her for non-virginity because it is presumed that he had been intimate with her.[36] His suit, according to Rashi, arose either because he forgot about his intimacy with her or because he believed that he had not ruptured her hymen

when in reality he had.[37]

Another ruling of the rabbis was that a man who married a bogeret (a woman over twelve years and six months old) had no claim to her physical virginity. The assumption was by that age a woman's hymen naturally disappeared.[38]

A further advance for women in the question of virginity is found in the decision of Rabban Gamaliel II in a virginity dispute between a man and his wife. The man found his wife a non-virgin and instituted a suit against her, but his wife claimed she had been a virgin when she was betrothed and had subsequently been violated. Even though the man may claim the woman is lying, Rabban Gamaliel, with the concurrence of Rabbi Eliezer, says the woman is to be believed. Their opinion is the accepted ruling despite the dissenting voice of Rabbi Joshua.[39] In similar fashion, Rabban Gamaliel and Rabbi Eliezer rule in favor of the woman who says she lost her tokens of virginity by an accident (i.e. some means other than intercourse) even if her husband claims she has had intercourse with another man.[40]

It is clear, then, that between the time of Deuteronomy when a non-virgin was subject to stoning and the time of Rabban Gamaliel II when a successful virginity suit was an impossibility, women achieved an important legal triumph concerning a central issue in Jewish marriage.

Conjugal Rights

Jewish tradition has long affirmed the healthiness of an active sex life in marriage. The Talmud emphasizes the importance of this concept to the extent that, as David M. Feldman writes:

> A prenuptial agreement by the woman to forego her claim to sexual rights is not to be recognized ...The deprivation of conjugal rights would be considered a personal hardship not subject to advance forfeiture.[41]

The Biblical precedent for obligatory sex in marriage appears in Exodus 21:10, which states that if a man takes another wife, he may not deprive the first of food, clothing, or conjugal rights.[42]

The Mishnah discusses what is meant by "conjugal rights" in Ketuboth 5:6. According to the School of Shammai, a man may, under normal conditions, abstain from having relations with his wife for a period of two weeks. If he exceeds this period, she is entitled to a divorce with the payment of her Ketubah. According to the School of Hillel, a man, under normal circumstances, may abstain from sex with his wife for a period of only one week, after which she would be entitled to a divorce with payment of her Ketubah.[43]

Rabbi Eliezer considered the question of conjugal rights and developed a schedule of sexual relations dependent on the man's occupation which gained acceptance as law. According to Rabbi Eliezer's schedule, men of independent

means had to perform their marital duties every day; workmen, twice a week; ass-drivers, once a week; camel drivers, once every 30 days; and sailors who went on long voyages were required to return home and attend to their wives at least once every six months.[44]

The Mishnah also stipulates that scholars may go away to study the law for a period of thirty days without permission from their wives. Laborers were allowed to leave their wives for a period of seven days.[45]

Ketubot 5:7 stipulates that if a woman refuses to have intercourse with her husband, her marriage settlement may be reduced by the sum of seven denars every week. Rabbi Judah ha-Nasi's opinion is that the marriage settlement may be reduced by seven half denars every week (i.e. $3\frac{1}{2}$ denars per week). This process is continued until the amount of her Ketubah is reached after which she is divorced.[46] (One denar=one zuz; a virgin's basic Ketubah ((Ikar Ketubah)) has a value of 200 zuz and a widow or a divorcee's basic Ketubah has a value of 100 zuz.)[47]

If, on the other hand, a man refuses to have intercourse with his wife, the court may add to her marriage settlement at the rate of three denars a week or, in the opinion of R. Rudah ha-Nasi, at the rate of three half-denars per week.[48] If the woman is agreeable, however, she may be divorced immediately and receive her Ketubah.[49]

The woman's right to sexual activity with her husband apparently extended beyond the stipulated minimum number of encounters. The Talmud states that a husband is morally (not legally) obliged to initiate sexual activity when he feels his wife desires it in addition to the times when intercourse is prescribed for him.[50]

The Talmud also teaches that a man may not change his occupation to one which would require him to be away from home more frequently than his previous work did without the permission of his wife. The assumption is that a woman would rather have the company of her husband than the extra income the new job might provide.[51]

Location

Concern for the woman's personal welfare is clearly expressed in the Mishnaic prohibition against a husband forcing his wife to move from one place to another against her will. For purposes of marriage the land of Palestine was divided into the following three provinces: Judea, the land east of the Jordan, and Galilee. A man could not force his wife to move from a town in Galilee, for example, to a town in Judea. Within one province, a man may move his wife from one city or town to another city or town of similar size. Without his wife's consent, however, he could not move from a city to a town or village, or vice-versa, even within the same province.[52]

The Talmud explains that the reason for this enactment is to prevent a woman accustomed to rural life from having to move to a city because "life in the cities is hard." Similarly, a city woman cannot be forced by her husband to move to the country "because everything is available in the city" and she is used to the convenience.[53]

Mutual Obligations

The Mishnah delineates the following tasks which a wife is supposed to perform for her husband: grind corn, bake, wash, cook, suckle his children, make his bed, and work in wool for the husband's profit. If the woman has servants, the amount of the work she does is naturally diminished according to the number of servants she has. Rabbi Eliezer, however, ruled that even if the wife has "100 bondwomen", the husband may compel his wife to work in wool because "idleness leads to lewdness."[54]

The Mishnah states that a wife has the right to return to her family's home for occasional visits. If her family lives in the same town, the husband cannot forbid his wife to visit home once a month. If her family lived in another town, she is allowed to visit with her family every three or four months--the period between one pilgrim festival (Pesach, Shavuot, and Sukkot) and another.[55]

Cases of Rape or Seduction

The rulings of the Mishnah tend to favor the woman's

position in cases of rape. Perhaps this is so because rape as a result of captivity by marauding soldiers was a not infrequent reality during the Mishnaic period. Rabbi Judah (son of Ilai) offered the opinion that if a girl were captured and redeemed she was still to be considered a virgin even if she were grown up. This opinion, however, did not become law.[57]

If a girl (Na'arah) were betrothed, then divorced and then raped or seduced, she receives full compensation from the man who violated her, and the compensation belongs to her, not to her father. This view of Rabbi Akiba prevailed over the view of Rabbi Jose the Galilean who claimed a woman in such a case had no claim to compensation.[58]

In cases of seduction, blame was clearly fixed upon the man. According to the Mishnah, the seducer has to pay for the woman's disgrace, her deterioration in value, and a penalty fine. The rapist must pay on all the above three counts plus an additional fine for bodily pain.[59]

The rapist, according to the Mishnah, bears an additional burden in that he must shoteh va-ahtseetso, "drink out of his (refuse) pot." In other words, he must marry the girl he raped "even if she were lame, even if she were blind, even if she were afflicted with leprosy," providing the girl was Jewish and eligible to marry an Israelite. He is never permitted to divorce her except if she were to commit adultery after marriage.[60] Another

example of rabbinic leniency toward the woman in matters of rape appears in the ruling of Rabbi Judah that a girl raped from behind by a large dog was permitted to marry a priest.[61]

Louis Epstein commented that because kidnapping was a recognized danger, "The husband's obligation to pay ransom for his wife grew in strength with the development of the law."[62] The following provision was even included in marriage contracts: "If you be made a captive, I shall redeem you and take you back as wife."[63]

Medicine and Burial

In addition to ransom, the husband was obligated to provide his wife with medical care in case of illness or injury. Legally, however, he had the right to divorce his ailing wife, grant her her marriage settlement, and be free of the responsibility for her medical care.[64]

Some Tannaim of the Tosephta, however, held that it was immoral for a husband to divorce his ailing wife while she is sick. They urged him to wait until she had recovered if he wished to divorce her.[65]

The final obligation a husband had toward his wife was to bury her in case of her death. The precedent derives from Abraham's efforts in Genesis 23 to procure the Cave of Machpelah as a burial place for his wife Sarah. "If you die, I shall bury you," became a clause that was included in Ketubot. The clause, however, was often left out to avoid

mixing the couple's joy at the time of their wedding with the sadness involved in contemplating death. Burial of a wife, however, remained a husband's statutory obligation.[66]

In summary, it can be said that during the Mishnaic period, the rights of women in marital affairs were greatly expanded. The move toward almost complete monogomy in Jewish marriage, and the virtual elimination of virginity suits are the two outstanding examples. In addition, the Mishnah's clear delineation of a husband's obligations towards his wife and the obligations of the wife toward the husband afforded women the protection of the law and made them less subject to their husband's whim.

Property Rights

Before Marriage

The father had full authority over the property of his unmarried minor daughter. The Mishnah stipulates, however, that the father was obligated to support his female children until they were wed or became of age.[1]

Although girls were entitled to support from their fathers or their father's estate, they had, in the absence of a will, no further inheritance rights if there were any male heirs. As Louis Epstein expressed it, the woman had no "tribal personality."[2]

The rabbinic view of inheritance is based on the Biblical ruling in the account of Zelophehad's daughters which reads: "If a man die without leaving a son, you shall transfer his property to his daughter."[3] From this statement, the rabbis reasoned that if a man did leave a son, the daughter was not entitled to a portion of the estate.[4]

Although the case of Zelophehad's daughters established a daughter's right to inherit her father if he had no sons, extenuating circumstances could nullify a daughter's chance to inherit her father's estate even if he had no male heir. The rabbis were preplexed by the following situation: A man, known as A, had a son and a daughter. The son had a daughter, but then he died leaving A with a daughter and granddaughter. Does the daughter or the granddaughter

inherit A upon his death?

The School of Shammai ruled that the daughter and the granddaughter divide A's estate equally. The School of Hillel, however, offered the prevailing opinion that the granddaughter had the sole claim to the estate.[5]

Solomon Zeitlin asserted that Hillel's decision in such a case demonstrated the significance of the legal innovation of testamentary succession. The Pharisees had ruled that a person could make a will (diatheke) by which a portion of his property could go to anyone he designated, "even to a total stranger." Thus, Hillel ruled that had the father wanted his daughter to inherit him when his son died, he could have made a will so stating. The absence of such a will, claims Zeitlin, was taken as proof that the father wanted the estate to pass directly to his son's heirs.[6]

The principle of testamentary succession did not give the daughter an automatic claim on her father's estate. It did, however, allow the father the option to designate her an heir even if there were a living son.

Whether or not there was a will, the rabbis ruled that a daughter's claim to support takes precedence over a son's claim to the estate. In other words, when a man dies, his daughter's needs are provided before his son can claim any of his inheritance. If the estate was not large enough to support both the daughter and the son, the son was

disinherited. As the Mishnah states: "In a limited estate, the daughters are supported, but the sons go begging."[7]

In contrast to what seems to be the prevailing view, Eleazer ben Azariah claimed that the father was not liable for the support of his daughter. Commenting on the general principle that "sons inherit but daughters receive support," Eleazer ben Azariah said: "Just as the sons only inherit after the death of their father, so do the daughters receive support only after the death of their father.[8]

The question raised by Eleazer ben Azariah was decisively answered by a passage which became part of the standard Ketubah agreement. It read: "The female children you bear me shall dwell in my house and be supported by me until they are married or until they become of age."[9]

The father's control over his dauthers before they reached adulthood or until they married included control over their betrothal agreements no matter how they were effected.[10] If his daughter were betrothed and divorced before the marriage took place, her father received her marriage settlement.[11]

Until she was married, the father also had control over his daughter's earnings, her findings, and the annulment of her vows. The only legal restriction on the father's control of the property of his unmarried minor daughter was that the father could not make use of the property she had inherited from another source, her maternal grandfather,

for example.[12]

Upon reaching her majority, a girl whose father was dead could (as noted in Chapter One) refuse to agree to a union which her mother or brothers arranged. If she consented, and if her guardians had assigned her a sum of money as a pledge, she had the legal power to claim that pledge when she reached her majority of twelve and one-half years.[13]

Between Betrothal and Marriage

When a daughter married, it was customary for her father to give her a dowry.[14] Concerning the custom of dowering brides, Louis Epstein commented:

> Throughout the halakah it is evident that the rabbis, fully aware that the daughter cannot have the status of an heir, feel that in some other legal form, one that most suits her needs, she is entitled to share the family fortune with her brothers. Dowry is in that sense a substitute for succession.[15]

The rabbis considered 50 zuz the minimum dowry under normal circumstances. This was enough for the bride to buy clothing for a full year. In the case that a girl's father was dead when she married, a 50 zuz dowry was normally provided from the father's estate.[16]

