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REFLECTIONS ON ROMAN LAW AND SOCIETY IN THE DEVELOPMENT OF FAMILY LAW IN MISHNAH KETUBOT

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Thesis Submitted in Partial Fulfillment of Requirements for Ordination

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Introduction

"***The historian is the physician of memory.***"

Yosef Yerulshalmi in *Zakhor: Jewish History and Jewish Memory*

A famous Talmudic legend relates how the eminent Yochanan Ben Zakai escaped from Jerusalem in a coffin carried by his disciples, thus outwitting the vigilant zealots who forbade everyone from leaving the besieged city. On reaching the Roman camp, according to one version, Yohanan ben Zakkai told Vespasian, commander of the Roman siege, that he would become emperor. Since the prophecy was immediately fulfilled, the newly elected Roman ruler was willing to grant the prophet his every wish. "Give me Jabneh and its scholars," was Yohanan ben Zakkai's request.

This legend is chronologically impossible, historian Eli Barnavi explains, for Vespasian had already become emperor in 69 CE , and the siege of Jerusalem was commanded by his son Titus; and "Jabneh and its scholars" were only to emerge after the Temple was in ruins.[1] This Talmudic legend, this collective Jewish memory, is only one of many formidable myths that we Jews tell ourselves about our past and the transmission of our laws, customs, and religious practices.

As the great historian Yosef Yerushalmi writes in *Zakhor: Jewish History and Jewish Memory*, "In historiography's quest for understanding, it brings to the fore texts, events, processes, that never really became part of the Jewish group memory even when it was at its most vigorous. With an unprecedented energy, historiography continually recreates an ever more detailed past whose shapes and textures, memory does not recognize."[2]

This thesis will explore another profound myth that is part of the collective Jewish memory: the development of Jewish law and in particular Jewish family law. In *Pirke Avot* we are taught that Moses received instruction (Torah and the Oral Law) from Sinai,

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[1] Barnavi, Eli. *An Atlas of the Jewish People.* Schocken Books: New York, 1992, p. 56.
[2] Yerushalmi, Yosef. *Zakhor: Jewish History and Jewish Memory.* University of Washington Press: Seattle, 1982, p. 99.

and passed it on to Joshua, and Joshua to the elders, and the elders to the prophets, and the prophets to the Great Assembly. There is the suggestion in this Mishnah from Pirke Avot that the rules and laws that became part of our Mishnah were a direct expression of ideas that came from Sinai.

The beautiful myth of the uninterrupted, monolithic continuation of Jewish law and tradition is challenged by historical reality. Jewish tradition survived and thrived though the accretion of new cultures, ideas, practices and peoples into Judaism. This accretion has always taken place and took place quite dramatically during the period of the Roman Empire. Preceded by the empire of the Greeks, the Romans inherited a world with a universalistic outlook and contributed to it by giving it the structure of Roman law. This Roman legal system, its structure and content, would greatly influence the development of Jewish family law. Early Jewish law, as seen in the Mishnah, shows the increasing influence of the philosophy and structure of Roman law which was also undergoing a parallel development. We can trace the different *strata* of the Mishnah including its canonization to events in the Roman Empire.

At the same time that Jews were being influenced by the Romans, , members of the Roman Empire were exposed to Jews and the Jewish heritage. By the middle of the first century, the vast majority, conservatively two-thirds of the followers of the faith of Abraham, came from recent non-Jewish roots. Great Jewish communities arose throughout the Empire. These new Jews brought with them their unique cultural heritage that would eventually become part of the greater Jewish culture and community.

The majority of these new Jews came into Judaism through the proselytizing efforts of the Hillelites, a wing of the Pharisaic party. The Hillelites proselytizing nature is noted in Book of Matthew, Chapter 23 v. 15. Matthew reports, "the Pharisees would traverse land and sea to bring into Judaism one single proselyte."

Over time and in particular by the middle of the first century, the term "Jew" became a problematic name for the followers of the Abrahamic faith. The term "*yehudi*" denoted a

resident of the land of Israel. As a result the successors to the Pharisees, the proto-rabbis, wrestled with the challenge of influx of the new Jews who could not be called "*yehudi.*" At some indeterminate point, this tradition, now understood as the rabbinic tradition, adopted the term *yisrael* as a singular to indicate every member of the Jewish community and not a *yehudi*. (The biblical term *yisrael* was used only in a communal sense and not in a singular sense). Scholars can trace the term *yisrael* to the period of Paul in the middle of the first century CE.

The Jewish community's world under the conquering Romans was radically different from the Jewish world of Bible. It was a world of vast geographic expanse, a cosmopolitan melting pot of ethnicities and a clash of cultures. The Roman leadership would rule by encouraging cohesiveness while at the same time allowing for the retention of individual group expression. We will see this principle of Roman policy in Tractate *Gittin* where the rabbis establish many laws *mipnei tikkun olam*, for the sake of social welfare. Also, Roman innovations are evident. For example, additions to the Jewish world include baptism, the rise of the academy as a study center, the elite's entitlement to education, and the understanding of the need for laws which could be applicable to all residents of the far flung Empire. Finally, we also see in early rabbinic Judaism, not only the proliferation of many Roman customs but also of Greek and Roman words such as *sanhedrin*, *afikomen*, *categor*, and *fanos*. The adoption of these words suggests the pervasiveness of Greco-Roman influence in the Jewish community.

When the Romans entered the land of Israel they initially gave their allegiance to the Sadducees. Shortly thereafter, they switched their allegiance to the pro-Roman group of the Pharisees, the pro-Roman Hillelites. These two groups had been in conflict for some time. During the reign of Queen Salome Alexandra (76 – 67 BCE) a truce was reached between the competing factions. The truce allowed the Sadducees leaders to maintain their positions of authority and extensive properties while the Pharisees acquired control of the application of the Torah. The Pharisaic control of the application of the Torah marks the beginning of the extensive process that led to the establishment of Pharisaic law.

The role of the family and the extent and nature of the protection of its members were influenced by Roman society and law. While in the past family life had been insular and individuals were controlled by the family's patriarch, we now see a transference of many matters to the court. This was the result of the increased fluidity of individual life and contact of non-Jews and Jews of different background.

The biblical system of family control gave women very few rights with a few notable exceptions, i.e. the daughters of Zelophehad. In the new Roman world, the proto-rabbis and their successors were very concerned with women and their role and rights in marriage. In tractates Ketubot, Kiddushin, and Gittin, the proto-rabbis define and expand laws regarding marriage, protection of women, divorce and property rights. Now, general authorities and the courts and no longer just individual family heads would resolve disputes. Also at this time, documents became the primary arbiter of legal rights. Documents rather than individual heads of household protected and defined the individual's rights and responsibilities.

In this thesis, I will 1) explore matters of family law as articulated in the Torah 2) summarize the development of Roman family law during the classical legal period 3) discuss some of the ways in which the Romans legal and cultural systems directly interacted with those of the Jewish communities during the period of 100 BCE – 200 CE 4) discuss issues of family law that concerned the rabbis of the 2nd century CE as articulated in Mishnah Ketubot 4) discuss corrleative passages in Mishnah Gittin and Kiddushin and 5) share some observations and conclusions regarding the impact of this Roman interaction on Jewish family law during the Mishnaic period. Through this discussion, I begin to explore the continuity and discontinuity of Jewish family law as articulated in the Bible and Mishnah Ketubot.

John Dunne's adage "no man is an island" applies to the Jewish community and legal concerns of the early rabbinic period. "No Jewish community is an island." We are greatly influenced by the cultural and social milieu in which we find ourselves.

Chapter One – The Family in the Bible and in the Ancient Near East

To better understand the biblical family, it instructive to contextualize it within the framework of the Ancient Near East. The family, as described in Tikva Frymer-Kensky's *Patriarchal Family Relationships and Near Eastern Law*, "is a large extended family which is patrilocal in residence, patripotestal in authority and patrilineal in descent."[3] This means that all sons stay together in one household with the father, who remains the undisputed head of the family until his death. The father contracts marriage for his children. In the case of a daughter, he has unlimited authority to dispose of her in any way he sees fit, whether by contracting a marriage for her or even by giving her as a slave. He provides his daughter with a dowry, which she gets in lieu of an inheritance, and she leaves his house. The father is also expected to obtain wives for his sons, either by actively negotiating and contracting the marriage, or by acquiescing to it and providing the bridal payment. When the father dies, the eldest son takes over as head of the household; he is given the charge of household emblems, insignia and deities and presides over the management of the estate. The brothers may, for one reason or another, continue to hold the land in common for some period rather than divide the inheritance immediately, or they made divide the smaller property, such as house and orchards, and maintain corporate ownership of the productive land. Whether or not they divide immediately they must first provide dowries for their unmarried sisters and insure the bridal payment for the younger bother from their joint holdings. Only then, should the

[3] Frymer-Kensky, Tikva. "PatriarchalFamly Relationships and Near Eastern Law" in *The Biblical Archaeologist*, Vol, 44, No. 4 (Autumn, 1981), p. 209.

remainder be divided. The eldest son thereupon receives a preferential share at the division of the estate.[4]

This pattern is not unique to the Near East but is rather common pattern for patriarchal families in many societies. The distinctive character of Near Eastern law appears in the ways that this pattern is perceived and understood, for in the ancient Near East such apparently self-evident kinship terms as "son," "brother," and "eldest son" are not limited to their biological referents but rather define special juridical relationships, relationships that can be created artificially through various types of adoption and specification.[5]

Kinship Structure of Family

According to the Anchor Bible Dictionary, the family "was a community of persons, related by ties of marriage and kinship, and ruled by the authority of the father."[6]
The biblical family, especially when marriage was polygamous, was large. It included the father, mother, sons, daughters, brothers, sisters, grandparents as well as concubines, servants and sojourners. To reiterate, all of these individuals were under the legal control of the father/husband.

Polygynous Society

Ancient Israel was a polygamous society in which a women might share her husband with other wives and did not have an exclusive right to him. So, it would be more accurate to describe Ancient Israel as polygynous, a society that involves one man and

[4] Frymer-Kensky, Tikva, p. 209-212.
[5] Frymer-Kensky, Tikva, p. 213.
[6] Anchor Bible Dictionary, p. 238.

multiple wives. Polygyny used to be common in the ancient world and was supported in most religions. While polygyny was endorsed in the Bible, it is unclear to what degree it might have been limited to the upper levels of society. Yet, the Bible is rife with examples of polygamy.[7]

Torts & Crimes vs. Private Family Matters

In matters that were deemed "family" matters, the court had no jurisdiction and would leave the matter entirely in the hands of the individual who was the head of house. In contrast, in matters of torts or crime, the "court" held jurisdiction over the matter. In the Bible, which offenses were considered crimes? Which were considered torts? Which were considered private family matters? Why were matters of family law left exclusively in the hands of the head of house to resolve? The answers to these questions will be explored in the next section.

In the Bible, a crime is an action that the community prohibits and punishes in the name of the common welfare. Adultery, defined as a man having sex with a married woman, is considered a crime. As articulated in Leviticus 20:10, "If a man commits adultery with a married woman, committing adultery with another man's wife, the adulterer and the adulteress shall be put to death." The penalty for this crime is death. The same is true in Deuteronomy 22:22, "If a man is found lying with another man's wife, both of them-the man and the woman with whom he lay-shall die. Thus you shall sweep away evil from

[7] Hebrew Study Bible, p. 150.

Israel." In the Bible, to reiterate, adultery is crime, a public matter in which the community has a vested interest.

A tort is "a breakdown in local relations following an injury and in which the public has a vested concern."[8] Seduction of an unmarried or an unbetrothed girl is considered a tort. This is the case in Exodus 22:15, "If a man seduces a virgin for whom the bride-price has not been paid, and lies with her, he must take her his wife by payment of a bride-price. If her father refuses to give her to him, the seducer must still weigh out silver in accordance with the bride-price for virgins. In other words, the girl's father must be financially compensated for the injury he, the father, incurred, the loss of the *mohar*.

Crime and torts were heard in local courts. Their resolution was not left to individuals or families to settle. Rather, the courts and/or the community stepped in to adjudicate the matter. This was not the case with matters deemed family matters. In matters deemed family law, the court held no jurisdiction and left matters entirely in the hands of the individual head of the household. One reason for this is, as explained by Oxford University scholar Anthony Phillips, "only free adult males had legal status in Ancient Israel and the right to appear before the elders in court. All other persons, women, children and slaves, were in effect personal property of the head of the household and were dependent upon him, not the courts, for their protection."[9]

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[8] Phillips, Anthony. "Some Aspect of Family Law in Pre-exilic Israel," in *Vestus Testamentum* 23 (1973), p. 350.
[9] Phillips, Anthony. "Some Aspects of Family Law in Pre-exilic Israel," in Vetus Testamentum 23 (1973), p. 350.

Matters of Family Law

Marriage

According to the *Hebrew Study Bible*, marriage, in the bible and the Ancient Near East, was a contractual relationship. A woman, regarded in terms of her relation to her father or he husband, could not act independently. The woman was not a free agent, either in legal or sexual terms. She remained in her father's household until a suitor paid a bride-price to compensate the father for the reduction of the household. At that point, she became formally engaged in the sense of legally contracted for, although still living, "under the father's authority" (Deuteronomy 22:21; lit. "in her father's house.). Later, at the marriage feast, the union was consummated (Genesis 29:22-25). The fact of intercourse marked the legal consummation of marriage. Subsequently, the woman took up residence in the household of her husband.[10]

In tale of Jacob in Genesis, the idea of a bride-price and the subsequent consummation of the marriage through intercourse are introduced. Jacob works for Laban for seven years for Rachel's hand in marriage. According to biblical scholar Nachum Sarna, Jacob worked those years in lieu of paying a *mohar*, a "bride-price," and "Jacob had the status of an indentured laborer working to pay off his bride-price."[11] In Genesis 29:18, we are told that Jacob loved Rachel; so he answered, "I will serve you seven years for your younger daughter Rachel." Laban said, "Better that I give her to you than I should her to an outsider. Stay with me." So Jacob served seven years for Rachel and they seemed to him but a few days because of his love for her. Then Jacob said to Laban, "Give me my

[10] *Jewish Study Bible*, p. 416.
[11] Sarna, p. 204.

wife, for my time is fulfilled, that I may cohabit with her." And Laban gathered all the people of the place and made a feast. " Unfortunately for Jacob, Laban deceived him and gave him Rachel's sister, Leah, to co-habtat with. Thus, having served seven years in lieu of the bride price and having had intercourse with Leah, Jacob was considered married to her. Neither Leah nor Rachel had any say in these transactions. Rather being in effect under the complete control of their father, he determined with whom she would have intercourse with and with whom she would marry.[12]

Interestingly, specific references to the payment of the bride-price are mentioned in Genesis 34 and Deuteronomy 20 as well. In Genesis 34, Shekhem's father, Hamor, spoke with Jacob and Jacob's son about Shekhem's desire to marry Dinah and his willingness to pay the bride-price. Hamor said, "Do me this favor, and I will pay whatever you tell me. Ask of me a bride-price ever so high, as well as gifts, and I will pay what you tell me; only give me the maiden for a wife (Genesis: 34:11-12." Unfortuntely for Hamor and Schekhem, Jacob's sons refuse to allow such a union to take place between their sister and a non-Israelite. In Deuteronomy 20, the rules for waging a holy war are elaborated and a list of those who are exempt from battle are explicated. The exempt include a man who has paid a bride-price but has not married his intended yet. The commander asks, "Is there anyone who has paid the bride-price for a wife, but who has not yet married her? Let him go back to his home, lest he die in battle and another marry her. (Deuteronomy 20:7)"

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[12] Sarna, Nachum. *The Torah Commentary: Genesis,* Jewish Publication Society: Philadelphia, 1989., p36.