In the case of a wealthy family, however, there was no established upper limit for a dowry. If a wealthy father was deceased, his heirs estimated what their father would have given his daughter as a dowry and supply

her with it. Rabbi Judah ha-Nasi determined that a daughter's dowry should amount to 10% of her father's estate.[17]

It was also the social custom for the bridegroom to give gifts of value (matan) to his bride-to-be at the time of their betrothal. Although there is no Biblical legislation concerning this practice, there are precedents in the Genesis stories of Abraham's servant and Rebekkah (Genesis 24) and the actions of Schechem and Hamor after the rape of Dinah (Genesis 34).[18]

Between betrothal and the actual marriage, a groom had no right to make use of his wife's earnings or inheritance. In case a betrothed woman died, however, the groom was not obligated to arrange and pay for her burial.[19]

The respective schools of Hillel and Shammai differed over the question of a woman's right to sell the property she acquired after her betrothal but before her marriage. The School of Shammai said she could sell such property, but the School of Hillel said she could not.[20]

After Marriage

A man, of course, had the legal obligation to support his wife. The Mishnah stipulates the minimum amounts of food, clothing, and other supplies and personal expenses which even a poor man must provide his spouse.[21] The man who was better off, though, was legally required to support his wife, even if they were separated, in a manner

which reflected his social status.[22]

When a woman married, her husband had the right to use and profit from her property unless he specifically waived the right or unless she were given a gift with the specific stipulation that the husband had no right to make use of it. The husband's right of usufruct of his wife's property could also be circumvented if she wrote a fictitious deed conveying ownership of her property to a third party.[23]

Regarding usufruct, Louis Epstein explained:

> The right of usufruct is not the husband's private right but as head of the family. He can, therefore, use the fruit only for the household benefit, not to increase his personal wealth. If the yield is greater than the family can use, the surplus is sold, and the money is used in other ways to make the family more comfortable.[24]

The rabbis acknowledge that the husband's right to make use of his wife's property has no Biblical precedent. Usufruct, rather, is a privilege the rabbis give the husband, according to the Jerusalem Talmud, "out of consideration for the care he gives the wife's property."[25] The Babylonian Talmud, however, accords the husband the privilege of usufruct "in exchange for the ransom which the law imposes upon him in the event his wife is made captive."[26]

There were two classes of property which a woman could use: Nichsei Tzon Barzel and Nichsei Mulug. Tzon Barzel was mortmain or real estate. It could be

used by the husband for his profit, but he undertook the obligation to restore the property in full to his wife should the marriage end in divorce or to her heirs if she should die. If the husband pre-deceased his wife, the value of her property became a lien upon his estate. Nichsei Mulug, which included animals and other movable property, differed from Tzon Barzel in that the husband was not responsible should deterioration or loss of his wife's property occur.[27]

Except for the efforts of Rabban Gamaliel II, the Mishnaic period saw the wife's rights over her private estate increasingly restricted. Until near the end of the Second Commonwealth, a wife was free to do with her private estate as she wished.[28]

The first restriction came when the husband was given the right to reclaim property which his wife sold if the wife had acquired that property after her marriage. Louis Epstein explained that the husband is automatically a part owner of the property, "since the wife acquired it at a time when she herself was owned by the husband."[29]

Under the rulings of the School of Hillel, women's property rights were further restricted. The unaccepted rulings of the School of Shammai, by contrast, favored the woman in economic matters.[30]

The Mishnah stipulates that if a woman inherited

money after her marriage, land should be bought with it from which the husband derived benefit.[31] One would assume in such a case that it was the husband's duty to cultivate the land which was purchased.

The Mishnah also states that a woman's earnings and the interest of her inheritance belong to her husband, but that compensation for indignity and injury to her belong to her. Rabbi Judah ben Bathyra ruled that if a wife sustained an injury which was normally covered by her clothing, she received 2/3 of the compensation ordered by the court, and her husband received 1/3. If, however, the injury was visible, it was thought to be a blow to the husband's dignity as well. Therefore, the husband received 2/3 of the compensation, and his wife received 1/3. While the husband would receive his share immediately, land was bought with the wife's share from which the husband profited. The wife, however, retained deed to the land itself.[32]

During his tenure as Nasi, Rabban Gamaliel II retarded the trend begun by the School of Hillel to limit a woman's control over her property. When the sages suggested to Rabban Gamaliel II that a man marrying a woman should come into possession of all her property, Rabban Gamaliel replied: "We already feel ashamed over the rights accorded the husband over the property she acquires after marriage. Now you propose to give him authority over her previously

acquired property![33]

Rabban Gamaliel II went so far as to allow the woman to do what she wished with any property she acquired before her marriage. The result was that if a woman inherited property before her marriage and sold it after her marriage, her husband could not void the transaction.[34]

After the death of Rabban Gamaliel II, the expansion of women's property rights which he legislated began to erode. Rabbi Simon ben Yochai distinguished between a woman's property her husband knew about and that which he had no knowledge of. If a husband knew his wife had come into possession of property before her marriage, she was not permitted to sell it after her marriage. Property that the husband did not know about, the wife was free to sell.[35]

After the ruling of Rabbi Simon ben Yochai, a woman's control over her mulug continually diminshed. As Louis Epstein wrote:

> The concluding and complete restriction of the woman's right and freedom in her own mulug came with the legislation of R. Rudah Nesiah in Palestine and Rab and Samuel in Babylonia at the beginning of the Amoraic period--that a married woman has no legal power to sell any of her mulug whether acquired before betrothal or after nuptials. So systematic and complete were the restrictions and the curtailment of the woman's right in her own property that the richest woman was for all practical purposes penniless.[36]

It should be restated at this point that the husband's

increasing control over his wife's property presupposed that the family was a single economic unit. The husband was to make use of his wife's property for the enrichment of the family and not for his own personal gain.

In cases of divorce, the woman could reclaim her own property. As stated earlier, real estate had to be restored in full with the husband responsible if it had decreased in value. The wife's mulug, by contrast, could be used by the husband without risk on his part.[37]

Rabbi Simon ben Yochai formulated the rule that in the case where the husband derives benefit when he marries his wife, he suffers loss when he divorces her. Conversely, in the case where he suffers loss when marrying her, he benefits financially in case of divorce.[38]

The wife's landed property, if in the category of Tzon Barzel, became the husband's to use when they married just as the mulug. If she was divorced, or he died, however, the property reverted to the wife and had to have the same value as at the time of marriage. The result was that she would lose from his efforts if the property increased in value, but she took no risk.

In the case of movable property which the husband made use of, he derived all the profit if it increased in value. She, however, was the loser if the value of the property diminished.[39]

Although the laws regarding the disposition of a wife's property increasingly favored the husband, the wife was supported by the husband in accord with his social status.[40] Even the poorest man, as stated earlier, had minimum obligations for the support of his wife which the Mishnah clearly specified.[41]

The wife's Ketubah was also an effective instrument for guaranteeing her certain economic advantages. For example, if a man agreed when he married his wife to support her daughter by a former husband for a certain specified time, he was bound to the agreement even if the couple divorced before the time period elapsed. If the couple divorced, and she married another man imposing the same agreement on him, he, too, was bound to it regardless of the obligation of the previous husband. The former husband could not demand as a condition for fulfilling his part of the agreement that the daughter come live with him. Rather, he had to supply the maintenance in the home where the daughter was living.[42]

The prudent husband, however, did not bind himself to such an arrangement in writing a Ketubah. Rather he agreed to support his wife's daughter by a previous marriage as long as he and the woman were married.[43]

The Ketubah could also become a vehicle wherein the wife protected her rights to sell her own property. If the

Ketubah so stipulated, the husband could claim no right of usufruct or profit from any of the wife's property.[44] One might imagine that in certain cases the issue of property rights became serious bargaining points when Ketubot were being written.

The one claim which the husband was not allowed to waive even if he had so agreed in writing was his right to inherit his wife's property upon her death. In such a case, Simon ben Gamaliel's accepted opinion states:

> If she died, he does inherit her because he made a condition contrary to that written in the Torah (an interpretation of Numbers 27:11), and if a person makes a condition contrary to that which is stated in the Torah, his condition is void.[45]

In the case of divorce, the husband's rights to his former wife's earnings automatically ceased. This was the case even if he were still paying off her Ketubah.[46] When a divorce occured, David Amram commented, "she lost none of her rights against him...although he forfeited all and every right that he had against her."[47]

Simon ben Gamaliel even went so far as to rule that if a man married a woman in Cappadocia and divorced her in Israel, he must pay her Ketubah in Cappadocian coins which were worth more than the corresponding coins in the Land of Israel.[48] His opinion, however, is rejected in the Gemara.[49]

Property Claims of Widows

In the absence of a will specifically designating her as an heir to her husband's estate, a widow did not inherit her husband's property upon his death. The husband's sons, however, could not dispossess her. According to Jewish law, the widow had the choice of remaining in her husband's home and receiving support from his heirs or collecting her Ketubah and leaving her husband's home. As the Mishnah states:

> If a widow said, I do not want to move from my husband's house, the heirs can not say to her, "Go to your father's house, and we will support you there." Rather they must maintain her in her husband's home and provide for her in accord with her social status.[50]

If she chooses to leave her husband's home and return to her family, the heirs to her husband are not obligated to support her.[51] She, however, has the option of claiming her marriage settlement from the heirs at any time for a period of 25 years. A widow who remains in her husband's home and accepts the support of the heirs may choose to leave at any time and claim her Ketubah.[52]

The Mishnah ascribed three levels of quality to land. They were: choice land (Idit); average land (Benonit); and poor land (Ziburit). In an estate whose wealth allowed a choice, a wife's marriage settlement was paid out of the poorest land despite Rabbi Meir's objection that it should

be taken from the average or middle grade of land.[53]

The Mishnah specified one exception to the rule that a widow who returns to her father's house waives her right to support from the heirs. That occurs when the court agrees that the widow is too young to care for herself, and the heirs are too young to care for her properly.[54]

If a widow remained in her husband's home, his heirs did not exercise the same economic control over her that the husband did. They were entitled to the earnings of her labor in exchange for her support, but she had the right to retain her earnings and waive the support of the heirs. In any event, the heirs, unlike her husband, had no claim on any property she might hold or receive other than her earnings.[55]

The only time when a widow received no support was when her husband died completely penniless. The Talmud stipulates that if a husband divided all his wealth among his children during his lifetime, then the widow is supported by the children.[56]

If the husband left any estate whatever, the widow's claim to her Ketubah took first priority. As Salo Baron wrote: "To insure the collections of a widow's dowry and marriage settlement from her husband's estate, rabbinic law granted priority to her claims over all other civil

obligations."[57]

According to the Mishnah, a widow can receive her Ketubah from the estate left the heirs if she takes an oath that she had not yet received it. Rabban Gamaliel I liberalized the law to allow her to make her Ketubah claim on the basis of a vow which is less severe than an oath.[58]

The Tosephta clarifies the decision regarding a widow's claim to her Ketubah. It says that if a man dies, and his sons claim his widow who had not remarried had already received her Ketubah, and the widow claimed she had not received it, it is the sons, not the widow, who must prove their contention. If, however, the widow had remarried, and she makes a claim for her Ketubah from her prior husband, then it is she who must supply proof that she never received her marriage settlement.[59]

In the case of a man who died leaving two widows, the Mishnah states that the Ketubah claim of the woman he married first takes precedence over the claim of the second wife. The second wife's claim took precedence, however, if she married a widower who died. In such a case, the second wife's Ketubah was paid before the claim which the heirs of the first wife had to her Ketubah.[60] According to the Talmud, when a wife died, the husband inherited her Ketubah as her legal heir, and in exchange

for arranging and paying for her burial.[61]

The issue of levirate marriage also raised some questions regarding property rights. For example, can a woman awaiting levirate union claim her marriage settlement from her first husband's estate? According to the Mishnah she can. In this ruling, the School of Hillel was convinced by the arguments of the School of Shammai and changed their opinion to accord with that taught by Shammai.[62]

The other basic question concerning levirate marriage and property rights involved the widow awaiting levirate marriage who inherited property. In such a case, both the School of Hillel and the School of Shammai agreed that she may sell such an inheritance or give it away, and her future husband has no authority to nullify the act.[63]

In summary, then, the married woman enjoyed fewer and fewer prerogatives over her own property as the Mishnaic period progressed. As noted, however, she could demand property considerations in her Ketubah as her price for agreeing to a marriage. A father who was so inclined could demand such protections for his minor daughter for whom he arranged betrothal.

The rabbis were, however, zealous to protect the property rights of widows. They were free agents in regard to the disposition of their property, and their Ketubah claims received first priority on their husband's estates.

In regard to court cases concerning property disputes, it is worth noting, as Salo Baron pointed out, that although women had limited property rights, they "appeared in court without the intercession of male attorneys as was required by most Hellenistic laws."[64]

In Cases of Divorce

The basis for rabbinic discussions of divorce is found in Deuteronomy 24:1:

> A man takes a wife and possesses her. She fails to please him because he finds something obnoxious about her, and he writes her a Bill of Divorcement, hands it to her, and sends her away from his house."[1]

Before the institution of the Ketubah, there were no stipulations made regarding the conditions of a divorce. As Solomon Zeitlin wrote: "In the case of his death or of a divorce, she (the wife) immediately lost any economic right deriving from her marriage."[2]

After the institution of the Ketubah, however, divorce could not be lightly undertaken because with certain exceptions (discussed below) the husband, upon divorce, had to pay his wife the value of her Ketubah.[3]

Grounds for Divorce

Two of the latest Biblical prophets, Deutero-Isaiah and Malachi (c. 550-500 B.C.E.) made strong anti-divorce statements.[4] From this period on, contends Salo W. Baron, "the movement against divorce and for extensive protection of woman's rights was a strong force in the Jewish Society of the Second Commonwealth."[5]

The Zadokites of the second pre-Christian century

even advocated the abolition of divorce. They sought to institute the same marriage code for the high priest, who was not allowed to divorce his wife, and for the rest of the community.[6]

In the Mishnah, the question of proper grounds for divorce was debated among the respective followers of Hillel and Shammai. The Shammaites favored granting divorce only on grounds of adultery whereas the school of Hillel, whose view was accepted as Jewish law, gave the man the power to divorce his wife almost at will subject to her Ketubah claims.[7] Josephus, the historian of the Second Commonwealth, also attests that practice permitted a man to divorce his wife without specified cause.[8]

The divergent claims of the schools of Hillel and Shammai on what constitutes grounds for divorce stem from different interpretations of the phrase Ervat Davar, in Deuteronomy 24:1. Hillel and his followers understood the phrase in the way the 1962 Jewish Publication Society Torah committee translated it: "something obnoxious;" or as the 1917 Jewish Publication Society Holy Scriptures translated it: "something unseemly."

To Hillel the phrase allowed a man to divorce his wife for any reason, even if she spoiled a dish (to annoy him). To Rabbi Akiba, the phrase allowed a man to divorce his wife even if he found another woman who pleased him more.[9]

At first reading, the statements of Hillel and Akiba seem harsh, but, it has been argued, they actually represent an advance in women's rights. According to Solomon Zeitlin, Hillel merely wanted to insure an expeditious way to terminate a loveless union.[10]

Alexander Guttmann finds Akiba's statement "enigmatic" but suggests it may have been made out of concern for the plight of the unloved woman in a theoretically polygamous society.[11] Menachem M. Brayer also feels that Akiba had the plight of the unloved woman in mind when he made his statement on divorce. According to Brayer, Akiba meant: "Give her a break, and give her a chance to get out in any possible way, not only on adultery."[12]

By contrast, Shammai's view on proper grounds for divorce understands Ervat Davar as meaning unseemly sexual conduct since Ervah in the Bible most often means nakedness or genitalia. Thus Shammai made the wife's adultery the only recognizable grounds for divorce.[13]

Reconciliation

Although it was not difficult from a legal standpoint for a man to divorce his wife, the rabbis, taking their cue from Deutero-Isaiah and Malachi, looked down upon divorce. According to Louis Epstein, "the Rabbis repeatedly denounce divorce, and declare the effort to bring about peace between husband and wife as among the loftiest of noble deeds."[14]

The Mishnah itself states that when a man comtemplates divorce, the rabbis use all the arguments they can muster to convince the man to change his mind. They even suggest that his personal honor and the honor of his children will suffer because of the divorce.[15]

In order to promote reconciliation between a man and his estranged wife, the rabbis legislated that if a Bill of Divorce was written and the couple lodged under the same roof before the Bill was handed to her, a second Bill of Divorce (Get) was required in order for the marriage to be dissolved. In this ruling, promulgated by the School of Hillel above the objections of the School of Shammai, the rabbis decided that a couple who lodged together indicated a desire to live as man and wife which annulled the get which was not yet handed to her.[16]

Limiting the Man's Power

Aside from the woman's right to claim her Ketubah and the growing social disapproval of divorce, other factors limited the man's prerogatives in divorce proceedings during the Mishnaic period. One such factor was the growing number of legal rules and formalities enacted for the preparation of the Bill of Divorce. David Amram noted: "The numerous rules and regulations incident to the procedure in divorce compelled the husband to seek the help of one learned in the

law to assist him in divorcing his wife, and thus the act became a quasi-judicial one."[17]

Rabban Gamaliel I enacted several rulings which limited the husband's right in divorce cases and increased the rights of the wife. He sought to protect the woman from a husband who divorced his wife and then later denied that he had ever written her a get. Rabban Gamaliel, therefore, stipulated that a man had to sign a Bill of Divorce by every name and alias by which he might possibly be known.[18] Thus, the validity of the get could not subsequently be challenged.

Rabban Gamaliel was also concerned with improving women's rights when he ruled that, once sent, a Bill of Divorce cannot be invalidated by a proxy in a court other than in the woman's home town. If the get were annulled in her home town, the woman was sure to hear of it before she remarried. If, however, a man sent his wife a get, but then convened a court to annul it in another place, the woman might not hear of the annulment, remarry, and bear illegitimate children. To prevent this occurrence, Gamaliel forbade the husband to annul a get outside of his wife's home town.[19]

Even within the woman's home town the husband's right to annul a Bill of Divorce extends only to those Bills of Divorce which have not yet reached the woman. Once a woman receives a Bill of Divorce, the Mishnah is clear, "he can no longer cancel it."[20]

A teaching of Rabbi Judah ha-Nasi states that if a man writes any conditions to modify a Bill of Divorce, the Bill of Divorce becomes invalid.[21] By this ruling the sages prohibited the husband from restricting his wife's freedom to marry after she was divorced. A husband, therefore, could not write his wife a get which said: "You are permitted to any man except so and so."[22]

Although the rabbis established careful guidelines for the preparation of Bills of Divorce, decisions in cases where a divorce occurred based on an illegal get favor the woman. The Mishnah elucidates three types of normally invalid Bills of Divorce which the court declares valid if a woman had remarried and had children. They are:

1. A Bill of Divorce written in the husband's presence but without witnesses.

2. A Bill of Divorce signed by witnesses but without a date.

3. A Bill of Divorce with a date but with the signature of only one witness. (Two were normally required.)[23]

Through these decisions, the rabbis protected the status of the children of the divorced woman by her second husband. Had the court annulled her divorce because the get was improperly prepared, the children she bore by her second husband would become "illegitmate" (mamzerim).

The Bible itself restricts the husband's right to divorce his wife in two specific instances. A man who

falsely charges his wife with non-virginity loses the power to divorce her (Deuteronomy 22:13-19). Similarly, a man who raped a non-betrothed virgin was required to marry her and was not allowed to divorce her (Deuteronomy 22:28-29).

These Biblical measures which were designed to protect the interests of otherwise defenseless women, were clarified by rulings of the Mishnaic period. The prohibition of divorce in these cases does not appear to be absolute.

Nothing in the Mishnah states that persons who wed under either of the two conditions in which the Bible prohibits divorce were absolved from living up to the standards of conduct for husbands and wives which Jewish law enjoined. There is nothing that indicates that a wife married under either of these two conditions could not petition the court to force the husband to divorce her with her Ketubah when circumstances discussed in Chapter One and later in this one warranted.

The Philosopher Philo noted that when a wife was falsely accused of non-virginity, she was not bound to remain married to her accuser. In such a case, wrote Philo, the judges confirmed the marriage "only if the wife will still endure to cohabit with him."[24]

Although a man who falsely charged his wife with non-virginity lost the power to divorce her under ordinary circumstances, he could divorce her if she committed adultery after marriage. Then, the husband was not only permitted but

obligated to divorce her.[25]

In his review of the Deuteronomic laws, Josephus affirmed rabbinic practice in the case of a woman whose husband falsely accused her of non-virginity.

> Let her live with her husband that accused her; and let him not have any further power at all to put her away unless she give him very great occasion of suspicion, and such as can be no way contradicted; but for him that brings an accusation and calumny against his wife in an impudent and rash manner, let him be punished by receiving forty stripes save one and let him pay fifty shekels to her father.[26]

In the case of a man who ravishes a virgin, the girl or her father, if she had not reached her majority, had the prerogative of refusing to marry him. As Josephus stated: "If the father of the damsel be not willing that she should be his wife, let him pay fifty shekels as the price of her prostitution."[27]

Here again, the Mishnah gives no cause to think that a virgin who marries the man who rapes her could not seek a court-ordered divorce like any other Jewish woman. The Mishnah is quite explicit, however, that such a husband may not divorce his wife except in the case of her adultery. As mentioned in Chapter One, this applies, "even if she were lame, even if she were blind, and even if she were afflicted with leprosy."[28]

The Mishnah further improved the status of women by

denying a man the right to divorce his wife if she became insane.[29] Phillip Blackman commented: "Even though she understands to preserve the get and may be divorced min ha-Torah, in accordance with the injunction of the Law, the Sages forbid divorce in such a case so that she is not in consequence rendered destitute and helpless."[30]

The Woman's Right to Divorce

In legal terms, the woman could not divorce her husband. Divorce was considered driving the woman out of the house. Since the husband owned the house, he did the driving out. One of the purposes of divorce was to grant the woman freedom to marry another. Since in a technically polygamous society, the man always had the right to marry another woman, he, unlike his wife, did not need to obtain a divorce in order to remarry.[31]

Although a woman could not legally divorce her husband, there were many circumstances in which the court, upon her petition, would compel her husband to divorce her. So, as Louis Epstein commented, "in essence Talmudic law recognizes the woman's right to divorce her husband, or to be more exact, to institute divorce action."[32]

Concerning the woman's right to institute divorce proceedings, David Amram commented:

> By means of this legal fiction no violence was done to the letter of the old law, and the

> theory of the husband's exclusive right to give the divorce was apparently maintained; yet the divorce given by the husband under order of the court at the suit of his wife, was as much a judicial divorce as any modern proceeding of such a nature.[33]

The Mishnah specifies several instances in which a man can be compelled to divorce his wife at her request and pay her her Ketubah. Nedarim 11:12 specifies three such instances:

1. A woman who has been raped and whose husband is a priest.

2. A woman whose husband is impotent.

3. A woman who cannot perform sexually because of a prolonged illness.[34]

In addition, Rabbi Simon ben Gamaliel held the minority opinion that a man who developed significant physical defects after marriage could be compelled by the court to divorce his wife and grant her Ketubah.[35] There is also the opinion that a copper miner or a tanner must divorce his wife upon her request and pay the Ketubah because of the unpleasant odor connected with these occupations.[36]

Rabbi Meir offered the opinion that the woman could sue for divorce and her Ketubah even if she knew of her husband's condition or occupation before marriage and thought at the time she could accept them but found out later she could not.[37] This opinion, however, did not gain legal acceptance. The conditions stipulated by Rabbi Simon ben Gamaliel were

also rejected as legitimate instances in which a woman could sue for divorce except if the husband developed a disease like leprosy which prevented him from engaging in sexual intercourse.[38]

In the view of the Mishnah, the husband was responsible for validating or annulling the vows made by his wife. If, therefore, a wife made rash vows, the husband had the legal ability as well as the obligation to annul them. If, for example, a wife vowed to abstain from certain essential foods or to cease using certain adornments which would make her attractive to her husband, it was the husband's place to cancel such vows. If he did not, he could be forced to divorce his wife and grant her her Ketubah.[39]

David Amram commented that the presumption regarding vows is that, if the husband does not annul them, he is satisfied with them. Thus, the husband who did not annul his wife's rash vows was guilty of unduly restricting her. For this she was entitled to a divorce with her Ketubah.[40]

The husband was also compelled to divorce his wife and grant her marriage settlement if he imposed degrading restrictions upon his wife. For example, a husband who forced his wife to divulge confidences between them or to "pour water on a dunghill" was compelled to grant his wife a divorce.[41]

Divorce with marriage settlement was also imposed on the husband who unduly restricted his wife's social

life without good cause. A wife prohibited by her husband from attending a "house of mourning" or "feasting" was entitled to divorce.[42] According to David Amram, the result of these decisions "was that when the husband treated his wife tyrannically and sought to deprive her of her lawful freedom, she was entitled to a divorce."[43]

From the discussion here and in Chapter One, one realizes that there were many cases in which the wife's claim to divorce was upheld by the court. The existence of such cases evidences a significant departure in practice from the theoretical statement of the Mishnah that a man divorces only by his consent but a woman is divorced either with her consent or without it.[44]

Perhaps the most dramatic historical departure from the notion that the man's power to divorce his wife is not reciprocal is recorded in the writings of Josephus:

> When Salome happened to quarrel with Costobarus, she sent him a Bill of Divorce and dissolved her marriage with him, though this was not according to the Jewish laws; for with us it is lawful for a husband to do so; but a wife if she departs from her husband, cannot of herself be married to another, unless her former husband put her away. However, Salome chose not to follow the law of her country, but the law of her authority, and so renounced her wedlock.[45]

Salome, of course, was not in the same position as the ordinary Jewish woman since she was the sister of King Herod. "The Law of her authority," which Josephus cites

refers to the Roman law at the time which allowed women to divorce their husbands.[46]

According to David Amram, the departure from Jewish law that Salome practiced, "no doubt found imitators."[47] There is, however, no evidence that large numbers of Jewish women followed Salome's lead. Salome, because of her station, had no need for the Ketubah protection which Jewish women enjoyed. By taking their cases through the courts, mistreated Jewish wives were compensated for their suffering. By acting as Salome did, they could receive no economic redress.