Polygamy and Its Effects on Marriage and Adultery

Ancient Israel was a polygamous society in which a women might share her husband with other wives and did not have an exclusive right to him. In the Bible, extramarital relations of a married man does not constitute adultery. If a bride price had been paid for the woman or she was married when the intercourse occurred, then adultery occurred. Yet, adultery was a sin against God (Gen 20:6; 39:9) and a capital crime (Leviticus 20:10; Deuteronomy 22:22-27) and as such both the woman and the offending man would be put to death.[13]

Divorce

In the Bible, a man has the unfettered right to dispose of women under his protection at will, whether that was a father making a marriage or a husband divorcing his wife. Neither wife nor daughter had any ultimate say in the matter, nor could they appeal to the courts. Their future was determined by family law and that was entirely a domestic matter. Thus, a wife could <u>not</u> divorce her husband while a husband had the absolute right to divorce his wife at anytime for any reason.[14]

As a family law matter, the ceremony of terminating a marriage did not take place in a court or before the community elders. Rather, it took place in the matrimonial home. Hosea 2:4 provides an example. An unwilling husband, in the act of divorcing his wife, declares, "She is not my wife and I am not her husband." To actualize the divorce, the husband need only drive the woman from his home. From then on, the divorced women

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[13] *Hebrew Study Bible*, p. 150.
[14] Phillips, Anthony, p. 355.

is known as *gerushah,* the expelled one. The husband had the absolute right to act unilaterally and independently of the community at large as it was his affair alone and not a concern of others. The divorced women would then normally return to her father's home (Leviticus 22:13).[15]

As Jewish society became increasingly complex, according to Professor Philips, the simple divorce proceeding was not enough. It became extremely important that the divorced woman have proof that the marriage dissolved in order for her to be able to marry again without fear that her first husband would claim rights over her. This led to the introduction of a bill of divorce, the *sepher kerithuth,* a bill of cutting. The *sepher kerituth* either replaced or supplemented the simple divorce formula of family law spoken by the husband before his wife's expulsion from the home.

Deuteronomy places two limitations on a husband's right to divorce: The first case is found in Deuteronomy 22:13-19. A husband falsely charges that his wife was not a virgin at the time of marriage. If the girl's father and mother produce evidence of the girl's virginity before the elders of the town at the gate, the elders will flog the man, fine him 100 shekels and give them to the girl's father. The girl then remains his wife. He shall never have the right to divorce her. In the second case, Deuteronomy 22:28-29, a man comes upon a virgin who is not engaged then he seizes and lies with her. If discovered, the man who lay with her must pay the girl's father fifty shekels of silver, and she becomes his wife. Once again, the man can never have the right to divorce her. In

[15] Phillips, Anthony, p. 357.

both of these cases, a tort is paid. In the case of the false charge, one hundred shekels is paid to the girl's father and in the case of the man who seizes an unmarried women and lies with her, five hundred shekels is paid to the girl's father. In both cases, the father is financially compensated while his daughter, not a legally independent individual, is not invited to decide if she wants to be married to her seducer and false accuser.

Seduction and Miscarriage-Cases of Injured Property

The Seduced girl

In the Bible, as mentioned previously, a woman had no individual legal status but was first treated as the property of her father and then of her husband. Accordingly in Exodus 22:15, the seducer must pay the father by way of damages the price which the father could have expected to have received for his daughter in marriage and which he would not now get. The seducer would have to take the girl as his wife, though the girl's father had the power to withhold her from the seducer. Thus, the father economically was neither better nor worse off than if he had made a marriage for the girl through a normal manner. Harmony, Anthony Phillips explains, was restored in the community.[16]

Miscarriage

When a man injures a married woman, the offender must compensate not the woman but her husband. In Exodus 21:22, a man knocks a pregnant women who then miscarries but sustains no further injuries. The offender must pay damages. The husband evidently

[16] Phillips, Anthony, p. 351.

would sue for a specific amount, which on a case-by-case basis, would be scrutinized by court assessors who determined an actual amount.[17]

A Brief Comparison with Ancient Near East Legal Codes

Although the father could dispose of his daughter at will, there is never any suggestion in the Bible that he had power of life and death over her. She was an asset for whom he was entitled to expect proper compensation in the case of loss, but his legal action was limited to dangers for any injury incurred. This was not the case with other Ancient Near East communities as explained by Driver and Miles in *The Assyrian Laws*. Driver and Miles explain, "if a virgin consented in her seduction than her father could treat her as he wishes, which may include the possibility of killing her."[18]

Conclusion

Typically, the family of the biblical period resided on homesteads. These families were rural rather than urban and the laws and customs which they lived by reflect this reality. Additionally, the father/husband was truly the "king of his castle." As described in this chapter, the father/husband had almost complete autonomy regarding how he chose to treat the members of his family. Yet within the Bible, particularly in the book of Deuteronomy, we begin to observe changes and developments in family law. These developments and changes would continue into and throughout the theocratic period.

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[17] Phillips, Anthony, p. 354.
[18] Driver and Miles. *The Assyrian Laws*, Oxford University Press, 1935, p. 62.

Chapter Two – The Roman Empire and Roman Law

In 31BCE, Octavian (the future emperor Augustus) defeated Mark Anthony and Cleopatra at the Battle of Actium and thus became the first sole ruler of the territory which extended from the Hispanic peninsula in the west to the Euphrates in the east and from France in the North and the Sahara in the South. At its height in the second century, the Roman Empire included even more territory, having added Britain and the lands west of the Rhine and south of the Danube. By the mid-fifth century CE, parts of the Western Empire in Europe and North Africa had fallen under the control of Germanic peoples. By 476 CE, the last Roman emperor in the West, Romulus Augustus, was deposed. At that point, the Roman Empire can be said to have ended, although the Byzantine Empire continued in the eastern Mediterranean for another millennium and Roman law continued to shape the legal traditions of the east and west.[19]

Through its governmental institutions, the Roman state developed one of the first complex systems of secular civil law and a formal judicial system in which law was interpreted and applied. It is this system of law that lies at the basis of most European and American law, as well as not inconsiderable parts of the English Common Law. Through the transmission of the common and civil law traditions to peoples and places outside Europe and the Americas, the influence of Roman law has also had a considerable impact on the legal systems of non-Western countries. Roman administrators, magistrates, and jurists therefore developed many of the fundamental

[19] Grubbs, Judith Evans. *Women and The Law in the Roman Empire: A Sourcebook on Marriage, Divorce and Widowhood.* Routledge: New York, p. xiii.

legal principles that are basic to a majority of the formal legal systems in the world today. In addition, Mishnaic law and the rabbis were greatly influenced by Roman law.

Roman law is divisible into two periods: the classical and the late antiquity periods. The classical period is generally defined as running from the first century before the Common Era through 235 of the Common Era. The late antiquity period is seen as extending from the early fourth century of the Common Era through the sixth-century of the Common Era.[20]

"In many parts of our law, the condition of women is below that of men," stated the third century legal writer Papinian. An examination of the traditional sources for Roman law under the Empire bears out the truth of Papinian's statement. At the same time, women in the Roman classical period enjoyed greater property rights and freedom to divorce than women did in the American and European legal systems before the twentieth century. While much recent scholarship has focused on law in the later Roman Empire (284-476), I will focus on the "classical" period of Roman law and culture. The first century before the Common Era until the third century of the Common Era.[21]

[20] Grubbs, Judith, p. 1.
[21] Grubbs, Judith, p. xi.

Sources of Classical Law

The Twelve Tables (451-450 B.C.)

The Twelve Tables were written by the Decemviri Consulari Imperio Legibus Scribundis,(the 10 Consuls) who were given unprecedented powers to draft the laws of the young Republic. Originally ten laws were drafted. Later, two statutes were added prohibiting marriage between the classes and affirming the binding nature of customary law. The new code promoted the organization of public prosecution of crimes and instituted a system whereby injured parties could seek just compensation in civil disputes. The plebeians were protected from the legal abuses of the ruling patricians, especially in the enforcement of debts. Serious punishments were levied for theft and the law gave male heads of families enormous social power (patria potestas).The important basic principle of a written legal code for Roman law was established, and justice was no longer based solely on the interpretation of judges. These laws formed an important part of the foundation of all subsequent Western civil and criminal law.[22]

As professor Cohen notes, the life and unique contribution of Ezra must be understood within the context of the Mediterranean world of the Near East and the possible influence of the Roman Republic. [23] The Republic was established in 509 BC and the codification of the Twelve Tables are dated to 450 BC. Ezra is believed to have been born approximately 500 BC. He returned to Jerusalem from Exile and publicly read the Torah

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[22] Jolowicz, H.F. *Historical Introduction to the Study of Roman Law.* Cambridge University Press: Cambridge, 1972, p. 5, 119, 121, 233- 237.
[23] Cohen, Martin. Interview, January 3, 2007.

in 447 BC. It was during Ezra's lifetime that, as Solomon Zeitlin notes in *The Halaka: Introduction to Tannaitic Jurisprudence*, "the Torah became the constitution of the Jewish people."[24] Most likely, Ezra, the educated priest, was not unaware of the legal developments that were occurring in the Roman Republic and promulgated an analogous legal system to his contemporaries in Jerusalem.[25] The similarity, Professor Martin Cohen notes, is due primarily to the influence of the many individuals from the Roman Empire who became Jews and is due secondarily to the those Jews who were seeking to adopt Roman norms and customs.[26]

The Digest of Justinian

The most important source for knowledge of classical Roman law is the *Digest of Justinian* (The Digest). It is comprised of fifty books of selections from voluminous commentaries of the Empire's most influential jurists. *The Digest* was compiled under the sixth century emperor Justinian. *The Digest* was compiled much later than the jurists whose work it includes. Emperor Justinian instructed his team of legal scholars to read through thousands of pages of classical legal texts and distill them into a much shorter work, preserving only what was still relevant and useful. The fifty books of *The Digest* are divided into "tithes" denoting topics treated in a particular book. Justinian's compilers carefully noted which jurist wrote which work. This has enabled modern scholars to reconstruct the context of the original works which are now lost. Most of the

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[24] Zeitlin, Solomon. "The Halakah: Introduction to Tannaitic Jurisprudence," *The Jewish Quarterly Review*, New Ser., Vol. 39, No. 1. (Jul., 1948), pp. 1-40.
[25] http://www.propadeutic.com/faith/history/exile
[26] Cohen, Martin. Interview. January 3, 2007.

jurists included wrote in the second and early third century. There were compatriots of the Mishnah. Interestingly, book 23 of *The Digest* deals exclusively with marriage.[27]

Institutes of Gaius

The Institutes of Gaius is a handbook written by a learned lawyer dating back to the second century of the Common Era. It has survived virtually complete. Gaius' *Institutes* are particularly valuable in providing information about aspects of classical law that were no longer valid in Justinian's day and were therefore not included in the Justinian corpus. For example, almost all knowledge of legal guardianship of women (*tutela mulierum*) derives from Gaius' *Institutes*.[28]

Code of Justinian

In addition to *The Digest*, the Emperor Justinian was responsible for compiling another important source of Roman private law of the second and third centuries of the Common Era. This work is *The Code of Justinian*. Whereas *The Digest* contains extracts from jurists' commentaries, *The Code* is a collection of legal enactments by Roman emperors from Hadrian (reigned 117-118 CE) up until Justinian. *The Code* was published in 534 CE. Almost all of the 2,500 rescripts[29] in the *The Code* date between 193 CE and 305 CE. As Professor Martin Cohen notes, the rescripts parallel the rabbis' *responsa*.[30] Greater than half of the rescripts are from the reign of Diocletian (282-305 CE). The

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[27] Grubbs, Judith, p. 3.
[28] Cook, John. *Law and Life of Rome*. Cornell University Press: New York, 1967, p. 15.
[29] Rescripts are replies given be emperors to petitions from individuals, mostly private subjects who had written letters to the Emperor.
[30] Cohen, Martin. Interview. December 27, 2006.

rescripts represent a much broader spectrum of the population of the Roman Empire. About twenty percent of all rescripts are addressed to women, a fare greater representation of women than in any other literary source of the Greco-Roman Antiquity.[31]

Status before Gender: The Roman Social Structure & Legal System

In Roman society and law, "status, the classical scholar Judith Evans Grubbs writes, "was almost as important as gender."[32] Though women were subject to some legal restrictions with regard to their public activities, and their actions were subject to the approval of some men (father, tutor or husband), women of the elite had privileges not available to men who were below them legally. In studying the position of women in the Roman Empire, the importance of social status must always be kept in mind.

A pyramid best describes the social structure of the Roman Empire. The wealthiest aristocrats are the narrow tip, the prosperous upper classes of the Empire's cities are the middle section and the inhabitants of the Empire who existed at a subsistence level comprise the broadest section of the pyramid.[33] Roman society was always very conscious of social status and rank. Not only honors, but also legal privileges and penalties were fixed according to one's status in society.

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[31] Grubbs, Judith, p.3.
[32] Grubbs, Judith Evans. *Women and The Law in the Roman Empire: A Sourcebook on Marriage, Divorce and Widowhood.* Routledge: New York, p.12.
[33] Alfody, G. The Social History of Rome, translated by D. Braund and F. Pollack. Baltimore: John Hopkins University Press, 1988, p. 107.