Divorce Without Ketubah

There are, according to the Mishnah, certain offenses for which a woman could be divorced without receiving her marriage settlement. Such women are described as those who transgress Mosaic or "Jewish" (i.e., rabbinic) law or custom. Serving her husband untithed food, having intercourse while menstruant, failing to fulfill a (voluntary) vow, and failing to separate the priests' food portion were considered transgressions of Mosaic law.[48]

There is less certainty among the sages, however, as to what consititutes a transgression of Jewish law or custom. Among the offenses mentioned are going out with loose hair or with arms exposed. The meaning here is that flirtatious behavior was considered a ground for divorce without Ketubah.

Abba Saul was of the opinion that a woman who cursed her husband's parents could be divorced without Ketubah, and Rabbi Tarfon felt that a "loud-voiced" woman could be similarly divorced. By "loud-voiced", Rabbi Tarfon referred to a woman who spoke in her house so that she could be heard in the homes of neighbors.[50] The reference here seems to be to a woman who berated her husband so loudly as to cause him public embarrassment.

The prime offense for which a woman could be divorced without receiving her Ketubah was, of course, adultery. The Mishnah clearly states that a woman divorced because of adultery cannot be taken back by her husband.[51] The Tosephta says this ruling was passed to keep the people from becoming overly promiscuous.[52]

In general, the woman divorced because of adultery received no protection from rabbinic law and no sympathy from the rabbis. Rabbi Meir commented that a man who marries a woman divorced because of adultery is worthy of death, for he has taken a wicked woman into his house.[53]

The Mishnah also provides that a man can generally divorce his wife without Ketubah payment if her body contained serious defects he had not known about and could not have known about beforehand. This was only true, however, if it could be shown that the woman had the defects before her marriage and concealed them from her husband.[54]

In this ruling, the rabbis state that if there was a public bath house in the town where the woman lived, the husband cannot divorce her without her Ketubah on the grounds that she had concealed serious body blemishes. The assumption here is that the prospective groom would have his female relatives examine the woman in the bath house and tell him if she had any defects.[55]

The Barren Woman

The Mishnah states that, in general, the barren woman has no claim to her Ketubah; an opinion in the Tosephta, however, claims that she does.[56] A woman is legally considered barren after ten years of childless marriage.[57] A barren woman clearly does receive her Ketubah if she is divorced by a husband who knew she was barren when he married her.[58]

Concerning the barren woman, the rabbis raised an interesting question: What happens if a man divorces his wife without paying her Ketubah because of barrenness, but she subsequently remarries and has children? May she then claim her Ketubah from her first husband? Rabbi Judah, son of Ilai said that she may not claim her Ketubah because such a move would jeopardize the legitmacy of her children from her subsequent marriage.[59] In an opinion recorded in the Tosephta, however, Rabbi Eleazer ben Shimon says that a woman divorced because of barrenness who subsequently has children by another husband is entitled to her first Ketubah.[60]

Status of the Divorced Woman

As restrictions on the husband's actual if not legal right to divorce grew, the status of the divorced woman declined. When divorce was solely at the discretion of the husband, there was no stigma attached to being divorced. As divorce became more difficult because of social pressures and the Ketubah obligation, the divorced woman became less highly regarded. Unless it were known that the divorce had taken place at her instigation, the divorced woman was often thought to have been guilty of some offense which prompted the husband to divorce her.[61]

The divorced woman did have the advantage of being completely under her own power.[62] The divorcee alone had control over any vows that she made. If she remarried, her second husband had no control over the vows she had made while she had been divorced.[63]

In summary, the Mishnaic period saw the end of the era in which a man could capriciously divorce his wife. Unless she had committed a clearly immoral act or another serious offense, the husband's obligation to pay his wife's Ketubah made divorce an economic hardship. The wife, on the other hand, was protected from extreme behavior on the part of her husband by her right to petition the court to force her

husband to divorce her and pay her Ketubah when circumstances warranted.

Adultery was not made the only admissable grounds for divorce because the rabbis recognized the necessity of not forcing unhappy couples to remain together. According to David Amram, "The mutual consent of the parties was the highest moral ground for divorce."[64]

Birth Control and Abortion

Rabbinic Definition of P'ru ur'vu

The Torah (Genesis 1:28) says that God blessed the first man and woman and said to them: "Be fertile and increase (P'ru ur'vu), fill the earth and master it..."[1]

The rabbis of the Mishnah interpreted the Torah's statement as a command as well as a blessing. Not only was man entitled to "be fertile and increase," he was obligated to do so.

The command raised two fundamental questions which the rabbis debated: 1. To whom is the command addressed? Is it for men and women or for men alone? 2. How many children must an individual have before he can be considered to have fulfilled the commandment?[2]

In answer to question 1, the rabbis decided that only the man is technically bound by the commandment to "be fertile and increase." Their decision was rendered in spite of the correct observation by Rabbi Jochanan ben Baroka that God addressed both man and woman when he said: "Be fertile and increase, fill the earth, and master it..."[3]

In the Talmud, Rabbi Illai in the name of Rabbi Eliezer ben Shimon countered Rabbi Jochanan ben Baroka's argument by stating that the commandment was addressed to the one who would "subdue", not to the one who would

"be subdued." Rabbi Yosef added that when God repeated the commandment, "Be fertile and increase," to Jacob (Genesis 35:11), He used masculine singular verb forms, thus excluding women.[4]

There was a dispute between the schools of Hillel and Shammai concerning the question of how many children an individual must have before he can be considered to have fulfilled his obligation to "be fertile and increase." Shammai's opinion was that a man must have two sons, but Hillel's accepted opinion was that a man must have a son and a daughter.[5]

The fact that a woman was technically excluded from the commandment to "be fertile and increase," gave her the advantage of being able to marry a man, if she so chose, who was incapable of fathering children. According to the Tosephta, a man could not marry a woman known to be barren.[6] The Mishnah implies, however, that a man is permitted to marry a barren woman.[7]

The Tosephta resolves the seeming controversy in the statement that a woman may marry as many as three husbands without bearing children before she is considered legally barren. After three childless marriages, a woman was not permitted to marry a man who had not already married and had children.[8]

Because procreation was legally the responsibility

of the man, a woman was not permitted to institute divorce proceedings on the ground that her husband was sterile. If, however, she pleaded her desire for children which the husband could not give her, her plea was accepted by the court, and the husband had to divorce her and pay her Ketubah.[9]

Contraception

A mokh is defined as a soft, spongy substance. In the Mishnah it is used as an absorbent to remove moisture in the ear, as an insert for comfort in the shoe, and as a tampon for menstrual blood.[10] The Talmud and Tosephta speak of mokh as a birth control device which, according to David M. Feldman, was inserted in the vagina either prior to intercourse or as a "postcoital absorbent."[11]

A baraita, which appears in five different Talmudic passages and once in the Tosephta, tells of three types of married woman who use a mokh to prevent conception. They are: a minor (between the ages of eleven and twelve) because she might die if she became pregnant; a pregnant woman because she might cause her fetus to "become a sandal;" and a nursing mother because becoming pregnant again might force her to wean her child prematurely, and the child might die as a result.[12]

Twenty-four months was the normal nursing period, and pregnancy during that time was considered a serious threat

to the well-being of the infant.[13] To avoid pregnancy during the nursing period, Rabbi Meir (according to the Tosephta) and Rabbi Eliezer (according to the Talmud) recommended that the husband practice coitus interruptus. The opinion, however, is rejected.[14]

Although the baraita of the three women testifies to the acceptability of the mokh in certain circumstances, the Talmud, according to Feldman, offers no clear proof of the permissability of the mokh as a general birth control device. Feldman notes that in Talmudic references, "permissability is not the issue; the legal attitude is, therefore, an indifferent one."[15]

Rabbinic literature speaks of another device with contraceptive properties called the "cup of roots." The ruling that the man and not the woman is responsible for fulfillment of the commandment, "Be fertile and increase," is the basis for the following statement of the Tosephta: "The man is not permitted to drink a 'cup of roots' in order to become sterile, but the woman is permitted to drink a 'cup of roots' in order that she may not give birth."[16]

The "cup of roots," first mentioned in the Mishnah, was used as a medicine to cure jaundice (yarokah).[17] The Tosephta (above) and the Talmud refer to its use as a contraceptive. In the Talmud, the story is told

of Rabbi Hiyya's wife who had difficulty bearing children. She disguised herself and asked her husband whether women were included in the commandment to procreate. When he said no, she drank a "cup of roots" to avoid pregnancy.[18]

References in rabbinic literature to the mokh and the "cup of roots" formed the bases of subsequent birth control discussions which continue in Jewish legal circles to this day. The notion that a woman could avoid an undesired pregnancy through artificial means of contraception found its first legal expression in Mishnaic and Talmudic times.

When pregnancy might have been dangerous to either a mother, an infant, or an unborn child, it seems clear that the woman had the right to use either the mokh or the "cup of roots." Neither the Mishnah nor the Talmud resolve, however, the question of whether birth control was acceptable when danger was not an issue.

The Talmud acknowledges, but does not necessarily sanction, the fact that certain women employed birth control methods in instances other than those where pregnancy would have consituted a physical danger. For example, a woman known to be promiscuous (isha mezanah) was presumed to use the mokh to avoid pregnancy. Alternative views in the same passage suggest that the isha mezanah shakes violently (mithapechet) during intercourse in order not to conceive.[19]

Abortion

The Mishnah (Oholoth 7:6) states that in order to save the life of the mother abortion is not only permitted, it is required:

> If a woman has grave difficulties in childbirth, they cut up the child within her and bring him forth limb by limb, for her life takes precedence over his (the child's) life. When most of it (rubo) has come out, they must not destroy it, for one (living) soul does not take precedence over another.[20]

In another Mishnah rubo is understood as the greater part of the baby's head, which the rabbis interpret as the baby's forehead.[21] Perhaps that is the reason why Bertinoro interprets rubo in Oholoth 7:6 to mean the baby's forehead (padahto).[22] Thus, when a baby's forehead has emerged from the womb, his life, according to the Mishnah, is on an equal footing with that of the mother. Rubo only refers to the greater part of the baby's whole body in cases where the baby is born feet first.[23]

The rabbis waited until the moment of birth to give an infant equal status with the mother despite the fact that, according to rabbinic calculations, an embryo, regardless of sex, is completely formed after 41 days.[24] The sages' ruling that a fetus, though perfectly formed, does not have the status of a living being derives from the Biblical law in Exodus 21:22 which states:

> When men fight, and one of them pushes a pregnant woman and a miscarriage results, but no other damage ensues, the one responsible shall be fined according as the woman's husband may exact from him, the payment to be based on reckoning.[25]

The Mechilta confirms that unless a man cause the death of a living human being, he is not liable to capital punishment.[26]

In summary, then, by the end of the Mishnaic period, it is clear that an abortion may be performed to save a mother's life. As for abortions for other purposes, it appears, as David Feldman wrote: "The more timely abortion in the earlier stages (of pregnancy) is very likely not even contemplated in the Mishnaic law."[27]

The Sotah Laws

The Biblical Precedent

The Bible discusses the procedure for a man who suspects his wife of adultery to follow in Numbers 5:11-31. According to the Biblical account, if a man feels his wife has committed adultery "without being forced," he may bring her to the priest for a trial by ordeal, even if "there is no witness against her."

In the trial, the priest prepared a special potion known as "the waters of bitterness" and charged the woman saying:

> If no man has lain with you, if you have not gone astray in defilement while married to your husband, be immune to harm from this water of bitterness that induces the spell. But if you have gone astray while married to your husband and have defiled yourself, if a man other than your husband has had carnal relations with you, may the Lord make you a curse and an imprecation among your people, as the Lord causes your thigh to sag and your belly to distend; may this water that induces the spell enter your body, causing the belly to distend and the thigh to sag."

The priest then rubbed the words of his charge into the water and made the woman drink it. Then according to the Biblical account:

> Once he has made her drink the water--if she has defiled herself by breaking faith with her husband, the spell-inducing water shall enter into her to bring on bitterness, so that her belly shall distend, and her thigh shall sag;

> and the woman shall become a curse among her people. But if the woman has not defiled herself and is pure, she shall be unharmed and able to retain seed.[1]

Mishnaic Modifications

During the Mishnaic period, Jochanan ben Zakkai abolished the Sotah trial. Alexander Guttmann contends that Sotah was outlawed before the destruction of the Second Temple, but Phillip Blackman claims that Sotah was banned shortly after the Temple was destroyed.[2]

In support of his position, Alexander Guttmann wrote:

> Since the right of the Sotah included not merely the drinking of the bitter water but also a Minchah sacrifice, (as described in Numbers 5) it stands to reason that this rite was terminated before the fall of the Temple. Maimonides explicitly states that the rite was terminated still during the time of the Second Temple (Yad Ha-Hazakah, Hilchot Sotah, 3:19). He substitutes "Sanhedrin" for Jochanan ben Zakkai because he holds that an individual leader could not suspend a Biblical law.[3]

After Jochanan Ben Zakkai's pronouncement, the Sotah rite was still debated by the rabbis, and several rulings were passed which gave the woman increased rights in the Sotah proceeding. The rulings were theoretical in nature based, like much of the Mishnah, on the notion that the Temple might someday be restored, and certain abandoned customs might be practiced once again.

The chief refinement which the rabbis legislated for the Sotah rite was that the man must warn his wife

in the presence of two witnesses that he is becoming suspicious of her behavior. Then, he must have the testimony of two witnesses that she disregarded his warnings before he could make her drink the bitter waters.[4]

The prevailing opinion of Rabbi Joshua (a disciple of Rabbi Jochanan ben Zakkai) that a man must have two witnesses of his wife's suspicious conduct before he could make his wife drink the bitter waters directly contradicts a statement of the Torah. There it says that a man could make his wife submit to the Sotah ordeal "even if there is no witness against her."[5]

The rabbis circumvented the Torah's view by means of a skillful gezerah shava (analogy of expressions) on the Hebrew word davar in two separate Biblical verses. Scripture permits a man to divorce his wife "because he has found some unseemly thing (davar) in her." (Deuteronomy 19:15). Just as the one matter (davar) needs two witnesses, so, the rabbis stated, does the matter (davar) of making a wife drink the bitter waters require two witnesses of suspicious conduct.[6]

The Mishnah defines suspicious conduct which would allow a husband to subject his wife to Sotah rite very strictly. A husband must warn his wife in front of two witnesses not to speak with the suspected paramour. If, after such a warning, she was seen conversing with the paramour, there was still not enough evidence. In order to be subjected

to the Sotah rite, the wife, after being properly warned, had to be seen by two witnesses entering into an enclosed space with her paramour and remaining there with him long enough for sexual intercourse to take place.[7]

The Mishnah insisted that a man have two witnesses of his wife's misconduct before he could subject her to Sotah even if strong rumors about her continual misconduct persisted. In such a case, a man had no recourse except to divorce his wife and pay her her marriage settlement.[8]

A woman who admitted her guilt did not have to submit to the embarrassment of a Sotah trial. She simply forfeited her Ketubah and was divorced.[9] A woman could decline to submit to the rite any time until just before she had to drink. Once the ceremony progressed to that point, however, she was forced to complete it.[10]

Both Rashi and Bertinoro commented that the priests do not let the wife decline to submit to Sotah at the very last moment in order to protect her rights. Perhaps, they reasoned, she is really innocent but is frightened because of the trial.[11]

A betrothed woman or a widow awaiting levirate marriage was not subjected to the Sotah ritual. The rabbis base this ruling on the fact that the Sotah passage in the Bible (Numbers 5:11 ff.) refers specifically to "his wife." According to rabbinic interpretation, the passage did not refer to anyone who was not his actual

wife. Therefore, both a bride to be and a sister-in-law awaiting levirate marriage were exempt from the ordeal.[12]

In the case of the widow awaiting levirate marriage, one infers from the Mishnah that the court could compel her not to marry her husband's brother if she were suspected of having sexual relations with another man before she remarried.[13] Rather Chalitzah would be performed, (see Deuteronomy 25: ff.).

Concerning the engaged woman who is unfaithful to her intended, the Talmud says she is put to death.[14] Given, however, the amount of evidence the rabbis required for conviction (she must have been seen closeted with her paramour by two witnesses after having been formally warned by her husband to be), it is doubtful that such a penalty was imposed other than in theory.

The Mishnah states clearly that a divorcee or an unmarried woman could not be tried by means of the Sotah rite. A man who divorced his wife and subsequently remarried her could not bring any action against her for her activities during the time she was divorced.[15] Given the demise of virginity suits (discussed in Chapter One), the woman who was neither married nor betrothed was not constrained, except for social pressure, from engaging in sexual relationships.

A woman found guilty of adultery as a result of a

Sotah trial was divorced without her marriage settlement. If, however, a husband declined to put his wife to the Sotah test or if he had intercourse with her on the way to Jerusalem for the ordeal, she did not drink the bitter waters, and her husband had to pay her her Ketubah upon divorce.[16]

Rabbi Judah Ha-Nasi ruled that a woman found guilty of adultery according to the Sotah trial was forbidden to return to either her husband or to her paramour. He based his decision on the fact that the word "defiled" appears twice in the Biblical description of the adulterous wife (Numbers 5:13,14.). Thus, ruled Rabbi, she is twice "defiled." That is, she is forbidden to both men.[17]

Once again it should be stated that most of the Mishnaic discussions of the Sotah rite were of an academic nature because Jochanan ben Zakkai had abolished the practice during his tenure as Nasi.[18] He based his decision on the notion that when adulterers (male) began to abound, the "waters of bitterness" ceased to have any effect.[19]

A Modern Tangent

In an effort to indict the attitude of rabbinic Judaism towards women, articles written by Jewish feminists have used as support for their position the statement by Rabbi Eliezer in Sotah 3:4 which says: "Whosoever teaches his daughter Torah (in the sense of Jewish law),

it is as though he taught her lewdness."[20] This statement, feminists have claimed, shows that the rabbis, or at least some of the rabbis, did not consider women worthy of learning.[21]

Rabbi Eliezer's remark, however, was not uttered in a general context. Rather, it must be understood in the context of the Sotah issue to which it relates. In particular, Rabbi Eliezer's statement must be understood in relation to the question: Does the merit of an adulteress (i.e., the fact that she might have acted righteously in other ways) prevent the Sotah waters from taking immediate effect if she were guilty? The prevailing opinion was that an adultress's other merits could hold the effect of the Sotah waters in suspense.[22]

In response to the Mishnaic statement that a woman's merit might hold the effect of the waters in suspense for as long as three years, Ben Azzai said: "A man is obligated to teach his daughter Torah so that if she ever had to drink (the bitter waters), she would know that her merit would hold punishment in suspense."[23]

It was in response to Ben Azzai's statement that Rabbi Eliezer remarked: "Whosoever teaches his daughter Torah, it is as though he taught her lewdness."[24] What he meant was that by teaching a daughter the law that merit will suspend the punishment of the bitter waters, a man would

be in effect, teaching his daughter how to commit adultery and not appear guilty. Because of the limited context of the discussion, it is less than accurate to suggest that Rabbi Eliezer's statement was a general admonition to fathers not to teach their daughters Torah.

Widows and Levirate Marriages

During the Mishnaic period several enactments were instituted which gave greater personal freedom to the widow and the prospective levirate bride. It has already been noted that the rabbis were zealous to protect the economic rights of widows and those awaiting levirate marriage. (See discussion of "Property Claims of Widows: in Chapter Two.)

Remarriage of Widows

Before the time of Rabban Gamaliel I, it had been the law that before a widow could remarry, two witnesses had to testify to the death of her husband. Just as dissolving a marriage by divorce had to be attested by two proper witnesses, so dissolving a marriage through death had to be attested by two witnesses.[1] The definition of a proper witness varied with the case. The basic requirements were that a witness had to: be of reasonable character, be unrelated to the principles of the case, and be personally disinterested in the outcome of the case. In certain cases a woman's testimony was not acceptable.[2]

During his tenure as Nasi, Rabban Gamaliel II (C. 25-55 C.E.) allowed a woman to remarry on the testimony of a single witness to her husband's death. In subsequent years, however, the tradition of requiring only one witness had apparently

been lost. On a trip to Nehardea, Rabbi Akiba (c. 130 C.E.) acknowledged that it was the custom in Israel to permit widows to remarry only on the testimony of two witnesses except in the court of Rabbi Judah ben Baba. After Nehemiah of Beth Deli informed Rabbi Akiba of Rabban Gamaliel the Elder's precedent, the courts in Israel reformulated the law in light of the forgotten tradition.[3]

The result was that a woman was permitted to remarry on the testimony of one witness. The courts also began to accept hearsay evidence of a man's death as well as the testimonies of women, slaves, relatives, and bondwomen. Although Rabbi Akiba argued that a woman's testimony in such a case should not be admitted, his opinion was not accepted.[4]

The Mishnah even stipulates:

> They may testify (that a person died) by the light of a lamp or by the light of the moon, and they permit a woman to be married on the testimony of an echo. It once happened that a man stood on top of a mountain and said: "A certain man from a certain place is dead." Even though they did not find a man there, they allowed his wife (of the designated dead man) to remarry. It also happened in Zalmon that a man said: "I am so and so. A snake has bitten me, and I am about to die." They went, and though they could not find him, they permitted his wife to remarry.[5]

Although the conditions for allowing widows to remarry were greatly liberalized, the law strongly discouraged

the remarriage of woman who was not completely sure her husband was dead. If a woman had remarried on the testimony of one witness (with the authorization of the court), and her first husband proved to be alive, then according to the Mishnah:

> She must leave both men and procure a get from each one. She receives no Ketubah payment, no produce, no maintenance, and no compensation from either man. If she took anything from either man, she must return it, and a child she may have (from the time she remarried) by either man is a bastard (manzer).[6]

Rabbi Jose offered the opinion that the woman who mistakenly remarried was still entitled to her Ketubah from her first husband.[7] The rejection of Rabbi Jose's opinion and the general strictness of the law, which treated the woman who mistakenly remarried as an adulteress, seem disigned to curb hasty remarriages which might impair family purity.

Levirate Marraige

The Torah explains the obligation to levirate marriage in Deuteronomy 25:5-10:

> When brothers dwell together, and one of them dies and leaves no son, the wife of the deceased shall not be married to a stranger, outside the family. Her husband's brother shall unite with her: take her as his wife and perform the levir's duty. The first son that she bears shall be accounted to the dead brother, that his name may not be blotted out

> in Israel. But if the man does not want to marry his brother's widow, his brother's widow shall appear before the elders in the gate and declare, "My husband's brother refuses to establish a name in Israel for his brother; he will not perform the duty of a levir." The elders of his town shall then summon him and talk to him. If he insists, saying, "I do not want to marry her," his brother's widow shall go up to him in the presence of the elders, pull the sandal off his foot, spit in his face, and make this declaration: Thus shall be done to the man who will not build up his brother's house! And he shall go in Israel by the name of "the family of the unsandaled one."[8]

According to the Biblical law, the brother-in-law could refuse to marry his brother's widow if he submitted to the ceremony of chalitzah. The Bible, however, made no provision for the woman to refuse to marry her husband's brother if she did not want to. During the Mishnaic period, however, decisions of the rabbis enabled women to avoid levirate marriage in several significant cases.