Until the second century C.E., the main factor determining legal status was citizenship. Roman citizens received better treatment under the law. Non-citizens, unlike citizens, were liable to penalties such as corporal punishment and execution. Even modest citizens had important rights that non-citizens *(peregrini)* did not have. Humble citizens could not be beaten by officials. If they were convicted of a capital crime, they would be subject to exile rather than execution. By the second century, as more and more people acquired citizenship and as the Empire became less focused on Italy, Roman citizenship as a criterion for legal status began to lose importance. Than in 212, Emperor Caracalla granted Roman citizenship to all free inhabitants of the Empire, which ultimately led to the devaluation of its worth.[34]

Even before Emperor Caracalla granted citizenship to all free inhabitants of the Empire, the legal dichotomy of citizen/non-citizen was being replaced in many areas of the law by a distinction based on rank. The two basic groups were the "more honorable" (*honestiores*) and the "more lowly" (*humilores*). The *honestiores* were those of higher status, who received public honor and legal privileges. This group consisted of members of the Senate, their children and their grandchildren, *equites* (equestrians), decurions (town councilors) and military veterans. All others were *humilores*, or classed with *humilores* in terms of legal treatment. The *honestiores/humilores* distinction was enshrined in law by the reign of Hadrian (117-138).[35]

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[34] Arjava, Antti. *Women and Law in Late Antiquity*. Oxford: Oxford University Press, 1996, p.50.
[35] Arjava, Antti. Women and Law in Late Antiquity. Oxford: Oxford University Press, 1996, p. 51-53.

Highest in the Roman social order, at the top of the *honestiores* were senators and their families. By the time of Augustus, there were about 600 senators in the Empires, many of whom were not originally from Italy but from all over the Empire. Members of the Senate, their wives, children and their sons' children held the honorary title of *clarissimus* for males and *clarissma* for females. In 18 BCE, Augustus enacted legislation that placed restrictions on the marriages and social behavior of senators. Senators, their children and their grandchildren of both sexes were not allowed to marry ex-slaves, actors or children of actors, or those prohibited to all freeborn people.[36] Strong formal parallels are found in the laws of the Mishnah. For example, the Mishnah defines whom the priests can and can not marry.

Next in the Roman status hierarchy was the equestrian order. The background the wealth of equestrians varied more widely than did that of senators, and there were many more of them. In the Empire, there were administrative and military posts reserved for the *equites*, including the prefect of Egypt. Equites, their parents and their grandparents had to be of free birth, and, like senators, they were barred from performing on stage. Unlike senators, they were allowed to marry freedwomen.[37]

Also included among the *honestiores* were decurions, members of the municipal senates (town councils). Most towns had an "order" of 100 decurions. They and their families formed the upper rank of the towns of the Empire. Some were wealthier and more powerful than others. There was not a census requirement as there was for senators and

[36] Grubbs, p. 8.
[37] Grubbs, p. 8.

equestrians. Only those of free birth could become decurions; freedmen could not but their sons could. Ultimately, the decurions were responsible for ensuring that the taxes owed to the imperial treasury was paid.[38]

Women could not hold office, either as senators or as local magistrates, such as decurions. They could, however, wield influence, particularly in their hometowns or provinces, by serving as a priestess of public cults. Often the women of prominent and wealthy families held religious office and participated in public life by endowing building projects or financing festivals. Elite and wealthy women were honored as patronesses of town or of trade associations to which they had contributed money.[39]

Land was the basis of wealth in the Roman Empire. The Empire's wealthiest families owned property in many different parts of the empire (Africa, Spain, Asia Minor and Italy). Through barred from imperial and municipal offices, women could and did own property in their own right and are found in legal sources as owners, purchasers, leasers and renters of land.[40]

Though the biggest difference in terms of wealth and privilege was between the *honestiores* and the *humilores,* there were distinctions within the *humilores* as well. Included in the *humilores* were *free*born people (ingénue) below the status of decurions, freed people (*libertini*) who had been born slaves but subsequently freed. Technically,

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[38] If the people of a decurion's municipality did not provide the full amount of taxes owed to the imperial government, decurions would have to make up the difference.
[39] Grubbs, p.10.
[40] Clark, Gillian. "Roman Women," *Greece and Rome* 28 (1981) 193-198.

slaves were not *humilores*, and were therefore subject to the same—or worse—legal treatment.[41]

The circumstances and conditions of slaves varied greatly. Legally, slaves were at the bottom of the social scale. Yet, some might have been better off or had a better chance of improving the lot of their children than did the freeborn poor. Many domestic slaves were manumitted. Many slaves were given allowances by their owner which they could use to purchase their freedom. Legally, slaves could not marry.

FAMILY & FORMS OF LEGAL POWER

In ancient Rome, all freed women were under one of the following three types of legal authority—*patria potestas* (paternal power), *manus* (subordination to a husband's legal power), or *tutela* (guardianship for those not under *patria potestas* or *manus*). By the reign of Augustus, *manus* had practically disappeared and Augustus weakened *tutela mulierum* by granting freedom from *tutela* to freeborn women with three children and freedwomen with four children. *Patria potestas*, in contrast, survived until the end of antiquity.

Patria Potestas

Patria Potestas was the all-inclusive legal authority of the *paterfamilias*, the male head of the family, over all his children, male and female, and over his sons' children. Male and female children were both under paternal power. The paterfamilias was the oldest male

[41] Clark, Gillian,. 198-203.

ascendant. When a man's sons had children, he would be the *paterfamilias* of his sons and his grandchildren by his sons. A man became a *paterfamilias* when all his male ascendants (paternal grandfather and father) died. A woman never became a *paterfamilias*; she did not exercise *potestas* over any other person. However if her *paterfamilias* was dead and she was not married in a manus-marriage, she would become legally independent.

As found in Gaius, I:48 and 55.

> For some persons are *sui iuris* (independent) and others are *alieni iuris* (dependent on another).
>
> Also in our *postestas* are the children whom we beget in *iustae nuptiae* (civil marriage). This right is peculiar to Roman citizens; for scarcely any other men have over their sons a power such as we have. The late emperor Hadrian declared as much in the edict he issued concerning those who petitioned him for citizenship for themselves and their children. I am not forgetting that the Galatians regard children as being in the potestas of their parent. [42]

Children under *patria potestas* could not own property. Everything given or bequeathed to them legally belonged to their paterfamilias. When the *paterfamilias* died, his children (male and female) could own property in their own names. If a *paterfamilias* died without a will, all his children (male and female) were heirs in equal shares as was his wife, if under *manus*. The paterfamilias' consent was required for his children's legal transactions, including marriage.

To reiterate, women did not have *patria potestas* and could never be a paterfamilias. Upon her husband's death, a widow could neither have *potestas* over her children nor

[42] Gaius, *Institutes*, I. 55.

serve as their guardian. Women could not adopt children as well for adoption required would have required putting the child under her *potestas*, an impossibility.

In addition, slaves were under their master's *postestas* as well. Gaius writes,

> "slaves are in the potestas of their masters. This potestas is iuris gentium for it is obeservable that among all nations alike the masters have power of life and death over their slaves, and whatever is acquired through a slave is acquired by the master."

Yet, how slaves would be treated was also stipulated by law. Gaius stipulates,

> "But at the present day neither Roman citizens nor any other persons subject to the rule of the Roman people are allowed to treat their slaves with excessive and causeless harshness. And even excessive severity on the part of the masters is restrained by a constitution of the same emperor; for, on being consulted by certain provincial governors as to slaves who take refuge at temples of the gods or the statues of emperors, he ordained that masters whose harshness is found to be unbearable are to be forced to their slaves. Both enactments are just, for we ought not to abuse our lawful right – the principle under which the prodigals are interdicted from administration of their own property."[43]

Musings on the Origins of Paterfamilias in Roman Law

John Andrew Couch in his article "*Women in Early Roman Law*," writes about the ancient religion of Italy and how it created the theological/ideological underpinnings for the legal concept of paterfamilias. He explained that for ancient Romans, the human soul after death resided with its body in the tomb. From living descendants it demanded sacrifices and offerings. Each family, therefore had its tomb situated in the house so that the living could easily hold communion with the dead. Though no longer of this life, the departed still needed food and drink prepared for them by their pious descendants. In return, they protected the living and gave them pure thoughts and a happy life. If deserted by family members, the dead became malignant demons whose spiritual

[43] Gaius, *Insitutes*, I. 52 and 53.

existence rested on the torment and final destruction of their undutiful posterity. Such negligence, Couch writes, "was nothing less than the crime of parricide, multiplied as many times as there were ancestors in the family." The logical result of such a religion could be nothing less than the close union of the members of a family, and the firm establishment of the family as a unit of any subsequent political group.[44]

Similarly, theocratic Israel practiced ancestor offerings and sought to call up the spirits of the departed. Saul, as presented in I Samuel 28, sought to bring up the spirit of the dead Samuel.

> "Saul disguised himself; he put on different clothes and se out with two men. They came up to the woman by night, and he said, "Please divine for me a ghost. Bring up for me the one I shall name to you. But the woman answered him, ""You know what Saul has done, how he has banned ghosts and familiar spirits in the land. So why are you laying a trap for me to get killed? Saul swore to her by the Lord, "As the Lord lives, you won't get into trouble over this. At that, the woman asked, "Whom shall I bring up for you? He answered, "Bring up Samuel for me." Then the woman recognized Samuel and she shrieked loudly, and said to Saul, "Why have you deceived me? You are Saul!" The king answered her, "Don't be afraid. What do you see? And the woman said to Saul, "I see a divine being coming up from the earth." "What does he look like?" he asked her. "It is an old man coming up," she said, "And he is wrapped in a robe." Then Saul knew that it was Samuel; and he bowed low in homage with his face to the ground.[45]
>
> Samuel said to Saul." Why have you disturbed me and brought me up?" And Saul answered, "I am in great trouble. The Philistines are attacking me and God has turned away from me. He no longer answers me, either by prophets or in dreams. So, I have called you to tell me what I am to do."[46]

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[44] Couch, John Andrew. "*Women in Early Roman Law*," in Harvard Law Review, Vol. 8 No. 1 (April 25, 1894), p. 40.
[45] I Samuel 28:8-14. *JPS Hebrew-English TANAKH.* Jewish Publication Society: Philadelphia, 1999, p. 636.
[46] I Samuel 28:15-16. *JPS Hebrew-English TANAKH*, Jewish Publication Society: Philadelphia, 1999, p. 636.

Professor Martin Cohen suggests that the similarities between ancient Rome and theocratic Israel are due in part to their shared agrarian natures.[47]

Couch also discusses the worship of the sacred fire as supporting the foundation of *paterfamilias*. In the interior of every Roman house burned, he writes, an undying flame upon the family altar.[48] To ancient men, this was a powerful, beneficent god, whose protection the family continually beseeched. The sacred fire of each household was the special providence of its own particular family. The divine fire and the ancestral spirit were blended into the household gods (Lares, Penates). These gods protected their own worshippers, and left the stranger to care for his own divinities. No interference on the part of the community or state, even in much later times, was ever thought of.[49]
Of the exclusive religion of the family, the father was the high-priest. He had supreme authority in all matters pertaining to the family worship. The father alone taught his sons the songs, rituals and ceremonies. Before the family altar, women had no independent place. They took part in the ceremonies only through their fathers or husbands. Nor did they attain godship.

And in this old religious supremacy of man, rather than in his physical superiority, we find the origin of Roman woman's political and legal subordination. From his position as high-priest of the family worship came that life-long authority over the other members of his household bestowed by this archaic society upon the father, *patria potestas*.

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[47] Cohen, Martin. Conversation, 28 January 2007.
[48] What is the connection of this with the everlasting light in our synagogues?
[49] Couch, John, p.41.

Tutela Impuberum (guardianship of minors) & Tutela mulierum (guardianship of women)

At the time of a father's death, his children (male and female) would become legally independent. If a father died before his children reached puberty (age fourteen for boys and twelve for girls), the children would be placed under *tutela impuberum* (guardianship for those below puberty).[50] This was considered proper and necessary.

As Gaius writes,

> "That persons below puberty should be under guardianship occurs by the law of every State, it being consonant with natural reason that a person of immature age should be governed by the guardianship of another person; indeed, there can hardly be any State in which parents are not allowed to appoint guardians to their children below puberty by their will, though as we have remarked, it seems that only Roman citizens have their children in their *potestas*.[51]

When they reached puberty, fatherless male children became free of legal authority.[52] However, females over the age of twelve would go from *tutela impuberum* to *tutela mulierum*. As described by Grubbs, the tutor was not a personal watchdog but rather someone who would safeguard a woman's paternal inheritance, particularly in the interests of her father's relatives. The tutor's consent was required for selling certain kinds of property, manumitting slaves, and making wills. The tutors consent was not needed for a woman to enter into a marriage without manus.

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[50] Under Roman law, a woman could not serve as a tutor. Typically, fatherless children lived with their mothers but the mother did not have *potestas* over her children or their property.

[51] Gaius, *Institutes*, I. 189.

[52] As Rabbi Martin Cohen notes, it is not coincidental that Jewish boys become bar mitzvah at age thirteen, roughly the age puberty commences.

Gaius, progressive for his day, had reservations with women of full age being in *tutela*. He comments in *Institutes*,

> But hardly any valid argument seems to exist in favor of women of full age being in tutela. That which is commonly accepted, namely that they are very liable to be deceived owing to their instability of judgment and that therefore in fairness they should be governed by the auctoritas of tutos, seems more specious than true"[53]

Augustus, as part of his promotion of marriage and procreation, granted women who served the state by child-bearing the *ius (trium) liberorum*, "the right of (three) children." Freeborn women who bore three children and freedwomen who had borne four children no longer needed a tutor.[54] These women could now conduct all their legal and business affairs without a tutor. By the reign of Septimus Severus (193-211), the position of *curator* had become common for both males and females under the age of twenty-five.

Manus (marital subordination)

In early Roman law, most women entered their husband's legal authority when they married. This marital control was called *manus*. While not as extensive as the *paterfamilias*' power over his children, a husband's authority over his wife was similar. A wife in a *manus* marriage could not own property and any possessions she had when she married would belong to her husband. A wife would inherit equally with her children. A husband did not have "the right of life and death" over his wife.

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[53] Gaius, *Institutes*, I. 190.
[54] Gaius, *Institutes*, I. 194.

Gaius describes *manus* and his *Institutes* are one of the few places it is outlined and the methods are described. Interestingly, as is articulated in Mishnah Kiddushin, there are three ways a woman can enter into *manus*.

> Now, while both males and females are found in potestas, only females can come under manus. Of old, women passed into manus in three ways--by *usus*, *confarreatio*, and *coemptio*.[55] (110) A woman used to pass into manus by usus if she cohabitated with her husband for a year without interruption, being as it were acquired by a usucapion of one year and so passing into her husband's family and ranking as a daughter. Hence it was provided by the Twelve Tables that any woman wishing not to come under her husband's manus in this way should stay away from him for three nights in each year and thus interrupt the *usus* of each year. But the whole of this institution has been in part abolished by statutes and in part obliterated by simple disuse. (111) Entry of woman into *manus* by *confarreatio* is effected by a kind of sacrifice offered to Jupiter Farreus, in which a spelt cake is employed, whence the name *confarreatio*. In the performance of this ceremony a number of acts and things are done, accompanied by special formal words, in the presence of ten witnesses.. This institution exists at the present day.... (112) Entry of a woman into *manus* by *coemptio* takes the form of emancipation, that is a sort of imaginary sale; in the presence of not less than 5 witnesses, being Roman citizens above puberty, and of a scale-holder, the woman is bought by him into whose *manus* she is passing. (113)[56]

By the time of Augustus, "*manus*-marriage," as mentioned earlier in this chapter, had mostly disappeared. Instead, most Roman women entered a form of marriage in which the wife remained under her father's *potestas*, though she would leave her family's home and live with her husband. In this way, her children were under her husband's *potestas*, but she herself would remain under *patria potestas* until her *paterfamilias* died, at which point she would become *sui iuris*. Marriage without manus served the interests of the women's natal family, because she and her property remained under her father's control. This kind of marriage also meant that the woman would become *sui iuris* sooner. *Manus*-

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[55] Gaius, *Institutes*, I. 109-110.
[56] Gaius, *Institutes*, I. 110-113.

marriages disappeared hundreds of years before the Justianiac legal corpus was compiled. The only descriptions, as mentioned earlier, are found in the *Institutes* of Gaius.

Augustus' Promotion of Marriage and Fidelity

The first emperor Augustus (31 BCE – 14 CE) enacted laws to promote Roman citizens' marriage and childbearing as well as to repress and discourage adultery. Augustus' legislation lasted several hundred years and directly affected the upper class, to whom it was aimed.

All male citizens between that ages of twenty-five and sixty and all female citizens between twenty and fifty were to be married. Marriage between a woman over fifty (considered past childbearing) and a man under sixty (enjoined to procreate) was also forbidden. Widows were to remarry within two years of their husband's deaths while divorcees within one and a half years. Those who were not married as prescribed were punished financially.[57] They could not receive inheritances or legacies from those with whom they were not closely related. Those who were married with children were granted certain privileges, the "right of three children." Spouses with the *isus liberorum* could leave more than one-tenth of their property to each other by will and men.[58]

[57] Grubbs, Judith, p.83.
[58] Grubbs, Judith, p. 83.

Augustus also prohibited marriages between members of the senatorial order (senators, their children, and their son's children from marrying former slaves. Such unions were not considered legitimate marriages.[59]

Adultery, sexual relations between a married woman and a man other than her husband, became a criminal offense to be tried in a court. If convicted, the man and the woman could be sent to an island and have property confiscated. Also, sex with an "unmarried woman of respectable status" was also punishable by the laws of adultery. This was the first time sexual offenses were punished as public crimes. Previously, chastisement of adulterous spouses was the role of the paterfamilias and the family council, not the state. Divorce for adultery required the presence of seven witnesses.[60]

The Dowry -- marriage, divorce or death

It is generally assumed that the dowry was a feature of Roman society from earliest times, but it is not listed in *The Twelve Tables*. It first appears in formal legal history in 230 BC, with the establishment of *actio rei uxoriae*, a legal action for the recovery of dowry on the dissolution of marriage. The immediate function of the dowry was to provide income or produce for the conjugal family, and the husband, as owner, was expected to maintain the substance or capital of the dowry while enjoying the benefit of the income or fruits. Both Cicero and Milo went to great lengths to safeguard a wife's dowries against the possible threat of confiscation as part of the husband's holdings.

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[59] Grubbs, Judith, p. 82.
[60] Grubbs, Judith, p. 84.

That the dowry was legally part of the husband's own property did not detract from the perception of it as really belonging to the wife.[61]

During marriage, the dowry belong to the husband ,and he could use the income from it or invest it. Dowry was intended to offset the expenses of maintaining the wife. If the wife died, the husband retained the dowry unless it had been given by the wife's father, who had the right to reclaim his contribution.[62] If the marriage ended on account of the husband's death or a divorce, the wife (or her *paterfamilias*) could bring legal action and have her dowry returned to her. Therefore, the wife had a very legitimate interest in the disposition of the dowry during the marriage. According to Grubbs, "the dowry was considered the wife's property."[63] As articulated in Gaius,

> "Sometimes it happens that he who is master (domius) does not have the power of alienating a thing, and he who is not master can alienate it (Gaius, Institutes II 62). For a husband prohibited by the Julian law (on adultery) from alienating dotal property if this wife is unwilling, though it is his, having either been emancipated to him for the sake of the dowry or lawfully ceded or taken by usucaption. But indeed, whether this law pertains only to Italian lands or also to provincial lands, is a matter of doubt. (Gaius, Institutes, II. 63)"

Moreover the dowry was considered separately from the husband's own property in assessing his financial worth.

Because the marriage might break up and the husband would have to return the dowry, a detailed list of the dotal property was made before the marriage took place. Sometimes a

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[61] Dixon, Suzanne. *The Roman Family.* The John Hopkins University Press: Baltimore, 1992., p. 53.
[62] Dixon, Suzanne. *The Roman Family.* The John Hopkins University Press, Baltimore, 1992, p. 50.
[63] Grubbs, p. 96.

precise monetary value would be placed on the property, which the husband had to repay in case of divorce.

> D.23.3.42 (Gauis) Things given as a dowry, which exist by weight, number, or measure, are at a husband's risk, since they are given for this purpose, that the husband sell them at his own free-will and when the marriage is dissolved, either he or his heir is to restore other things of the same kind and quality.

If a wife died before her husband, he kept the dowry that had been given by anyone other than her father or a male ascendant. Dowry contributed by the wife's father, would be returned to the father.

As described by Suzanne Dixon, it became common for families to negotiate agreements before marriage (*pacta dotalia*) establishing the rules for the return of the dowry on its dissolution, and it was customary to review the terms in the case of divorce. Rules also developed for those instances where negotiations broke down, and the *Digest* contains whole chapters about the problems that might arise. While the husband was legally the owner of the dowry, his ownership was hedged by social expectations and slowly by legal ones as well. Gauis pints to the anomaly of Augustan legislation which still accorded the husband this status as owner but prevented him from alienating or mortgaging his wife's dotal land without her permission, legislation which was later strengthened.[64]

[64] Dixon, Suzanne, p. 53.

DIVORCE: CLASSICAL ROMAN STYLE

In Roman law, both pre-classical and post-classical, divorce was permissible only on the grounds of certain specified offenses committed by the other partner. In contrast, classical Rome had a very liberal divorce policy.[65] By the first century B.C.E., women who were not married with *manus* had the right to divorce their husbands unilaterally, and eventually the same right was enjoyed by women married with *manus*. Husbands had been able to divorce their wives unilaterally, particularly for adultery or other misbehavior, from a very early period. Whether unilateral or by mutual agreement, divorce was an accepted fact of Roman life, and was subject to very few restrictions until the fourth century C.E. How frequent divorce actually was, and what percentage of divorces were initiated by women rather than by husbands, are not answerable. Indeed, there is little information on Roman divorce apart from the legal sources, except for literature that focuses on the Roman elite in the late Republic.[66]As is written in Gauis (D.24.2.2),

> "Moreover, it has been called "divorce" either from a diverging of minds or because those who are separating go off into diverging directions. 1. However, in repudiations, that is, in renunciations these words have been established. "I do not employ a marriage match with you." : But it makes no difference at all if the renunciation is made in the presence of the person (being repudiated) or in his (or her) absence through someone who is in his power or (through someone) in whose power he or she is.

The jurists mentioned several reasons why a husband and a wife might agree to divorce. These include old age, ill health, or military service. (Gauis D.24.1.1.61).

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[65] Gardner, Jane. p. 89.
[66] Grubbs, p. 187.

Though divorce without matrimonial offence was permitted, the concept of fault did still find expression in two ways. First, in classical law a wife guilty of adultery could be penalized by an action brought by the divorcing husband, the *actio de moribus*. The husband had to provide security. The reason was, according to Gaius, to discourage unfounded accusations made by individuals with dishonest motives. If successful, the husband could retain one-sixth of the dowry. Conversely, if the wife were suing the husband for return of the dowry, he could put up a defense of *rentio propter mores*, i.e. that he had a right to retain the same amount on account of her adulterous behavior. For less serious misconduct, he could keep only one-eighth. If the fault was on the husband's side, then instead of being allowed to return the dowry, as usual, in three annual installments, he was given only six months to pay or in the case of a graver misconduct, had to pay up at once.[67]

Secondly, fault (*culpa)* occurs in the context of responsibility, who initiated the divorce. Husbands could retain one-sixth of the dowry in consideration of the children of the marriage, up to a maximum of three children, if the divorce had been through the culpa (initiation) of the wife or her father.[68]

Sending a Notice of Divorce

Though formulas of repudiation are known from legal sources, they were not necessary to effect a unilateral divorce. Nor was a written notice of divorce necessary. In order for a unilateral divorce to be fully valid, since the time of Augustine, the divorcing spouse had

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[67] Grubbs, p. 90.
[68] Grubbs, p. 90.

to repudiate the other in front of witnesses. Publicly attested divorce was especially important for a husband divorcing his wife for adultery, because a husband who did not divorce an obviously adulterous wife could be charged with pimping. Moreover, many people would want to give clear evidence of intent to divorce, so they could bring an actio for return of the dowry. Failure to repudiate a partner publicly might cast doubt on the validity of the divorce, and could have legal ramifications.[69]

Conclusion

The Roman Empire developed one of the first complex systems of civil law and one of the first judicial systems in which law was interpreted and applied. Roman administrators, magistrates and jurists developed many of the fundamental legal principles that are a basis for many of the legal systems in the world today. One of the groups that would be greatly influenced by Roman Empire's legal form, methodology, and content were the rabbis of the Mishnaic period. Before turning to a discussion of the Mishnah Ketubot, Gittin and Kiddushin, I will provide examples of some of the ways in which the Roman Empire came into contact with and influenced the inhabitants of *Eretz Yisrael*, including the emerging Pharisaic elite whose political descendents would come to inform and mold the Mishnah.

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[69] Grubbs, p. 191.

Chapter Three – Rome and the Jews

The Jews and the Roman Empire

During the first century BCE, Judea lost its autonomy to the Roman Empire. First, it became a client kingdom and then a province of the empire. The first intervention of Rome in the region dates from 63 BCE, following the Third Mithridatic War, when Rome made a province of Syria. After the defeat of Mithridates VI of Pontus, general Pompeius Magnus (a.k.a. Pompey) remained there to secure the area.

Judea at the time was not a peaceful place. Queen Salome Alexandria had recently died and her sons, Hyrcanus II and Aristobulus II, divided against each other in civil war. In Jerusalem in 63 BCE, Aristobulus was besieged by his brother's enemies. He sent an envoy to Marcus Aemilius Scaurus, Pompey's representative in the area. Aristobulus offered a massive bribe to be rescued which Pompey promptly accepted. Afterwards, Aristobulus accused Scaurus of extortion. Since Scaurus was Pompey's brother-in-law and protégée, the general retaliated by putting Hyrcanus in charge of the kingdom as Prince and High Priest.

When Pompey was defeated by Julius Caesar, Hyrcanus was succeeded by his courtier Antipater the Idumaean, also known as Antipas, as the first Roman Procurator. In 57-55 BCEE, Aulus Gabinus, proconsul of Syria, split the former Hasmonean Kingdom into Galilee, Samaria, and Judea with five districts of the Bet Din Ha Gadol.

Both Cesar and Antipater were killed in 44 BCEE and Antipater's son, Herod the Idumean was designated "King of the Jews" by the Roman Senate in 40 BCE. He did not gain military control of Judea until 37 BCEE. During his reign the last representatives of the Hasmoneans were eliminated the and the port of Caesarea was built. He died in 4 BCEE and his kingdom was divided among his sons. One son, Herod Archelaus, ruled Judea so badly that he was dismissed by Emperor Augustus in 6CE. Another son, Herod Antipas, ruled as tetrarch of the Gailee and Perea for an extended period, approximately 4 BCE to 30 CE.

Judea and Iudaea

In 6CE, Judea became part of the larger Roman province of Iudaea which was formed by combining Judea, Samaria and Idumea. The Capital was Caesarea. The Galilee, the Golan, Peraea and the Decapolis were not included. Quirinius became Legate (Governor) of Syria and conducted the first Roman tax census of Iudaea, which was opposed by the Zealots. This province was one of the few governed by a knight of the equestrian order, not a former consul or praetor of senatorial rank. This gives us a sense of the relative import of the area for Rome. Even though its revenue was of little import to the Roman treasury, it controlled the land routes to Egypt, the important bread basket. Pontius Pilate was one of the prefect from 26 to 36 CE. Caiaphas one of the appointed High Priests of Herod's Temple.

Between 41 and 44 CE, Iudaea regained in nominal autonomy when Herod Agrippa was made King of the Jews by the emperor Claudius. Following Agriappa's death, the

province returned to direct Roman control for a short period. Iudaea was returned to Agrippa's son, Marcus Julius Agrippa in 48 CE. He was the seventh and last of the Herodians. There was however an imperial curator in the area responsible for keeping peace and tax raising. When Agrippa II died in 100 CE, the area returned to direct control by the Roman Empire.

The Jewish Roman Wars

Iudea was the stage for three rebellions against the Roman Empire. The Jewish Roman wars occurred in 66 – 70 CE, 115-117 CE, and 132- 135 CE. In 67 CE, Vespasian and his forces landed in the north of Israel, where they received the submission of Jews from Ptolemais to Sepphoris. The Jewish garrison at Yodfat (Jodeptah) was massacred after a two month siege. By the end of this year, Jewish resistance in the north had been crushed. Over 100,000 Jews died during the siege of Jerusalem and nearly 100,000 were taken to Rome as slaves. Many Jews fled to Mesopotamia (Iraq), and to other countries around the Mediterranean. The first rebellion, followed by the destruction of Herod's Temple.

During the period of this first revolt, Yochanan Ben Zakkai obtained permission from the Roman general to establish a center of Jewish learning and the seat of the Sanhedrin in the outlying town of Yavneh. This is the period when the Halakha began to be formalized. The Bet Din Ha Gadol, now called the Sanhedrin, became the supreme religious, political and judicial body for the Jews worldwide, until 425 CE when it was forcibly disbanded by the Romans.