In tractate Yevamoth, the rabbis attempted to reconcile the Biblical law of levirate marriage with the laws of prohibited marriages to close relatives discussed in Leviticus 18 and with other prohibitions. In complex cases involving conflicts between the law of levirate marriage and Leviticus 18, the tendency of the School of Hillel was to limit the occurrence of levirate marriage. As Alexander Guttmann has pointed out, Hillel's policy was advantageous to the status of women, for it worked to free the childless woman of the obligation to marry her brother-in law.[9]

There are other decisions in which the School of Hillel favored women's rights over the institution of levirate marriage. According to the law, a minor, upon reaching her twelfth birthday was entitled to repudiate any marriage arrangement made for her by her mother or brothers after her father's death. (See discussion of "Betrothal" in Chapter One.) The School of Hillel, above the objections of the School of Shammai, allowed a minor so betrothed to refuse to marry her brother-in-law if her intended died. She had the right to refuse to marry the brother-in-law even if she had not repudiated her original intended and was married to him when he died.[10]

In another case, the Mishnah states that if the brother-in-law (yabam) wished to suspend his decision to marry or not to marry his brother's widow, he was not permitted to do so. He could not expect her to wait until his younger brother reached marriageable age or until his older brother returned from overseas, or until another brother became physically or emotionally fit to marry her. Rather the court would charge him: "The mitzvah (of levirate marriage) is yours. Either submit to chalitzah or marry her."[11]

The Mishnah further restricted levirate marriage by giving a woman the right to reject her husband's brother if his occupation was objectionable to her. The case is cited of a tanner who lived in Zidon whose brother was also

a tanner. When the tanner died, the rabbis gave his widow the prerogative of refusing levirate marriage if she simply said, "I could bear your brother, but I cannot bear you."[12] In such a case, the court would order the brother-in-law to submit to chalitzah, and the woman would recieve her Ketubah from the estate of her husband.[13]

The institution of levirate marriage was opposed by Abba Saul (c. 150 C.E.). He said that levirate marriage used to be preferable to chalitzah when the intention was to perform a meritorious deed. Since most levirate husbands no longer married their brother's widow to fulfill the commandment but for the woman's property or beauty,[14] there was the feeling that chalitzah was preferable to levirate marriage.[15]

The Tosephta records that Abba Saul also said: "He who approaches (has intercourse with) his levirate bride because of her beauty or because of her wealth is considered to have committed a licentious act, and the child (of such a union) is close to being a bastard (mamzer).[16]

Although the opinions of Abba Saul in regard to levirate marriage did not gain acceptance as halachah, they articulated the notion that a man was no longer obliged to marry his childless brother's widow. According to Ze'ev Falk, Abba Saul's view was increasingly subscribed to in subsequent years, and chalitzah, not levirate marriage, increasingly became the norm.[17]

In summary it can be said that the Mishnaic period saw the rights of widows significantly expanded. No longer were two eyewitness testimonies to the death of a husband needed in order to permit a widow to remarry. Regarding levirate marriage, the number of cases wherein a widow had to marry her husband's brother became fewer. The result was that widows, as a group, gained greater control over their personal lives than they had previously enjoyed.

Conclusion: The Forces at Work

In the foregoing chapters it has been shown that through decisions made by the Rabbis of the Mishnaic period, the status and freedom which women enjoyed in marital relations and divorce proceedings increased significantly. The economic rights of the married woman as an individual did not expand, for Jewish Law viewed a husband and wife as a single economic unit with the husband in control of the finances. A married woman, however, was always supported in accord with the family's economic resources. When a married woman became single again through the death of her husband or divorce, the rabbis were zealous to see that she was not disadvantaged economically.

The introduction of the Ketubah was the major factor in the improvement in the social and economic position of women. A taqqanah of Simon ben Shetah, which made a husband's entire estate guarantor of his wife's Ketubah, was perhaps the most significant advance.

The rabbis' liberal interpretations of several Biblical laws also worked in the woman's favor. Particularly noteworthy are the rulings which made virginity suits and the Sotah trial obsolete.

An intricate historical study of why these changes took place when they did is beyond the scope of the present work. An attempt, however, to highlight some of the forces

which contributed to these changes does appear in order.

Rise of the Pharisees

During the roughly 400 years (200 B.C.E. - 200 C.E.) generally regarded as the Mishnaic period, a fundamental change in Jewish life took place. Political and religious power shifted from the High Priests to the Hasmonean monarchs, and ultimately, to the scholar class known as the Pharisees and their successors, the rabbis.

The process began when Jason, backed by those forces who wished to Hellenize Jewish life, replaced his brother Onias as High Priest c. 175 B.C.E. Jason, in turn, was ousted and replaced by Menelaus, an even more ardent Hellenizer. The result of these actions was that the legitimacy of priestly succession was disrupted, and the high priesthood as an institution never recovered from the blow.[1]

The decline of priestly power enabled the Pharisees, with their belief in an oral as well as a written law to mount an ultimately effective challenge to the priestly insistence on the literal observance of Pentateuchal law. As Alexander Guttmann has written:

> In guiding their people (the rabbis) took the realities of life, among them the weakness of man, into consideration. They upheld the Torah as the divine code, but at the same time recognized the need for harmonizing the Torah with the ever-changing realities of life. The

> success of the sages of Rabbinic Judaism is to a large extent due to the ability of its leaders to maintain a harmonious state between Judaism and a continuously changing life.[2]

Regarding the attitude of the Pharisees, Louis Finkelstein wrote:

> There have been many periods in the world where people were broadminded regarding questions to which they were indifferent; the Pharisees were almost unique in developing a liberal attitude toward a problem which was the primary concern of their life--the study and observance of the Torah.[3]

The Pharisees would never have conceded that they were abrogating any of the Torah's principles. The concept of a dual revelation, however, enabled them to expand the meaning of the Torah through explanation and interpretation. By so doing, the Pharisees were able to liberalize the status of women in accord with the needs of society and other external stimuli.

Hellenistic Culture

One such stimulus was Hellenism which was the dominant culture in the world during the Mishnaic period. Nahum Glatzer has pointed out that some rabbinic laws paralleled the laws of Solon who was an Athenian reformer. "Others, wrote Glatzer, reveal a knowledge of the laws in the classical Greek Polis as they later appeared in Plato's laws."[4]

Ralph Marcus noted that Hellenistic influence on

Jewish life could be seen by the impact the Septuagint had upon the people and by such practices as burying Roman Jews in coffins engraved with cherubs and pagan inscriptions.[5] Marcus, however, denied that the Hellenistic-Roman culture necessarily influenced the legislation of the Pharisees. He wrote:

> No doubt there are striking similarities between the legal formulas used in contracts of sale, marriage, divorce, and so on by the Jews and by the Greeks in Egypt. But the resemblances may well be due, as the late Professor Louis Ginzberg suggested, to the common origin of these formulas in the cuneiform law of ancient Mesopotamia. As for the influence of Roman law on Jewish Palestine, though this question was raised several centuries ago, the matter is still undecided.[6]

Ellis Rivkin, however, feels that Hellenistic influence on Jewish law was marked. He noted that the Beth din ha-Gadol bore "far closer resemblance to Greek and Roman law-making institutions than to anything in the Pentateuch...The Pharisaic revolution," Rivkin concluded, "was thus a novel form of Judaism fashioned by men of genius out of raw materials from both the polis and the Pentateuch."[7]

The precise effect of Hellenism on the rights attained by Jewish women is not clear. In some important respects, Jewish women enjoyed higher status than their counterparts in other Hellenized countries. For example, Hellene women, as Solomon Zeitlin pointed out, did not eat dinners with their husbands. They ate in a special women's quarter

called a gynaconitis. Judaean women, by contrast, dined with their husbands except during their menstrual period.[8]

A Jewish woman was subject to her father's guardianship until she was married or until she became twelve and a half years old. The custom in Greece was for women to be controlled by a guardian thoughout her life.[9]

Noting, however, that the Hellenistic age was a period where concern for women's rights was growing, Ralph Marcus suggested: "Perhaps the position of the Hasmonean Queen Salome Alexandra was a reflection of the newly emancipated status of women in the Hellenistic Age."[10]

Salome Alexandra

Salome succeeded to the throne of Judaea upon the death of her husband, Alexander Jannai, in 78 B.C.E. Solomon Zeitlin noted: Such succession would not have been possible if women, as a sex, had been held in disdain."[11]

With the accession of Salome Alexandra to the throne came a restoration of the Pharisees to royal favor and political power. Before his death, Alexander Jannai, who had feuded with the Pharisees, advised Salome to mend the rift because the Pharisees enjoyed widespread popular support. Because of the policies of Salome, Victor Tcherikover noted, "the Pharisees again obtained control of matters of religion and law, and, in consequence, the opportunity of directly influencing the course of affairs in

the state."[12]

Heinrich Graetz noted that during Salome's reign:

> The Chief post in the Council of Seventy hitherto possessed by the high priest, was, however, given up to the Pharisees by order of the queen. The Nasi or President of the Great Council, was from this time on, as a rule, the most learned and the most respected of the Pharisees.[13]

The Talmud records that Salome's brother was none other than Simon ben Shetah whose ordinance concerning women's Ketubah rights was a great advance in the status of women.[14]

Alexander Guttmann cites a passage in Megillath Ta'anith as evidence that the transfer of power in the Sanhedrin from the Sadduccess to the Pharisees took place while Alexander Jannai still lived.[15] There is, however, little dispute that the Pharisees reached the height of their power during the reign of Salome Alexandra between 78 and 67 B.C.E.

Gerson Cohen suggests that Salome's reign was the only time the Pharisees gained absolute control of the Sanhedrin in Jerusalem.[16] The Talmud refers to the days of (Salome and) Simon ben Shetah as a golden age when "the wheat grains were as big as kidneys, and the barley grains as big as the kernels of olives, and the lentils as big as gold dinars."[17]

Graetz and Zeitlin differed in their assessments of the nature of Salome Alexandra. Graetz wrote that she was a

woman "of gentle nature and sincere piety" whose ascendence to the throne was like the coming of "the refreshing dew to an arid and sunburnt soil"[18]

Zeitlin, by contrast, wrote that much of the tragedy of Alexander Jannai's rule "was actually due to the vicious character of Queen Salome Alexandra." Her policies, contended Zeitlin, were "largely responsible for bringing the country to civil war."[19]

Whatever her merits as a ruler, Salome was an important influence for women's rights. The possibility is viable that she influenced her brother's legislation regarding the Ketubah although concrete evidence that she did is lacking.

Salome, however, was not the only influential woman during the Mishnaic period. As Zeitlin noted:

> The Second Commonwealth knew such influential figures as Alexandra, her granddaughter Alexandra, and Berenice daughter of Agrippa I--all of whom played critical roles in the affairs of Judaea. So it is not surprising that the author of the Book of Judith, portraying God watching over his people, chose a heroine, Judith, to save the Judaeans.[20]

The Talmud also has its share of women of note. As Gerson Cohen wrote:

> The sufferings of Akiba's wife were proverbial even in her own day. Rabbi Joshua's mother, while she bore the future scholar in her womb, visited the academy in order that the atmosphere might seep into her unborn son.[21]

The independence from her husband of Rabbi Hiyya's wife is also noteworthy. She drank the "cup of roots" to prevent pregnancy much to her husband's chagrin. (See discussion of "Contraception" in Chapter Four.)

Beruriah

The most noteworthy of all the women mentioned in rabbinic literature was Beruriah, the wife of Rabbi Meir. In a Tosephta argument concerning whether or not a door bolt is susceptible to ritual impurity, Beruriah's opinion was accepted by Rabbi Judah above the views offered by Rabbi Tarfon or the Sages.[22]

In an incident recorded in the Talmud, Rabbi Meir was angry at some men who were robbers, and he prayed for their death. It was Beruriah who reminded him that it was proper to pray not for the death of sinners but for an end to sin. Heeding his wife's advice, Rabbi Meir prayed that the men might repent which, according to the Talmud, they did.[23]

In other episodes Beruriah rebuked Rabbi Jose the Galilean and an unnamed student for their non-observance of minor precepts of Jewish law. In the case of Rabbi Jose the Galilean, Beruriah rebuffed his polite request for travel directions telling him he should not waste words with women.[24] Beruriah's scorn for Rabbi Jose may be more than coincidental, for he had offered the opinion (which was

rejected) that a woman betrothed but divorced before marriage had no claim to compensation if she were subsequently seduced or raped. (See discussion of "Cases of Rape or Seduction" in Chapter One.)