The Quitos War, the second rebellion of 115- 117 CE, was due to excessive taxation. The third rebellion, the Bar Kochba revolt of 132 – 135 CE, was suppressed. Emperor Hadrian changed the name of the province to Syria Palaestina. In order to humiliate the Jewish population and reduce their historical ties to the region, Jerusalem was renamed Aelia Capitolina. in order to The other portions became the provinces of Galilee, Samaria and Peraea.

Through its governmental institutions, the Roman state developed one of the first complex systems of civil law and a formal judicial system in which law was interpreted and applied. It is this system of law that lies at the basis of most European and American law, as well as not inconsiderable parts of the English Common Law. Through the transmission of the Common and Civil law traditions to peoples and places outside Europe and the Americas, the influence of Roman law has also had a considerable impact on the legal systems of non-Western countries. Roman administrators, magistrates, and jurists therefore developed many of the fundamental legal principles that are basic to a majority of the formal legal systems in the world today. In addition, Mishnaic law and the rabbis were greatly influenced by Roman law.

What Happened to local law of "foreigners" when they entered the empire?

I will be discussing the period prior to 212 CE when everyone in the Empire was granted citizenship. In general, the local law was applicable to indigenous people in all private matters. This was true even in the city of Rome. Acts completed according to local law, i.e. marriage and contracts, were considered valid even when they were contrary to

Roman law.. There are examples of marriages between a brother and a sister in Egypt or the use of *abdicatio* in the Greek provinces which gave a father the right to expel his child from his house and to exclude him from paternal succession.[70]

The conservation of local laws for *peregrinis* (foreigners) explains the existence of multiple indigenous jurisdictions in the provinces. In Judea, for example, the Sanhedrin set forth the laws which concerned Jews and the Roman tribunal decided remaining issues in the area. There was no regularity in the recourse to local law or to Roman law. There are cases of Jews going to local Jewish courts and Jews going to Roman courts.

In 63BCE, after Pompey's conquest of Jerusalem in 63 BCEE, the Jews came under the authority of the Romans. In a statute granted a few years later, , Caesar recognized the privilege of "living according to their national customs and laws". At that time, Jews were granted the right of association, the possession of a place of worship (the Synagogue), the pilgrimage to Jerusalem, the "local law" (Pharisaic law), the respect of their dining practices and especially the observance of the Sabbath and feast days. These privileges were confirmed by Augustus and all the emperors, with the exception of Caligula, until at least 70CE. The destruction of the Temple in 70CE by Titus, following the Jewish revolt against first the local government and then Rome itself, did not alter their situation significantly. The enjoyment of their privileges was subject to only one condition: the payment to Rome of the didrachme, a tax paid into a new fund in honor of

[70] Moatti, Claudia. Thesis. Department of Classics. USC.

Jupiter, the *fiscus judaicus*. This was characteristic of the treatment of the Jews and other groups in the empire until Hadrian

During his reign, Emperor Hadrian, forbade the practice of circumcision. This measure was not anti-Jewish in character, since the Jews were not the only ones to practice the rite. Circumcision was also practiced by Arab and Egyptian communities. Rather, the ban was humanitarian, aimed at eliminating a practice deemed to be mutilation and akin to ban on castration which had been promulgated in the previous century.
Finally, the emperor Antoninus Pius, having understood the religious significance of this practice, restored the right to the Jews.

What was completely remarkable in the policy of Caesar towards the Jews was that *all* the practicing Jews received the same privilege, regardless of their status (either as Roman citizens or provincials) or their place of residence (as Jews from the Diaspora or from Judaea itself). And one will note the Romans did not make a distinction between religious laws and civil laws: in their eyes, all the Jews belonged to the same nation, holders of common custom, language, and a particular cult, which was nothing other than the morals and the laws of the Jewish nation. It was not until later, under the Christian Empire, that religious law would be distinguished from civil law, to which the Jews would then be obliged to subject themselves[14].

Chapter Four – The Jewish Family Reflected in Mishnah Ketubot

By 200 CE, the nature of family law as well as the rights of Jewish women had changed, expanded and become more complex than those articulated in the Bible. Most dramatic was the system of categories, each with its own rights and responsibilities that developed. In this chapter, through a close reading of Mishnah Ketubot, I will describe and discuss the new system of classification schema that the rabbis had developed. I will also discuss the new rights that Jewish women had been granted. What is presented is a break with what came before. As Michael Satlow writes in "*Reconsidering the Rabbinic Ketubah*," "Rabbinic traditions that ascribe the ketubah to pre-rabbinic times are historigraphical compositions in which received tradition might have been interpreted anachronistically to yield coherent explanations for rabbinic legal innovations and institutions"[71]

Jewish women, in Mishnah Ketubot, are classified as either autonomous or not. For most women, the vast majority of their lives were spent as "dependents". Consequently, their rights and freedoms were limited and managed by a male. Still by the time of the Mishnah, these women had greater freedoms and rights than those of found in the Bible. Who are the not autonomous women? The young girl below the age of twelve, the girl between the ages of twelve and twelve and a half, and the wife. In contrast to the not autonomous women, the autonomous women had greater rights and freedoms, particularly in the areas of buying and selling property." Who were these autonomous women? They are the divorcee, the widow and the "spinster."

In the subsequent chapter, through a discussion of Roman law, I will conjecture how and why the rabbis of the late first through third centuries, who were cognizant of and influenced by Roman law, expanded Jewish women's rights.

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[71] Satlow, Michael. "*Reconsidering the Rabbinic Ketubah*" in Jewish Family in Antiquity. Edited by Shaye Cohen. Brown Judaic Studies, vol 289. Atlanta: Scholars Press, 1993, p. 15.

K'tannah--The Minor Daughter

The minor daughter (under 12 years of age) is completely under her father's authority. He has the exclusive right to arrange betrothal and marriage—with or without her consent. If he dies without doing so while she is still under age, her mother or brother may betroth her. In this case, the marriage can be consummated only with her consent. This subtle distinction reflects the most significant aspect of the father/daughter relationship. As sole owner of her sexuality, the father alone has an unqualified right to dispose of it as he pleases. Any man who rapes or seduces her, thereby reducing her value on the marriage market, must compensate her father. Not by accident, the fine of two hundred *zuz* corresponds to the sum payable by a bridegroom to a virgin bride. In awarding the fine to the father, the sages are constrained by the Torah. The rabbis award the criminal penalty and civil damages for rape or seduction alike to the father. The amount awarded depends on the father's social situation. The fact that the father rather than his daughter receives damages for the pain and suffering of the rape symbolizes a disregard of the daughter as an independent person. The father is also free to sell her as a slave.[72]

At some time, the sages recognize the minor daughter as a person in potential. A wife enjoys much more personhood than a daughter. Granted the father will almost certainly marry her off before she attains her majority. but, if he has not, she will become an autonomous person in the private sphere of Jewish life. She could enjoy many legal rights (to make vows, to own and dispose of property, to conduct business, to engage in litigation, and to choose her own husband). The potential occasionally leads the Mishnah's framers to recognize the minor daughter as an incipient person.

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[72] Wegner , p. 38.

Virginity and Bride-Price

Placing a premium on virginity, the Mishnah's framers set the bride-price twice as high for virgins as for non-virgins (Ketubot 1:2). The bride group gives the bride a document, a ketubah, that specifies he is paying her the "bride-price of virgins." The commercial aspect of the transaction is underscored, Wegner notes, by the fact that the sages open their discussion of Tractate Ketubot with a rule providing prompt legal redress for a bridegroom who claims the bride's father has deceived him. This lawsuit vindicates a man's scriptural right to receive a virgin in return for the bride-price.[73]

Mishnah Ketubot 1:1 a-c.

א בְּתוּלָה נִשֵּׂאת לְיוֹם הָרְבִיעִי, וְאַלְמָנָה לְיוֹם הַחֲמִישִׁי. שְׁפָעָמַיִם בַּשָּׁבֻעַ בְּתֵי דִינִין יוֹשְׁבִין בָּעֲיָרוֹת, בַּיּוֹם הַשֵּׁנִי וּבְיוֹם הַחֲמִישִׁי, שֶׁאִם הָיָה לוֹ טַעֲנַת בְּתוּלִים, הָיָה מַשְׁכִּים לְבֵית דִּין:

A virgin should be married on a Wednesday and a widow on a Thursday, for in towns the court sits twice in the week, on Mondays and on Thursday; so that if the husband would lodge a virginity suit he may forwith go in the morning to the court.

Having paid for his bride's virginity, an aggrieved groom can bring suit. But he should not have paid bride-price unless he could have reasonably assumed the girl to be a virgin; so the sages make a point of telling him when this assumption is reasonable and when it is not. [74]

Mishnah 1:2

ב בְּתוּלָה, כְּתֻבָּתָהּ מָאתַיִם. וְאַלְמָנָה, מָנֶה. בְּתוּלָה אַלְמָנָה, גְּרוּשָׁה, וַחֲלוּצָה, מִן הָאֵרוּסִין, כְּתֻבָּתָן מָאתַיִם, וְיֵשׁ לָהֶן טַעֲנַת בְּתוּלִים. הַגְּיוֹרֶת, וְהַשִּׁבוּיָה, וַהֲשִׁפְחָה שֶׁנִּפְדּוּ וְשֶׁנִּתְגַּיְּרוּ, וְשֶׁנִּשְׁתַּחְרְרוּ, פְּחוּתוֹת מִבְּנוֹת שֵׁשׁ שָׁנִים וְיוֹם אֶחָד, כְּתֻבָּתָן מָאתַיִם, וְיֵשׁ לָהֶן טַעֲנַת בְּתוּלִים:

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[73] Wegner, p.22.
[74] Wegner, p. 23.

> The *Ketubah* of a virgin is 200, and of a widow one *mina*. The *Ketubah* of a virgin who after betrothal only became a widow or was divorced or performed *halitzah* is 200 *denar*s, and a virginity suit may be lodged against her. The *Ketubah* of a female proselyte, captive, or slave who was redeemed, proselytized, or freed under the age of three years and a day is 200 *denars*, a virginity suit may be lodged against her. (Mishnah Ketubot 1:2)

Minor Daughter vs. Pubescent Girl

A *k'tannah, a* girl child under twelve, and a *na'arah,* pubescent girl between the ages of twelve and twelve and one-half, have very different rights. The *na'arah* is assigned more rights than her younger sister. For example, a father has the right to sell his girl child into slavery yet he loses this power as soon as she reaches the ages of twelve. Likewise, as Judith Wegner notes, though daughters have no legal right to maintenance, there is an interesting exception made for a *na'arah*. When the time comes to transfer a girl from her father to a husband, the father must provide a trousseau unless the bridegroom agrees to supply one.

ה הַמַּשְׂיא אֶת בִּתּוֹ סְתָם, ל׳א יִפְחוֹת לָהּ מֵחֲמִשִּׁים זוּז. פָּסַק לַהַכְנִיסָה עֲרַמָּה, ל׳א י׳אמַר הַבַּעַל כְּשֶׁאַכְנִיסָה לְבֵיתִי אֲכַסֶּנָּה בִכְסוּתִי, אֶלָּא מְכַסָּה וְעוֹדָהּ בְּבֵית אָבִיהָ. וְכֵן הַמַּשְׂיא אֶת הַיְתוֹמָה, ל׳א יִפְחוֹת לָהּ מֵחֲמִשִּׁים זוּז. אִם יֵשׁ בַּכִּיס, מְפַרְנְסִין אוֹתָהּ לְפִי כְּבוֹדָהּ:

> If a man gave his daughter in marriage without prescribed conditions, he may not assign to her less than fifty *zuz*. If he made it a condition that the bridegroom should take her in naked, the bridegroom may not say, "After I have taken her into my house, I will clothe her with clothing of mine," but he must clothe her while she is yet in her father's house. So, too, if an orphan was given in marriage she shall be assigned not less than fifty *zuz*; if there was more in the poor-funds they should provide for her according to the honor due to her. (Mishnah Ketubot 6:5).

Wegner suggests that these rules foreshadow the improvement in status that will accompany her transition from daughter to wife. So long as she is a daughter, the father can refuse to clothe her (Mishnah Ketubot 4:6). But once she is a bride, her husband must clothe her (Ketubot 4:4)

ד הָאָב זַכַּאי בְּבִתּוֹ בְּקִדּוּשֶׁיהָ בַּכֶּסֶף בַּשְּׁטָר וּבְבִיאָה. וְזַכַּאי בִּמְצִיאָתָהּ וּבְמַעֲשֶׂה יָדֶיהָ וּבַהָפָרַת נְדָרֶיהָ. וּמְקַבֵּל אֶת גִּטָּהּ. וְאֵינוֹ אוֹכֵל פֵּרוֹת בְּחַיֶּיהָ. נִשֵּׂאת, יָתֵר עָלָיו הַבַּעַל שֶׁאוֹכֵל פֵּרוֹת בְּחַיֶּיהָ, וְחַיָּב בִּמְזוֹנוֹתֶיהָ, בְּפִרְקוֹנָהּ, וּבְקִבּוּרָתָהּ. רַבִּי יְהוּדָה אוֹמֵר, אֲפִלּוּ עָנִי שֶׁבְּיִשְׂרָאֵל, לֹא יַפְחוֹת מִשְּׁנֵי חֲלִילִים וּמְקוֹנֶנֶת:

The father has control over his daughter as touching her betrothal whether it is effected by money, by writ, or be intercourse (whereby betrothal is effected); and he has the right to aught found be her and to the work of her hands, and the right to set aside her vows, and he receives her bill of divorce; but he has not the use of her property during her lifetime. When she is married the husband exceeds the father in that he has the use of her property during her lifetime; and he is liable for her maintenance and for her ransom and for her burial. R. Judah says: even the poorest in Israel should hire not less than two flutes and one wailing woman. (Ketubot 4:4)

ו הָאָב אֵינוֹ חַיָּב בְּמְזוֹנוֹת בִּתּוֹ. זֶה מִדְרָשׁ דְּרַשׁ רַבִּי אֶלְעָזָר בֶּן עֲזַרְיָה לִפְנֵי חֲכָמִים בַּכֶּרֶם בְּיַבְנֶה, הַבָּנִים יִירְשׁוּ וְהַבָּנוֹת יְזוֹנוּ, מָה הַבָּנִים אֵינָן יוֹרְשִׁין אֶלָּא לְאַחַר מִיתַת הָאָב, אַף הַבָּנוֹת אֵינָן נִזּוֹנוֹת אֶלָּא לְאַחַר מִיתַת אֲבִיהֶן:

The father is not liable for his daughter's maintenance. R. Eleazar b. Azariah thus expounded it before the Sages in the vineyard at Yabneh: "The sons inherit and the daughter's receive maintenance" –but like as the sons inherit only after the death of the father so the daughters receive maintenance only after the death of their father. (Ketubo*t* 4:6)

Seduction & Rape: Criminal Penalties and Civil Damages

The sages view, as Judith Wegner explains, "the victim of rape or a woman seduced from the father's economic standpoint. Defloration reduces her value by the same amount no matter how it happened.[75]" The Mishnah imposes the same criminal penalty for rape or seduction. Because the girl's virginity is an economic asset, the sages emphasize the

[75] Wegner, p. 24.

damaged chattel rather than the human being who may have suffered a devastating trauma. An identical fine is incurred (Ketubot 3:1B) regardless of the girl's case (Ketubot 3:7, 3:4).[76]

The Mishnah also lets the father of a girl under twelve sell her into slavery, virtually forcing him to do so in order to recover his loss for her rape or seduction.[77]

ח כָּל מָקוֹם שְׁיֵשׁ מֶכֶר, אֵין קְנָס. וְכָל מָקוֹם שְׁיֵשׁ קְנָס, אֵין מֶכֶר. קְטַנָּה יֶשׁ לָהּ מֶכֶר וְאֵין לָהּ קְנָס. נַעֲרָה יֶשׁ לָהּ קְנָס וְאֵין לָהּ מֶכֶר. הַבּוֹגֶרֶת אֵין לָהּ לֹא מֶכֶר וְלֹא קְנָס:

> Wherever there is right of sale no fine is incurred, and wherever no fine is incurred there is not right of sale. She that is a minor is subject to the right of sale and no fine is incurred through her; but through a girl that is of age a fine is incurred and she is not subject to the right of sale. If she is past her girlhood, she is not subject to the right of sale nor can a fine be incurred through her. (Ketubot 3:8)

Seduction & Rape: Civil Damages

The violation of a virgin incurs civil damages in tort. These damages also go to the father and not the girl. All scheduled payments, including pain and suffering, go to the victim's father (Mishnah Ketubot 4:1), thus identifying the father (not the girl) as the injured party. As is the case in the Torah (Deuteronomy 22:29, Exodus 22:16), a rapist must marry his victim while a seducer is only permitted to marry a girl if her father acquiesces (Ketubot 4:1).

In the Mishnah, the sages calculate the "disgrace" according to the father's station in life, explicitly treated the humiliation as his rather than hers. (Ketubot 3:7)

ז אֵיזוֹהִי בּוֹשֶׁת, הַכֹּל לְפִי הַמְבַיֵּשׁ וְהַמִּתְבַּיֵּשׁ. פֻּקְחַ, רוֹאִין אוֹתָהּ כְּאִלּוּ הִיא שִׁפְחָה נִמְכֶּרֶת, כַּמָּה הָיְתָה יָפָה וְכַמָּה הִיא יָפָה. קְנָס, שָׁוָה בְכָל אָדָם. וְכָל שֶׁיֵּשׁ לוֹ קִצְבָה מִן הַתּוֹרָה, שָׁוֶה בְכָל אָדָם:

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[76] Wegner , p. 25
[77] Wegner, p. 25.

> How much is the compensation for indignity? It is in accordance with the condition of life of him that inflicts and her that suffers the indignity. And the compensation for blemish? She is looked upon as if she was a bondwoman that was to be sold; how much was she worth before? How much is she worth now? The prescribed fine remains the same for all. Wherever a fixed sum is enjoined in the Law it remains the same for all. (Ketubot 3:7)

Perhaps, the framers of the Mishnah have been influenced by Roman society and its laws, which are focused on status as a determining factor in many legal decisions. This will be explored further in chapter three of the thesis.

The Wife

When the Israelite daughter changes her status from daughter to wife, she acquires legal entitlements, rights and obligations. Consequently, the Israelite wife's personhood ranks her far higher than that of a slave or a minor in the social scale. Marriage, as Judith Wegner explains, "transforms the girl into a woman in more ways than one, for besides fulfilling her biological destiny it brings her into a relationship marked by a reciprocal nexus of spousal rights and duties that clearly defines her as a person in the mishnaic system."[78] Most important of all, as discussed in the Torah, a wife has a right to maintenance by her husband, who must supply food, clothing and rights of conjugal cohabitation. Additionally, she enjoys other valuable entitlements such as the right to recover her marriage portion if her husband should decide to divorce her without fault on her part. Beside her property rights, a wife possesses important intangible rights. Her husband is legally obligated to treat her humanely in defined ways. He must allow her to visit her mother and father, to wear her favorite ornaments and to eat her favorite food. If not, he will be found guilty of cruelty and will be forced to release her and pay off her marriage settlement.[79]

Like her husband, a wife has the legal right to appoint an agent, to function as her spouse's agent or bailee, to own and dispose of property, and to bring or defend a lawsuit. The wife also has specified legal duties. She must not only perform prescribed household

[78] Wegner, p. 40.
[79] Wegner, p. 71.

tasks in return for her maintenance but also observe rules of biblical and mishnaic law. For example, she must not in anyway impair his cultic sanctity or prevent his having marital relations.[80]

Nonetheless, the wife never enjoys full equality with her husband but remains his subordinate. In return for her maintenance, she owes, specified domestic and economic chores, she cannot dispose of property without his approval. Also, the husband's vested interest in her biological function takes precedence over any competing interest, including the rights of the wife herself. This parallels, as Wegner notes, the sage's view of the minor daughter; "Just as her sexuality belonged to her father making her chattel, so the wife's biological function belongs to her husband and makes her his chattel with respect to all matters affecting that function."[81]

The Wife's Rights in Customary Law

Normally stipulated in a marriage settlement, a wife's customary rights will be enforced by the court even if the husband wrote no ketubah for her or omitted these rights by design or accident. These conditions include 1) customary bride price (Ketubot 4:7), 2) the wife's lien on her husband's property for payment of her ketubah in case of widowhood or divorce (Ketubot 8:8), 3) the husband's obligation to ransom a kidnapped wife (Ketubot 4:8), 4) the assurance that if the wife predeceases her husband, her ketubah will pass at his death to the sons she bore him (Ketubot 4:10), 5) daughters will be maintained out of their father's estate until they marry or come of age (Ketubot 4:11) and 6) her right to maintenance as her husband's widow so long as she chooses to remain in his house or until his heirs decide to pay off her marriage settlement and let her go (Mishnah 4:12).[82]

יב אַתְּ תְּהֵא יָתְבָא בְּבֵיתִי וּמְתַזְנָא מִנְּכָסַי, כָּל יְמֵי מִגַּד אַלְמְנוּתִיךְ בְּבֵיתִי, חַיָּב, שֶׁהוּא תְּנַאי בֵּית דִּין. כָּךְ הָיוּ אַנְשֵׁי יְרוּשָׁלַיִם כּוֹתְבִין. אַנְשֵׁי גָלִיל הָיוּ כוֹתְבִין בְּאַנְשֵׁי יְרוּשָׁלַיִם. אַנְשֵׁי יְהוּדָה הָיוּ כוֹתְבִין, עַד שֶׁיִּרְצוּ הַיּוֹרְשִׁים לִתֵּן לִיךְ כְּתֻבָּתִיךְ, לְפִיכָךְ אִם רָצוּ הַיּוֹרְשִׁין, נוֹתְנִין לָהּ כְּתֻבָּתָהּ וּפוֹטְרִין אוֹתָהּ:

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[80] Wegner, p. 71.
[81] Wegner, p. 41.
[82] Wegner, 71 or Mishnah.

> If he had not written for her, "Thou shall dwell in my house and receive maintenance from my goods so long as thou remain a widow in my house," he is still liable, since this is a condition enjoined by the court. Thus the people of Jerusalem used to write; and the people off Galilee used to write after the same fashion as the people of Jerusalem. But the people of Judea used to write, "...until such time as the heirs are minded to give you your *ketubah*;" therefore if the heirs were so minded they could pay her *ketubah* and let her go. (*Ketubot* 4:9)

The rights articulated above do not depend on a written agreement but rather arise automatically from the parties' relationship. Moreover, the law forbids that a husband evade his responsibilities by simply exercising his power to divorce her at any time for any time. A husband must ransom his kidnapped wife (Ketubot 4:9) rather than divorce her and force her to ransom herself out of a portion of her marriage portion. In addition, the status of wife invests the woman with support rights during widowhood. According to Wegner, "the sages' insistence on the absolute character of a wife's rights of status, which her spouse can not curtail, endorses her personhood."[83]

It is significant that all the rights protected in Ketubot 4:7-12 directly involve a wife's property rights—bride price, maintenance, ransom money and marriage portion. In general, The Mishnah holds property rights sacrosanct. With greater mobility, Professor Martin Cohen suggests, more and more people were moving off of and away from their lands. This resulted in greater opportunities for disputes over land property rights.[84]

The Wife as Owner of Property

Can a married woman own property? Can she control and dispose of her assets as she sees fit? In Mishnah Ketubot, a woman of full age has the capacity to own property. Marriage does not extinguish a wife's ownership, but "holds its full exercise in abeyance. A wife's full exercise is held in abeyance. They are subordinated to her husband but remain intact." A husband has the right to manage his wife's property and enjoys its usufruct but he never acquires title to the property itself. On widowhood or divorce, the

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[83] Wegner, p. 73.
[84] Cohen, Martin, Conversation, January 30, 2007.

poverty reverts to her control, underscoring the connection between property ownership and ownership.[85]

Interestingly, not all of a wife's property falls under her husband's control. It depends on the time and the manner in which the woman acquired the property. A wife's property acquired before marriage remains at her disposition (unless it had been designated as part of her dowry, which would then subject it to her husband's control for the duration of the marriage.). However, all property acquired after marriage falls under the husband's control. In contrast, an independent woman (spinster, divorcee, or widow) may do as she pleases with her property.[86]

Insert Mishnah 6:1?

א מְצִיאַת הָאִשָּׁה, וּמַעֲשֵׂה יָדֶיהָ לְבַעְלָהּ. וְיוֹרֶשָׁתָהּ, הוּא אוֹכֵל פֵּרוֹת בְּחַיֶּיהָ. בָּשְׁתָּהּ וּפְגָמָהּ שֶׁלָּהּ. רַבִּי יְהוּדָה בֶּן בְּתֵירָא אוֹמֵר, בְּזֶמֶן שֶׁבַּסַּתֶר, לָהּ שְׁנֵי חֲלָקִים, וְלוֹ אֶחָד. וּבְזֶמֶן שֶׁבַּגָּלוּי, לוֹ שְׁנֵי חֲלָקִים, וְלָהּ אֶחָד. שֶׁלּוֹ, יִנָּתֵן מִיָּד. וְשֶׁלָּהּ, יִלָּקַח בָּהֶן קַרְקַע, וְהוּא אוֹכֵל פֵּרוֹת:

> Anything found by a wife and the work of her hands belongs to her husband, and during her lifetime he has the use of her inheritance. If she received compensation for indignity and blemish, it falls to her. R. Judah b. bathyra says: If it was down to a hidden part of her body, two-thirds of the compensation falls to her and one-third fall to him. If in a manifest part, two-thirds fall to him and one-third to her. His share is given to him forthwith; but with her lands is bought and he has the use of it. (Ketubo*t* 6:1)

Mishnah Ketubot 6:1, divides a wife's acquisitions during marriage into three types: 1) what she acquired by her own action, 2) what accrues to her by inheritance and 3) what falls to her as compensation for personal injury. The sages treat these three categories in different ways. Anything that a wife finds or earns accrues to her husband. Perhaps, this reflects the reciprocity between a husband's duty to support his wife and her duty to work for him. The value of her work (child care, household chores, economic product) is offset by the cost of maintaining her. The property that falls to her through inheritance is treated like property brought to the marriage. The wife remains owner but the husband

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[85] Wegner, p. 91.
[86] Wegner, p. 86.

manages it and collects its yield. There is a dispute recorded in the Mishnah regarding damages for personal injuries inflicted on the wife by a third party. A minority position, the position of Judah b. Bathyra, is recorded. He argues that the husband should be awarded the damages. However, the majority argues that the wife has suffered the embarrassment of indignity and disfigurement and she should collect the damages, including compensation for pain, disagreement and indignity.[87] In contrast, if a man's daughter is raped, all damages, including compensation for pain, disfigurement, and indignity accrue to the girl's father and not the girl (Ketubot 3:7) because the sages view the daughter as her father's property.

A wife's property controlled by her husband cannot be alienated without the latter's consent s this would deprive him of his right to usufruct. As a result, the sages go to great lengths to delineate the procedure for selling a wife's property. Even though the sages endorse a husbands, right to control the property's disposition, the Mishnah recognize the need to protect a wife whose unscrupulous husband may force her to sell property against her will. The procedures outlined therefore protect the rights of both spouses.[88]

ב רַבִּי שִׁמְעוֹן חוֹלֵק בֵּן נְכָסִים לִנְכָסִים. נְכָסִים הַיְדוּעִים לַבַּעַל, ל׳א תִמְכּוֹר. וְאִם מָכְרָה וְנָתְנָה, בָּטֵל. שֶׁאֵינָן יְדוּעִים לַבַּעַל, ל׳א תִמְכּוֹר. וְאִם מָכְרָה וְנָתְנָה, קַיָּם:

> Rabbi Simeon makes distinction between one kind of goods and another; goods that are known to the husband, she may not sell, and if she sold them or gave them away the act is void; and goods that are not known to the husband she may not sell, but if she sold them or gave them away her act is valid. (*Ketubot* 8:2)

[87] Wegner, p. 88.
[88] Wenger, p. 90.

Exceptions: Women as litigants and Witnesses

In general, women were not allowed to be witnesses and take oaths in a court of law. However, the Mishnah does make exceptions to this rule. The exceptions are cases involving virginity where no independent corroboration exists, cases where women are the sole witnesses to a man's death, and some cases involving property. Remarkable that there are cases where women's testimony is accepted and their oaths are valid. (How compares to Roman Law?)

Women as Witness

In general, women were not permitted to be witnesses in court as they could neither swear an oath to support or rebut a claim or testify in court. Interestingly, there are several circumstances under which women were deemed competent and permitted to serve as witnesses. The exceptions include 1) a case where a woman was the sole witness to a man's death (she may testify to free the widow, possibly herself, to remarry); 2) in some property cases, a woman could be asked to swear that she neither embezzled good entrusted to her or received money she claims she is owed and 3) a case involving virginity, where no independent corroboration exists, a woman may testify.[89]

In Mishnah Ketubot 1:4 we learn that a man can expect his wife to be a virgin unless she was married before or lived with captors or gentiles beyond the age of three. If the bride appears not to be a virgin, the groom may lodge a virginity suit to recover the bride price he paid for her, as described in Ketubot 1:2. Typically, virginity suits lie against the father. But a bride of full age who has arranged her own marriage must defend herself against the accusation that she deceived her bridegroom. The sages, as Wegner notes, "concede the validity of certain defenses but dispute whether the woman's testimony is acceptable without corroboration."

In these two cases, the sages permit a woman's testimony because they cannot obtain the truth otherwise. Both Gamliel and Eliezer accept the woman's testimony because she admits the charge of non-virginity but offers a plausible reason.

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[89] Wegner, p. 121.

Similarly, the sages are concerned with a woman's eligibility to marry into the priestly caste. Previously married women cannot remarry at all without proof of widowhood or divorce. Also, scripture forbids a *kohen* from marrying a woman who has been violated or divorced (Leviticus 21:7, Mishnah Ketubot 2:9), and a woman who has been taken captive is presumed to have been raped (Ketubot 1:4). In the second chapter of Ketubot, the sages consider a woman's statements differently on these matters according to their altruistic, gratuitous or self-serving character.[90]

ה הָאִשָּׁה שֶׁאָמְרָה אֲשֶׁת אִישׁ הָיִיתִי וּגְרוּשָׁה אֲנִי, נֶאֱמֶנֶת, שֶׁהַפֶּה שֶׁאָסַר הוּא הַפֶּה שֶׁהִתִּיר. וְאִם יֵשׁ עֵדִים שֶׁהָיְתָה אֲשֶׁת אִישׁ וְהִיא אוֹמֶרֶת גְּרוּשָׁה אֲנִי, אֵינָהּ נֶאֱמֶנֶת. אָמְרָה נִשְׁבֵּיתִי וּטְהוֹרָה אֲנִי, נֶאֱמֶנֶת, שֶׁהַפֶּה שֶׁאָסַר הוּא הַפֶּה שֶׁהִתִּיר. וְאִם יֵשׁ עֵדִים שֶׁנִּשְׁבֵּית וְהִיא אוֹמֶרֶת טְהוֹרָה אֲנִי, אֵינָהּ נֶאֱמֶנֶת. וְאִם מִשֶּׁנִּשֵּׂאת בָּאוּ עֵדִים, הֲרֵי זוֹ לֹא תֵצֵא:

> If a woman said, "I have been married but am now divorced," she may be believed, since the mouth that forbade is the mouth that permitted. But if there are witnesses to say that she was married and she says, "I am divorced," she may not be believed. If she said, "I was taken captive yet, I remained clean," she may be believed, since the mouth that forbade is the mouth that permitted; but if such witnesses come after that she is married she may not be put away. (Ketubot 2:5)

ו שְׁתֵּי נָשִׁים שֶׁנִּשְׁבּוּ, זֹאת אוֹמֶרֶת נִשְׁבֵּיתִי וּטְהוֹרָה אֲנִי, וְזֹאת אוֹמֶרֶת נִשְׁבֵּיתִי וּטְהוֹרָה אֲנִי, אֵינָן נֶאֱמָנוֹת. וּבִזְמַן שֶׁהֵן מְעִידוֹת זוֹ אֶת זוֹ הֲרֵי אֵלּוּ נֶאֱמָנוֹת:

> If two women had been taken captive and one said, "I was taken captive yet I remain clean," and the other said, "I was taken captive yet I remain clean," they are not to be believed; but when they testify thus of each other they are to be believed. (Ketubot 2:6)

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[90] Wegner, p. 122.

The Autonomous Women: Who is she? What are her rights?

The autonomous women, the widow, the emancipated daughter (a women who attains full age while still unmarried) and the divorcee, are distinguished from their dependent sisters on account of "the sexuality factor." As Wegner argues, " A women's freedom from male authority rests precisely on the fact that no man can lay claim to her sexuality. Consequently, autonomous women remain legal persons even with respect to ownership of their sexuality, that is, in the very context that reduces dependent women to the levels of chattels."[91]

The legal status of the autonomous women differs greatly from that of dependent women. An autonomous women, a women who attains full age while still unmarried, a divorce or a widow has many rights and duties that her "dependent" sisters do not have. For example, an autonomous women can engage in litigation, transact business personally or through agents, and (sometimes) testifies in her own behalf. An autonomous woman also has duties that her "dependent" sisters do not have. For example, the autonomous woman who is a bailee of goods can be forced to swear an oath concerning the disposition of the bailer's property, just as a male bailee, and concerning her proper care. It is interesting to note that the autonomous women is not under guardianship while under Roman law women were kept under perpetual tutelage "on account of their instability of judgment." Why did the Mishnah grant women an autonomy that her Roman sisters did not have? We will discuss this issue later.

The Widow

The widow is autonomous; she falls under no man's jurisdiction. The sages permit a widow to execute her own business transaction, above all the purchase and sale of property. This power can have great value because a widow may well possess significant wealth—not to mention the intangible power that wealth may generate. The husband's

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[91] Wegner, p. 114.

death entitles the widow to collect all the property he previously held in trust for her—bride price and whatever property she brought to the marriage as dowry.[92]

The sages make rules to protect the widow's property rights against the heirs of her deceased husband. A newly bereaved widow is entitled to the return of her property entrusted to her husband. She can choose to collect her portion or defer her claim for as long as she likes. If she defers her claim she continues to be maintained out of her husband's estate (Ketubot 4:12). In return, she must give the heirs whatever she earns if she continues working while they maintain her.[93]

פרק יא

א אַלְמָנָה נִזּוֹנֶת מִנְּכְסֵי יְתוֹמִים, מַעֲשֵׂה יָדֶיהָ שֶׁלָּהֶן, וְאֵין חַיָּבִין בִּקְבוּרָתָהּ. יוֹרְשֶׁיהָ יוֹרְשֵׁי כְתֻבָּתָהּ, חַיָּבִין בִּקְבוּרָתָהּ:

The widow receives her maintenance from the property of the orphans, and the work of her hands belongs to them; but they are not responsible for her burial. The heirs to her *Ketubah* are responsible for her burial. (Ketubo*t* 11:1)

ב אַלְמָנָה בֵּין מִן הָאֵרוּסִין בֵּין מִן הַנִּשּׂוּאִין, מוֹכֶרֶת שֶׁל֣א בְבֵית דִּין. רַבִּי שִׁמְעוֹן אוֹמֵר, מִן הַנִּשּׂוּאִין, מוֹכֶרֶת שֶׁל֣א בְבֵית דִּין. מִן הָאֵרוּסִין, ל֣א תִמְכּוֹר אֶלָּא בְּבֵית דִּין, מִפְּנֵי שֶׁאֵין לָהּ מְזוֹנוֹת. וְכָל שֶׁאֵין לָהּ מְזוֹנוֹת, ל֣א תִמְכּוֹר אֶלָּא בְּבֵית דִּין:

A widow, whether she became a widow after betrothal or after wedlock, may sell (property that was security for her *Ketubah*) without the consent of the court. R. Simeon says: If she became a widow after wedlock she may sell without the consent of the court; but if after betrothal only, she may not sell save with the consent of the court; since she has no claim to maintenance, and she that has no claim to maintenance may not sell save with the consent of the court. (*K*etubot 11:2)

ג מָכְרָה כְתֻבָּתָהּ אוֹ מִקְצָתָהּ, מִשְׁכְּנָה כְתֻבָּתָהּ אוֹ מִקְצָתָהּ, נָתְנָה כְתֻבָּתָהּ לְאַחֵר אוֹ מִקְצָתָהּ, ל֣א תִמְכּוֹר אֶת הַשְּׁאָר. אֶלָּא בְּבֵית דִּין. וַחֲכָמִים אוֹמְרִים, מוֹכֶרֶת הִיא אֲפִלּוּ אַרְבָּעָה וַחֲמִשָּׁה פְּעָמִים, וּמוֹכֶרֶת לִמְזוֹנוֹת שֶׁל֣א בְבֵית דִּין וְכוֹתֶבֶת, לִמְזוֹנוֹת מָכַרְתִּי. וּגְרוּשָׁה ל֣א תִמְכּוֹר אֶלָּא בְּבֵית דִּין:

If a widow sold her *Ketubah* or part of it, or if she pledged her *Ketubah* or part of it, or if she gave away her *Ketubah or* part of it, she may not sell what is left save

[92] Wegner, p 138.
[93] Wegner, p. 140.

with the consent of the court. But the Sages say: She may sell it (piecemeal) even four or five times, or sell it for the sake of maintenance without the consent of the court and declare in writing, "I have sold it for the sake of maintenance." If she was divorced, she may only sell with the consent of the court. (Ketubot 11:3)

The Mishnah takes for granted the widow's power to transact business and handle property. Most striking, the Mishnah even empowers the widow to sell property not strictly her own. If she is failed to be maintained by her husband's heirs, she may sell their inheritance, on which she has a lien for the payment of her marriage portion (Ketubot 8:8).

At the same time, the Mishnah will not let the widow abuse her power by selling more of the deceased's property than is needed for her maintenance in a given period. The Mishnah takes care to balance the rights of the heirs and the widow. Generally, the widow can expect to be maintained by the heirs if she agrees to remain in the matrimonial home.[94].

ג אַלְמָנָה שֶׁאָמְרָה אֵי אֶפְשִׁי לָזוּז מִבֵּית בַּעֲלִי, אֵין הַיּוֹרְשִׁין יְכוֹלִין לוֹמַר לָהּ לְכִי לְבֵית אָבִיךְ וְאָנוּ זָנִין אוֹתָךְ, אֶלָּא זָנִין אוֹתָהּ בְּבֵית בַּעֲלָהּ וְנוֹתְנִין לָהּ מָדוֹר לְפִי כְבוֹדָהּ. אָמְרָה אֵי אֶפְשִׁי לָזוּז מִבֵּית אַבָּא, יְכוֹלִים הַיּוֹרְשִׁים לוֹמַר לָהּ, אִם אַתְּ אֶצְלֵנוּ יֶשׁ לִיךְ מְזוֹנוֹת, וְאִם אַיִן אֵין אַתְּ אֶצְלֵנוּ אֵין לִיךְ מְזוֹנוֹת. אִם הָיְתָה טוֹעֶנֶת מִפְּנֵי שֶׁהִיא יַלְדָּה וְהֵן יְלָדִים, זָנִין אוֹתָהּ וְהִיא בְּבֵית אָבִיהָ:

If a widow said, "I do not wish to leave my husband's house," the heirs cannot say to her, "Go to thy father's house and we will maintain you," but they must maintain her in her husband's house and give her a dwelling befitting her condition. If she said, "I do not wish to leave my father's house," the heirs may say to her, "If you continue with us, you will receive maintenance; but if you continue not with us, you will not receive maintenance." If she pleaded because she was but a child and they were but children, they must maintain her even while she is in her father's house. (Ketubot 12:3)

[94] Wegner, p. 140.

Emancipated Daughter

The Mishnah rarely mentions the emancipated daughter. Yet, she is free to arrange her marriage herself or through an agnet (Mishnah Kiddushin 2:1). A man cannot legally revoke his grown daughter's vows (Mishnah Nedarim 10:2, 11:10) If an emancipated daughter is raped or seduced, her father is not entitled to any fines. He no longer owns her sexuality (Ketubot 3:8).

In transactions of private law, the Mishnah treats the emancipated woman exactly like a grown man. As Wegner describes, "this equivalence is reflected in the rule that when a man and a mature woman agree to marry, the law grants both of them a twelve-month period of preparation, reckoned from the time that either requests the other to fulfill the promise of marriage.

The Widow

The widow is autonomous and falls under no man's jurisdiction. She is permitted to execute her own business transactions and sell and purchase property. Upon her husband's death, a widow is entitled to collect all the property held in trust for her, including the bride-price stated in her marriage settlement as well as whatever property she brought into the marriage as a dowry.

Rights Against Heirs

A widow's ability to buy and sell property is dependent upon her having access to her marriage portion soon after her husband's death. There is a balance created between her rights and those of her husband's heirs. A widow is entitled to the property (dowry and bride price) she brought into the marriage. Also, she is able to collect her marriage portion at once or defer it for as long as she likes. If she defers her claim he is entitled to be maintained out of her husband's estate (Ketubot 4:12). In exchange, the widow must give the heirs whatever she earns is she continues to work while they are maintaining her.

פרק יא

א אַלְמָנָה נִזּוֹנֶת מִנְּכָסֵי יְתוֹמִים, מַעֲשֶׂה יָדֶיהָ שֶׁלָּהֶן, וְאֵין חַיָּבִין בִּקְבוּרָתָהּ. יוֹרְשֶׁיהָ יוֹרְשֵׁי כְתֻבָּתָהּ, חַיָּבִין בִּקְבוּרָתָהּ:

ב אַלְמָנָה בֵּין מִן הָאֵרוּסִין בֵּין מִן הַנִּשּׂוּאִין, מוֹכֶרֶת שֶׁל ׳א בְּבֵית דִּין. רַבִּי שִׁמְעוֹן אוֹמֵר, מִן הַנִּשּׂוּאִין, מוֹכֶרֶת שֶׁל ׳א בְּבֵית דִּין. מִן הָאֵרוּסִין, ל׳א תִּמְכּוֹר אֶלָּא בְּבֵית דִּין, מִפְּנֵי שֶׁאֵין לָהּ מְזוֹנוֹת. וְכָל שֶׁאֵין לָהּ מְזוֹנוֹת, ל׳א תִּמְכּוֹר אֶלָּא בְּבֵית דִּין:

ג מָכְרָה כְתֻבָּתָהּ אוֹ מִקְצָתָהּ, מִשְׁכְּנָה כְתֻבָּתָהּ אוֹ מִקְצָתָהּ, נָתְנָה כְתֻבָּתָהּ לְאַחֵר אוֹ מִקְצָתָהּ, ל׳א תִּמְכּוֹר אֶת הַשְּׁאָר. אֶלָּא בְּבֵית דִּין. וַחֲכָמִים אוֹמְרִים, מוֹכֶרֶת הִיא אֲפִלּוּ אַרְבָּעָה וַחֲמִשָּׁה פְּעָמִים, וּמוֹכֶרֶת לִמְזוֹנוֹת שֶׁל ׳א בְּבֵית דִּין וְכוֹתֶבֶת, לִמְזוֹנוֹת מָכַרְתִּי. וּגְרוּשָׁה ל׳א תִּמְכּוֹר אֶלָּא בְּבֵית דִּין:

If the husband's heirs fail to maintain the widow, she is empowered to sell their inheritance on which she has a lien for payment of her marriage portion (Ketubot 8:8). At the same time, the sages limit her ability to abuse this unique power. Typically, the sages expect the heirs to maintain the widow if she remains in the matrimonial home.