There is a tradition, recorded by Rashi, which says that Beruriah ultimately committed suicide after she was seduced by one of Rabbi Meir's students who acted at Rabbi Meir's bidding.[25] This notion is not, however, expressed in the Talmudic text, and it did not diminish Beruriah's scholarly reputation.

If anything Beruriah's reputation for wisdom and piety increased after her death near the middle of the second century C.E. Rabbi Jochanan bar Nappaha even cited Beruriah as a standard by which a scholar might measure his acumen.

Rabbi Simlai, who lived in the second half of the third century C.E. appeared before Rabbi Jochanan bar Nappaha and wanted to learn the complex (and no longer extant) Sefer Yohasin in three months. Rabbi Jochanan threw a stone at him and said that Beruriah, who could assimilate 300 halachoth in a single day, could not learn the Sefer Yohasin in three years. "How do you expect to learn it in three months?!"[26]

A later collection of midrashim on the Book of Proverbs includes the famous story of how Beruriah explained

the death of their two sons to Rabbi Meir. The sons both passed away on the same Shabbat. When Rabbi Meir returned from the synagogue and asked for his sons, Beruriah stalled him until after he had recited havdalah and had his dinner. Then she posed the following question: "A man came today and left a deposit. Now he has come to claim it; should I return it or not?"

A surprised Rabbi Meir answered that of course she must return it. Then she showed him the bodies of his two dead sons. When Rabbi Meir cried out in anguish, Beruriah reminded him that God had come to claim the deposit which he had lent to them.[27]

Demographic Reasons

Demographic reasons have also been cited to explain the increase in women's status during the Mishnaic period. Salo Baron considered the expansion of women's rights due in part to a surplus of men in new Jewish communities.

> Enterprising young men are always readiest to face the risks of expatriation. As is usual where women are relatively few, they experienced here a rise in social status.[28]

Baron also felt that the rise in the status of women was part of a deliberate campaign to counteract the general population decline. High on this program were efforts to reduce to a minimum the number of unmarried women."[29]

In Perspective

The triumph of the Pharisees, the selected influence of Hellenistic culture, the worldliness of such personalities as Salome and Beruriah, and the changing demographic conditions all contributed to the growth of women's rights during the time of the Mishnah. As has been shown, the growth was significant.

In assessing any movement, it is a mistake to remove the analysis from the context of its time. Women at the time of the Mishnah did not achieve equality with men, and Mishnaic standards would be unacceptable to many modern women.

Needless to say, though, the view of the world at that time was quite different than it is now. It was inconceivable then that a nuclear family would operate as anything but a single economic unit. There was no significant group of women who thought it a more desireable lifestyle to remain unmarried than to wed. The idea of a casual abortion was unheard of.

To draw an analogy, Abraham Lincoln's racial policies would be considered highly reactionary today. Judged in the light of society 110 years ago, however, his policies were either forward-looking or radical depending on one's point of view. It is simply not useful to judge Lincoln's policies by current standards.

Similarly, one must put Mishnaic laws in the perspective of society 2000 years ago and not make the mistake of judging them by today's standards. The rabbis of the Mishnah guaranteed women financial security (unless her husband were penniless or she was guilty of immoral conduct) and much more control over her own life than she had ever enjoyed before.

The feminist Rachel Adler acknowledges:

> Make no mistake; for centuries, the lot of the Jewish woman was infinitely better than that of her non-Jewish counterpart. She had rights which other women lacked until a century ago...In its time, the Talmud's was a very progressive view.[30]

In advancing the status of women so significantly, the rabbis did more than keep Judaism, in Guttmann's words, "alive and vibrant," and in harmony "with the ever-changing realities of life."[31] The rabbis bid their successors continue their work. The extent to which women remain stifled by contemporary Jewish law and practice is the extent to which post-Talmudic Jewish leaders have not lived up to the example set by the sages of the Mishnah.

Footnotes

In Married Life

1. Louis Finkelstein, The Pharisees, p. xiv.

2. Ibid., p. xiii.

3. Kiddushin 1:7; Philip Blackman, Mishnayoth, Volume III, p. 456.

4. Alexander Guttmann, letter to Stephen Fuchs, December 16, 1973.

5. Kiddushin 2:1.

6. Finkelstein, pp. lxxx-lxxxi.

7. B. Kiddushin 41a.

8. Yevamoth 13:2.

9. Sifra, (Weiss edition) p. 110a; Louis M. Epstein, The Jewish Marriage Contract, p. 185.

10. Epstein, chapters 1 and 2; Alexander Guttmann, Rabbinic Judaism in the Making, p. 44.

11. Epstein, pp. 53-54.

12. Finkelstein, p. 45.

13. Guttmann, p. 44.

14. Epstein, p. 59.

15. David M. Feldman, Birth Control in Jewish Law, p. 37; George Foot Moore, Judaism, Volume II, p. 122.

16. Ketuboth 10:1.

17. Feldman, p. 37.

18. Ibid., p. 37.

19. Ibid., p. 38.

20. Ze'ev Falk, Jewish Matrimonial Law in the Middle Ages, p. 4.

21. Ibid., p. 3.

22. Falk, p. 3.

23. Solomon Zeitlin, The Rise and Fall of the Judaean State, Volume II, p. 284.

24. Kiddushin 3:2.

25. Kiddushin 2:2.

26. Kiddushin 3:2.

27. Kiddushin 2:5.

28. Ketuboth 1:2.

29. Ketuboth 2:1.

30. Deuteronomy 22:20-21.

31. Ketuboth 1:2; Blackman, Volume III, p. 126.

32. Sanhedrin 1:4; Blackman, Volume IV, p. 233.

33. Alexander Guttmann, letter to Stephen Fuchs, December 16, 1973, based on B. Sanhedrin 8a-b.

34. Finkelstein, p. 45.

35. Ketuboth 1:5.

36. B. Ketuboth 12a.

37. B. Ketuboth 9b and Rashi.

38. B. Ketuboth 36a and Rashi.

39. Ketuboth 1:6.

40. Ketuboth 1:7.

41. Feldman, p. 61 based on B. Ketuboth 56a and B. Kiddushin 19b; See also Epstein, p. 144.

42. Exodus 21:10.

43. Ketuboth 5:6.

44. Ketuboth 5:6.

45. Ketuboth 5:6.

46. Ketuboth 5:7.

47. B. Ketuboth 82b.

48. Ketuboth 5:7.

49. Blackman, Volume III, p. 152.

50. B. Yevamoth 62b; B. Pesachim 72b; Feldman p. 64.

51. B. Ketuboth 62b; Feldman p. 63.

52. Ketuboth 13:10.

53. B. Ketuboth 110b; Finkelstein xxiii.

54. Ketuboth 5:5.

55. Ketuboth 7:4.

56. Ketuboth 7:5, 7:4.

57. Ketuboth 3:2.

58. Ketuboth 3:3.

59. Ketuboth 3:4.

60. Ketuboth 3:5.

61. B. Yevamoth 59b; Guttmann 252.

62. Epstein p. 165.

63. Ibid., p. 165; B. Ketuboth 51a.

64. Ketuboth 4:9.

65. Epstein, p. 163; Tosephta Ketuboth 4:5.

66. Epstein, p. 169.

Property Rights

1. Ketuboth 4:11.

2. Louis Epstein, The Jewish Marriage Contract, p. 121.

3. Numbers 27:8.

4. Alexander Guttmann, Rabbinic Judaism in the Making, pp. 141-142 based on Tosephta Yadaim 2:20.

5. Ibid.; See also Louis Finkelstein, The Pharisees, p. 139.

6. Solomon Zeitlin, The Rise and Fall of the Judaean State, Volume I, pp. 433-434.

7. Ketuboth 13:3; Baba Bathra 9:1.

8. Ketuboth 4:6.

9. B. Ketuboth 52b; See also Epstein p. 186; Finkelstein, p. 139.

10. Ketuboth 4:4.

11. Ketuboth 4:2.

12. Ketuboth 4:4; See Philip Blackman, Mishnayoth, Volume III, p. 144, note 10.

13. Ketuboth 6:6.

14. Zeitlin, Volume I, p. 418, based on B. Ketuboth 54a.

15. Epstein, pp. 90-91.

16. Ibid., p. 95.

17. Ibid., p. 102.

18. Ibid., p. 78.

19. Tosephta Ketuboth 8:1.

20. Ketuboth 8:1.

21. Ketuboth 5:8,9.

22. Ketuboth 5:9.

23. Epstein, p. 119; K. Kahana, The Theory of Marriage in Jewish Law, p. 18, based on Baba Bathra 51b.

24. Epstein, p. 117.

25. Epstein, p. 114, based on Yer. Ketuboth 4:6.

26. Epstein, p. 114, based on B. Ketuboth 47b.

27. Yevamoth, 7:1; Zeitlin, Volume I, p. 418 based on B. Ketuboth p. 54a; See also Marcus Jastrow, Dictionary of Talmud Babli, Yerushalmi, Midrashic Literature, and Targumim, p. 191, entry Barzel, and p. 787, entry Mulug.

28. Epstein, p. 107.

29. Ibid., pp. 107-108.

30. Ibid., p. 109; Guttmann, p. 93.

31. Ketuboth 8:3.

32. Ketuboth 6:1.

33. Ketuboth 8:1.

34. Ketuboth 8:1.

35. Ketuboth 8:2.

36. Epstein, p. 112.

37. See note 27 above.

38. Ketuboth 8:4.

39. Ketuboth 8:4.

40. Ketuboth 5:9.

41. Ketuboth 5:8.

42. Ketuboth 12:1.

43. Ketuboth 12:1.

44. Ketuboth 9:1.

45. Ketuboth 9:1.

46. Baba Metzia 1:5.

47. David Amram, The Jewish Law of Divorce, p. 121.

48. Ketuboth 13:11.

49. B. Ketuboth 110b.

50. Ketuboth 12:3.

51. Ketuboth 12:3.

52. Ketuboth 12:4.

53. Gittin 5:1.

54. Ketuboth 12:3.

55. Epstein, p. 183.

56. B. Ketuboth 49b; See also Epstein, p. 184.

57. Salo W. Baron, A Social and Religious History of the Jews, Volume II, p. 303.

58. Gittin 4:3.

59. Tosephta Ketuboth 11:1.

60. Ketuboth 10:1.

61. B. Ketuboth 47b and Rashi.

62. Eduyoth, 1:12.

63. Yevamoth, 4:3.

64. Baron, Volume II, p. 240.

In Cases of Divorce

1. Jewish Publication Society, The Torah, pp. 367-368.

2. Solomon Zeitlin, The Rise and Fall of the Judaean State, Volume I, p. 415.

3. Ibid., p. 416.

4. Isaiah 54:6; Malachi 2:14-16.

5. Salo W. Baron, A Social and Religious History of the Jews, Volume I, p. 114.

6. Nathan Goldberg, "The Jewish Attitude Toward Divorce," in Jews and Divorce, Jacob Freid, ed., p. 47.

7. Gittin 9:10; See also Louis Epstein, The Jewish Marriage Contract, p. 196.

8. Flavius Josephus, Antiquities of the Jews, 8:4.

9. Gittin 9:10.

10. Zeitlin, Volume I, p. 418.

11. Alexander Guttmann, Rabbinic Judaism in the Making, pp. 229-230.

12. Opinion of Menachem M. Brayer in discussion of "The Role of Jewish Law Pertaining to the Jewish Family," in Jews and Divorce, Jacob Freid, ed., pp. 37-38.

13. David Amram, The Jewish Law of Divorce, p. 33.

14. Epstein, p. 195 based on B. Nedarim 66b; B. Gittin 90a-b.

15. Nedarim 9:9.

16. Eduyoth 4:7; Gittin 8:4.

17. Amram, p. 46.

18. Gittin 4:2.

19. Guttmann p. 179 based on Gittin 4:2.

20. Gittin 4:1.

21. B. Gittin 84b.

22. Gittin 9:1.

23. Gittin 9:4.

24. Philo, "Of Special Laws Relating to Adultery," chapter 14.

25. Ketuboth 3:5.

26. Josephus, Antiquities, Book 4, chapter 8, section 23.

27. Ibid.

28. Ketuboth 3:5.

29. Yevamoth 14:1.

30. Philip Blackman, Mishnayoth, Vol. 3, p. 102, note 7.

31. Epstein, p. 200.

32. Ibid., p. 203.

33. Amram, p. 60.

34. Nedarim 11:12.

35. Ketuboth 7:9.

36. Ketuboth 7:10.

37. Ketuboth 7:10.

38. Ketuboth 7:10.

39. Ketuboth 7:2,3,4.

40. Amram, p. 70, based on B. Ketuboth 72a.

41. Ketuboth 7:5.

42. Ketuboth 7:5.

43. Amram, p. 70.

44. Yevamoth 14:1.

45. Josephus, Antiquities, Book 15, chapter 7, section 10.
46. Amram, p. 61.
47. Ibid., p. 61.
48. Ketuboth 7:6.
49. Ketuboth 7:6.
50. Ketuboth 7:6.
51. Gittin 4:7.
52. Tosephta Gittin, 4:3.
53. B. Gittin 90b.
54. Ketuboth 7:8.
55. Ketuboth 7:8.
56. Ketuboth 11:6; Tosephta Yevamoth 8:4.
57. Epstein, p. 208.
58. Ketuboth 11:6.
59. Gittin 4:8.
60. Tosephta Gittin 4:3.
61. Amram, p. 104, based on Nedarim 9:9.
62. Kiddushin 1:1.
63. Nedarim 9:9.
64. Amram, p. 39.

Birth Control and Abortion

1. Genesis 1:28, Jewish Publication Society, Torah, 1962 edition, p. 4.

2. Yevamoth 6:6.

3. Yevamoth 6:6.

4. B. Yevamoth 65b.

5. Yevamoth 6:6.

6. Tosephta Yevamoth 8:4.

7. Ketuboth 11:6; see discussion of "The Barren Woman" in chapter three, "In Cases of Divorce."

8. Tosephta Yevamoth 8:4.

9. David M. Feldman, Birth Control in Jewish Law,** p. 54 based on B. Yevamoth 65b. See also discussion of "The Barren Woman" in chapter three, "In Cases of Divorce."

10. Shabbat 6:5.

11. Feldman, p. 170.

12. Tosephta Niddah 2:6; B. Yevamoth 12b; B. Yevamoth 100b; B. Ketuboth 39a; B. Niddah 45a; B. Nedarim 35b.

13. Feldman, p. 187.

14. Tosephta Niddah 2:6; B. Yevamoth 34b.

15. Feldman, p. 170.

16. Tosephta Yevamoth 8:4.

17. Shabbat 14:3.

18. B. Yevamoth 65b.

19. B. Yevamoth 35a; B. Ketuboth 37a.

20. Oholoth 7:6.

21. Niddah 3:5.

22. Oholoth 7:6, comment of Bertinoro.

23. Niddah 3:5.

24. Niddah 3:7.

25. Exodus 21:22, Jewish Publication Society, Torah, 1962 edition, pp. 136-137.

26. Mechilta d'Rabi Yishmael, Mishpatim, chapter 8, Horowitz-Rabin edition, p. 275.

27. Feldman, p. 284.

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The Sotah Laws

1. Entire section based on Numbers 5:11-28; quotations from 1962 Jewish Publication Society, Torah, pp. 253-254.

2. Sotah 9:9; Tosephta Sotah 14:2; See also Alexander Guttmann, Rabbinic Judaism in the Making, pp. 193-194; Philip Blackman, Mishnayoth, Vol. III, p. 329.

3. Alexander Guttmann, letter to Stephen Fuchs, April 10, 1974.

4. Sotah 1:1.

5. Sotah 1:1; Numbers 5:13.

6. Sotah 6:3.

7. Sotah 1:2.

8. Sotah 6:1.

9. Sotah 1:5.

10. Sotah 3:3.

11. Comment of Bertinoro to Sotah 3:3; B. Sotah 20a, Rashi.

12. Sotah 4:1.

13. Sotah 4:1.

14. B. Ketuboth 45a; See also Solomon Zeitlin, The Rise and Fall of the Judaean State, Volume I, p. 418.

15. Sotah 2:6.

16. Sotah 4:2.

17. Sotah 5:1.

18. See note 2.

19. Sotah 9:9; Tosephta Sotah 14:2.

20. Sotah 3:4.

21. Rachel Adler, "The Jew Who Wasn't There: Halacha and the Jewish Woman," Response, summer 1973, p. 78; and

Paula E. Hyman, "The Other Half: Women in the Jewish Tradition," Response, summer 1973, p. 70.

22. Sotah 3:4; 3:5.

23. Sotah 3:4.

24. Sotah 3:4.

Widows and Levirate Marriage

1. Solomon Zeitlin, The Rise and Fall of the Judaean State, Volume II, p. 303.

2. Rosh Hashanah 1:8; Sanhedrin 3:2,3,4,5.

3. Yevamoth 16:7.

4. Yevamoth 16:7.

5. Yevamoth 16:6.

6. Yevamoth 10:1.

7. Yevamoth 10:1; See Philip Blackman, Mishnayoth, Volume III, p. 77, note 17.

8. Deuteronomy 25:5-10; Jewish Publication Society, Torah, 1962 edition, pp. 369-370.

9. Alexander Guttmann, Rabbinic Judaism in the Making, pp. 83-84, based on Yevamoth 1:4 and Yevamoth 3:5.

10. Yevamoth 13:1.

11. Yevamoth 4:6.

12. Ketuboth 7:10.

13. Ketuboth 7:10 comment of Ikar Tosaphot Yom Tov.

14. Bechoroth 1:7, comment of Bertinoro.

15. Bechoroth 1:7; B. Yevamoth 39b.

16. Tosephta Yevamoth 6:9.

17. Ze'ev W. Falk, Jewish Matrimonial Law in the Middle Ages, p. 9.

Conclusion: The Forces at Work

1. Ellis Rivkin, The Shaping of Jewish History, pp. 49-50; Solomon Zeitlin, The Rise and Fall of the Judaean State, Volume I, pp. 79-84; Victor Tcherikover, Hellenistic Civilization and the Jews, pp. 160, 170.

2. Alexander Guttmann, Rabbinic Judaism in the Making, p. xii.

3. Louis Finkelstein, The Pharisees, p. 10.

4. Nahum N. Glatzer, Hillel the Elder: The Emergence of Classical Judaism, pp. 18-19.

5. Ralph Marcus, "The Hellenistic Age," in Great Ages and Ideas of the Jewish People, pp. 125-126.

6. Ibid., p. 110.

7. Rivkin, p. 81.

8. Zeitlin, Volume II, p. 284.

9. Tcherikover, p. 350.

10. Marcus, p. 99.

11. Zeitlin, Volume I, p. 305.

12. Tcherikover, p. 257; See also B. Sotah 22b.

13. Heinrich Graetz, History of the Jews, Volume II, pp. 48-49.

14. B. Berachot 48a; See also Graetz, Volume II, p. 49; Zeitlin, Volume I, p. 320; Guttmann, p. 25.

15. Guttmann, p. 25, and pp. 260-261, note 23.

16. Gerson Cohen, "The Talmudic Age," in Great Ages and Ideas of the Jewish People, p. 160.

17. B. Ta'anit 23a.

18. Graetz, Volume II, p. 47.

19. Zeitlin, Volume I, p. 335.

20. Ibid., Volume II, p. 195.

21. Cohen, p. 190.

22. Tosephta Kelim Baba Metzia 1:6.

23. B. Berachot 10a.

24. B. Erubin 53b-54a.

25. B. Avodah Zarah 18b, Rashi.

26. B. Pesachim 62b.

27. Chaim Nachman Bialik and Y. H. Robnitz, Sefer Ha-Agadah, p. 190 based on Midrash Mishle, p. 31.

28. Salo W. Baron, A Social and Religious History of the Jews, Volume II, pp. 112-113.

29. Ibid., p. 238.

30. Rachel Adler, "The Jew Who Wasn't There: Halacha and the Jewish Woman," in Response, summer 1973, p. 81.

31. Guttmann, pp. xvi and xii.

Bibliography

Primary Sources

Philip Blackman. Mishnayoth (Volumes I-VII). New York, The Judaica Press, 1964.

M.D. Casuto, editor. Sifre Ha-Mikra (Hebrew Bible). Tel Aviv, Yavneh, 1970.

The Holy Scriptures, Philadelphia, The Jewish Publication Society of America, 1917.

Chaim Saul Horowitz and Israel Abraham Rabin, editors. Mecchilta d'Rabi Ishmael. Jerusalem, Bamberger and Wahrman, 1960.

Flavius Josephus. Josephus (Loeb Classical Library Edition Volume VIII), translated by Ralph Marcus. London, Wm. Heinemann Ltd., 1963.

Flavius Josephus. Josephus: Complete Works. Grand Rapids, Kregel Publications, 1960.

Philo Judaeus. Philo (Loeb Classical Library Series), translated by F.H. Colson and G. H. Whitaker, London, Wm. Heinemann Ltd., 1956.

Shishah Sidre Mishnah. New York, Shulsinger Bros., 1948.

Talmud Babli. Jerusalem, Ha-Machlakah L'Sipuk Tsarke Dat, 1960.

The Torah. Philadelhiphia, The Jewish Publication Society of America, 1962.

A. H. Weiss, editor, Sifra. Vienna, 1862.

Moshe Shmuel Zuckermandel, editor. Tosephta. Jerusalem, Sifre Wahrman, 1963.

Secondary Sources

Rachel Adler. "The Jew Who Wasn't There: Halacha and the Jewish Woman" (Response XVIII). Waltham, Massachusetts, summer 1973.

David Werner Amram. The Jewish Law of Divorce. Philadelphia, Edward Stern and Company, 1896.

Leo Baeck. The Pharisees and Other Essays. New York, Schocken Books, 1947.

Salo W. Baron. A Social and Religious History of the Jews (Volumes I and II). Philadelphia, The Jewish Publication Society of America. 1952.

Chaim Nachman Bialik and Y. H. Robnitzsky. Sefer Ha-Agadah. Tel Aviv, Dvir, 1962.

Gerson D. Cohen. "The Talmudic Age" in Leo W. Schwarz, editor, Great Ages and Ideas of Jewish History, New York, Random House, 1956.

"Discussion of the Jewish Attitude Toward Divorce" in Jacob Freid, editor, Jews and Divorce, New York, Ktav Publishing House, 1968.

Louis M. Epstein. The Jewish Marriage Contract: A Study in the Status of the Woman in Jewish Laws. New York, Jewish Theological Seminary of America, 1927.

Ze'ev Falk. Jewish Matrimonial Law in the Middle Ages. Oxford, Oxford University Press. 1968.

David M. Feldman. Birth Contrl in Jewish Law. New York, New York University Press, 1968.

Louis Finkelstein. The Pharisees. Philadelphia, The Jewish Publication Society of America, 1946.

Nahum N. Glatzer. Hillel the Elder: The Emergence of Classical Judaism. New York, Schocken Books, 1966.

Nathan Goldberg. "The Jewish Attitude Toward Divorce" in Jacob Freid, editor, Jews and Divorce. New York, Ktav Publishing House, 1968.

Heinrich Graetz. The History of the Jews (Volume II). Philadelphia, The Jewish Publication Society of America, 1967.

Alexander Guttmann. Letter to Stephen Fuchs, December 16, 1973.

Alexander Guttmann. Letter to Stephen Fuchs, April 10, 1974.

Alexander Guttmann. Rabbinic Judaism in the Making. Detroit, Wayne State Univeristy Press, 1970.

R. Travers Herford. The Pharisees. New York, Macmillan, 1924.

Paula E. Hyman. "The Other Half: Women in the Jewish Tradition" (Response XVIII). Waltham, Massachusetts, summer 1973.

Marcus Jastrow. A Dictionary of the Targumim, The Talmud Babli and Yerushalmi, and The Midrashic Literature. New York, Pardes Publishing House, 1950.

K. Kahana. The Theory of Marriage in Jewish Law. Leiden, E. J. Brill, 1966.

Ralph Marcus. "The Hellenistic Age" in Leo W. Schwarz, editor, Great Ages and Ideas of the Jewish People. New York, Random House, 1956.

George Foot Moore. Judaism. Cambridge, Harvard University Press, 1927.

Ellis Rivkin. The Shaping of Jewish History. New York, Charles Scribner and Sons, 1971.

Emily Solis-Cohen Jr. Women in Jewish Law and Life. Philadelphia, The Jewish Publication Society of America, 1932.

Victor Tcherikover. Hellenistic Civilization and the Jews. Philadelphia, The Jewish Publication Society of America, 1966.

Solomon Zeitlin. "The Origin of the Ketubah" (The Jewish Quarterly Review XXIV). Philadelphia, 1933.

Solomon Zeitlin. The Rise and Fall of the Judaean State. Philadelphia, The Jewish Publication Society of America, 1962.