As per Ketubot 12:3,

ג אַלְמָנָה שֶׁאָמְרָה אִי אֶפְשִׁי לָזוּז מִבֵּית בַּעֲלִי, אֵין הַיּוֹרְשִׁין יְכוֹלִין לוֹמַר לָהּ לְכִי לְבֵית אָבִיךְ וַאֲנוּ זָנִין אוֹתָךְ, אֶלָּא זָנִין אוֹתָהּ בְּבֵית בַּעֲלָהּ וְנוֹתְנִין לָהּ מָדוֹר לְפִי כְבוֹדָהּ. אָמְרָה אִי אֶפְשִׁי לָזוּז מִבֵּית אַבָּא, יְכוֹלִים הַיּוֹרְשִׁים לוֹמַר לָהּ, אִם אַתְּ אֶצְלֵנוּ יֵשׁ לִיךְ מְזוֹנוֹת, וְאִם אֵין אַתְּ אֶצְלֵנוּ אֵין לִיךְ מְזוֹנוֹת. אִם הָיְתָה טוֹעֶנֶת מִפְּנֵי שֶׁהִיא יַלְדָּה וְהַן יְלָדִים, זָנִין אוֹתָהּ וְהִיא בְּבֵית אָבִיהָ:

Oath taker

At times, in cases where a widow claims she has received only a portion of her marriage portion, the sages may compel the widow to swear an oath. In the case where she contends where she has not received any portion, the sages may compel her to make a religious oath in private rather than swear a legal oath in public.

As per Ketubot 9:7

ז הַפּוֹגֶמֶת כְּתֻבָּתָהּ, ל׳א תִּפָּרַע אֶלָּא בְּשִׁבּוּעָה. עַד אֶחָד מְעִידָהּ שֶׁהִיא פְרוּעָה, ל׳א תִּפָּרַע אֶלָּא בְּשִׁבּוּעָה. מְנַכְּסֵי יְתוֹמִים וּמְנַכְּסִים מְשֻׁעְבָּדִין וְשֶׁל ׳א בָּנָיו ל׳א תִּפָּרַע אֶלָּא בְּשִׁבּוּעָה:

Conclusion

The autonomous woman's legal status may in practice not be accompanied by high socio economic status, as Judith Wegner writes. Many emancipated women, both widows and

divorcees, may have had small marriage settlements and therefore were not as economically well off as they were during marriage. As a result, there is evidence that many autonomous women were forced to return to their father's homes. Mishnah 4:8 mentions a priest's daughter who returns to his home after divorcing. In contrast, wealthy, urbane widows and divorcees may have found themselves in improved positions, one in which they could operate in the world of commerce without restraints imposed on them by their husbands. As Wegner points out, we cannot make blanket statements regarding the effect that legal autonomy had on the lives of women living under the mishnaic system.

Chapter Five - Mishnah Kiddushin and Mishnah Gittin: Correlative Passages

The cultural, historical, and social context discussed in chapter four, a proto-rabbinic context, is evident in two other tractates which deal with the family and in particular with the protection of women in the family. These are Tractates Kiddushin and Gittin. The world of Gittin and Kedushin is radically different from the world of the Bible. It is a world of mobility and greater individuality. It is a world in which family isolation is broken. It is a world in which documents are carried and delivered to the far reaches of the Roman Empire. In this chapter, referring to Tractates Kiddushin and Gittin, I will present examples which illustrate the changed conditions and priorities of the proto-rabbinic world.

Mishnah Gittin 1:1 states,

> If one brings a letter of divorce from a country beyond the sea, he must state, *In my presence was it written and in my presence was it signed.* Rabban Gamaliel says, Even if one bring it from Rekem or from Chagar. R. Eliezer says, Even from Kefar Ludim to Lod. But the Sages say, It is not necessary from him to say, *In my presence was it written and in my presence was it signed,* but only if he bring it fom a country beyond the sea; and he bear it and bring it from one province to another province in a country beyond the sea, he needs to say, *In my presence was it written and in my presence it was signed.* Rabban Simon ben Gamaliel says, Even from one jurisdiction to another jurisdiction.

In this Mishnah we learn that contractual documents are being used and transported from one locale to another. Some of these locales are quite distant from the Land of Israel, as we are told that they are "beyond the sea". Jews were not residing exclusively

in the land of Israel. Rather, Jews were traveling, working and living throughout the Roman Empire.

In Gittin 6:1, some detailed rules and regulations regarding the process of divorce and how the early rabbis wished to create boundaries for this process are indicated. *Gittin* 6:1 reads

> If one say, "Accept this *letter of divorce* on behalf of my wife," or, "Take this *letter of divorce* to my wife," if he wish to retract, he may retract. If the woman said, "Accept my *letter of divorce* on my behalf, if he desire to retract, he may not retract. Hence, if the husband said to him, "I do not want the to accept it on her behalf, but takes it and gives it to her," if he want to retract, let him retract. Rabban Simon ben Gamaliel says, "Even if she say, "Take my *letter of divorce* on my behalf," if he wish to withdraw, he may not withdraw.

In addition, this Mishnah suggests that husbands were employing the services of messengers, perhaps because the husband and wives were not residing in the same local.

In Gittin 7:4, we see an example of the rabbis' concern for protection of and the reputation of women. With regard to the delivery of a bill of divorce, Gittin 7:4 reads,

> She must not be in his company save in the presence of witnesses even a bondman, even a bondwomen, except her own bondwoman because she feels no shame with her own bondswoman. What is her status in those days? R. Judah says, She is as a married woman in every way. R. Jose says, She is as one divorced and as one not divorced.

In Gittin 9:1, we find an argument between R. Eliezer and the Sages regarding the conditions of divorce and refers to situations that arose during the proto-rabbinic and the rabbinic period that could not have arisen during an earlier time. Gittin 9:1 states,

> "If one divorced his wife and said to her, "Thou art permitted to any man, save to so-and so, R. Eliezer allows it, but the Sages prohibit it. What is he to do? He takes it from her and then gives it back to her and says to her, "Thou art permitted to any many; but if he had thus written therein, then even though he erased it, it is still invalid.

In Mishnah 9:3 we find the legal formula for the divorce which, again, we do not find in the bible. It reads

> The essential formula of a *letter of divorce* is, Behold, thou art permitted to any man. R. Judah says, Let this be from thy *letter of expulsion* and *writ of release* and *deed of dismissal* that thou mayest be wedded to whatever man thou desires. The integral formula in deed of liberation is, *Behold, thou art a freewoman, lo, thou belongest to thyself.*

In terms of length, Tractates Ketubot and Gittin are much longer than Kiddushin. Perhaps for the sake of social order, the elite are more concerned with and preoccupied by the preservation of marriage than with the initiation of marriage. This is true in our day as well. Nevertheless, Tractate Kiddushin, the shortest of the three tractates under consideration is enlightening because it combines a concern for the rights of women and the continuation of women as property. We see the latter in chapter one of Kiddushin. In Kiddushin 1:1-6 women are conceived of as property. By juxtaposition, as we can see in Kiddushin 1:5, there are also discussions of property unrelated to marriage. Kiddushin 1:5 reads,

> Property that carries security can be acquired by money, or by document, or by usucaption; and such as do not possess security can not be acquired save by the act of drawing. Property for which there is no security when bough together with property for which there is security can be acquired by money, or by document, or by usucaption, and (this property for which there is no security) imposes the necessity for an oath on property which possesses security.

In Kiddushin 1:7, we learn that women are not required to do time-bound mitzvot. In Mishnah 1:8 and 1:9, we are told of additional obligations, ritual obligations, that women must undertake. In terms of religious obligations, these three *mishnaot* demonstrate that women have a subsidiary role to play.

In chapter two of Kiddushin, 1-10, the formulas for betrothal are expressed and detailed to indicate which forms are valid and which are invalid. These mishnaot are indicative of an attempt to maintain an institution of marriage which has now moved into the general Roman world of individualism and mobility. Within this section, it is interesting to note 2:7 which indicates that the practice of a man's betrothal of a woman and her daughter or a man's betrothal of a woman and her sister had precedent and perhaps we not uncommon outside of the Jewish world. Kiddushin 2:7 reads,

> If one betroth a woman and her daughter, or a woman and her sister, together, they are not betrothed. And it once happened in the case of five women among whom were two sisters, that a certain man took a basket of figs, which belonged to them and which contained Sabbatical Year produce, and he said, "Behold, you are all betrothed to me with this basketful, and one of them accepted on the behalf of all of them. And the Sages said, "The sister have not become betrothed."

Chapter three delineates the restrictions on the betrothal process while chapter four deals with the permitted and the forbidden marriage arrangements. In Mishnah 4:1, an attempt

to control the marriage between different groups is articulated and to biblical precedents for these are listed. Mishnah 4:1 states,

> Ten classes of definite genealogy came up from Babylon: the priestly class, the proselyte class, (and) the emancipated class, the bastard class, the Gibeonite descendant class, the class of illegitimates of unknown fatherhood, and the class of foundlings. The priestly class, the Levitic class and the Israelitish class may intermarry; the Levitic class, the Israelite class, the impaired priestly class, the proselyte class, and the freedmen class are permitted to intermarry; the proselyte class, (and) the freedmen class, the bastard class, (and) the Gibeonite descendant class, the class of illegitimates of obscure fatherhood, and the class of foundlings are all permitted to intermarry.

In Kiddushin chapter 4, we also notice an attempt at social control. Mishnah 4:12 delineates under what conditions a man and a woman may or may not be alone together. The rabbis are trying to impose a code of morality that probably contradicted what was practiced in the community. Kiddushin 4:12 states

> A man must not be alone with two women, but one woman may be alone with two men. R. Simon says, Even one man may be alone with two women so long as his wife is with him, and he may sleep with them in an inn since his wife watches over him. A man may be alone with his mother and with his daughter and he may sleep with them with their bodies in contact, but if they are of adult age, she must sleep in her clothes and he must sleep in his clothes.

At first glance the final mishnah in this chapter, Mishnah 4:14,appears to be unrelated to what comes before it. This is typical for the Mishnah. Frequently, seemingly unrelated mishnaot are included. Kiddushin 4:14 reads,

> R. Meir says, A man should always teach his son a clean (and easy) craft, and should pray to Him to Whom riches and possessions belong, since there is no craft wherein there is no poverty and riches, for poverty does not come from any craft nor does wealth come from any craft, but all is according to one's merit.

We see in tractates Kiddushin and Gittin further manifestations of the world in which Ketubot was created and the attempt to give general principles of law and detailed cases

in order to provide social welfare in a new society. It is significant to recognize that the case law discussed is formally similar to the case law of the Roman Empire. Moreover, it reflects sociologically conditions of human interaction and morality which this law was intended, to structure, reorganize and control.

Conclusion

The field of matrimonial and family law in the Jewish tradition has often been addressed but rarely been thoroughly plumbed. The reason for this is that the addresses of the past, thorough though they have been illuminative, have focused largely on halakhic development per se as if the halakhic development was monolithic and "untainted" by outside influences. As a result, study of family law for the early rabbinic period has focused largely on 1) the organization of this law from the many individual legal pronouncements or halakhot found in Tannaitic literature and/or 2) from efforts to derive the law from biblical underpinnings. Needless to say, subsequent halakhah has followed suit though subsequent halakhists did not always have as difficult a problem as did earlier halakhists in connecting their findings to the earlier literature.

However, when we suspend our assumption that Jewish law is monolithic, self-generating, and develops in a vacuum and examine the development of parallel laws in the context in which Jewish law developed, an entirely different picture emerges. While indeed, the constitutional dimension and, if one will, the legal fiction of connecting subsequent law with prior Jewish law (especially that found in the Bible) continues as it must in any society which seeks continuity on the basis of founding documents. When we "look around," we see that there are parallels to Jewish law in every stage of the development of the Jewish communities. Furthermore, there is an intimate connection both formally and substantively between the so-called "outside "Jewish law and the law of the Jewish communities.

This is an interesting phenomenon that can be explained in at least two ways. First, Jews going into certain areas or reaching certain periods of time in which they are a minority group in a majority culture will automatically be influenced by or adopt the mores and folkways of the dominant culture. Secondly, in areas where there are Jews, people who are not Jewish become Jewish and bring with them their heritage and traditions. There is yet another consideration, regardless of which of the first two premises are correct. There is an ineluctable reality that changing conditions inevitably demand new applications of law regardless of the heritage of a group that is involved. Therefore, Jews and non-Jews involved in the wrenching novelty of the society during the Greco-Roman world naturally had problems and challenges that were not found previously and had to result in some new formulations of the law. As a matter of fact, one of the finest instances of this, the *prozbul*, is found in the materials I studied. In effect, Hillel's *prozbul*, through a legal fiction, suspends biblical law by which loans were automatically cancelled in the jubilee year. This cancellation could not have been tolerated in the new world.

It is therefore not surprising that when turns to the important social element of family law that there should be during the Roman period situations that were not anticipated even on a small scale prior to this time. These new situations require new consideration regarding the family and the protection of the family. The primary example of this is the change, occasioned by the Greco-Roman world, of society's tonal element from agriculture to urban. Though it must be remembered that the world tonal does not mean total or majoritarian. Rather, it indicated the central group for whom the laws were passed. In the tonal element of the Jewish community, like that of the general Roman Empire, the

family homestead no longer existed. In this new world, there was great mobility, travel, and great contact and mixing between diverse groups.

Prior to the ascendancy of the Greco-Roman Empire in the Mediterranean, the tonal element was agricultural an localized. The head of the family was the supreme judge who faced very little interference from other sources, except in a unusual situations, i.e. rape or adultery. However in the Greco-Roman world, a new form of protection for the family and for its continuity developed—the document/ketubah. The legal system sought to create circumstances that made for the greatest stability of the family in marriage, betrothal and divorce. Paramount was the protection of property.

Thus, when we examine the Jewish dimension of family law as articulated in the Tannaitic literature in Tractates Ketubot, Gittin and Kiddushin) we find example of efforts to resolve these problems. Obviously a major element of this is the transformation of authority from the head of the family to the community and to the creation of a documentary system that insured the dictates of the legal system. Documents, therefore, abound.

This is seen in Tractate Ketubot of the Mishnah which has been the focus of my study. It is not a coincidence that Tractate Ketubot is larger than the two other tractates that I have studied, Tractates Gittin and Kiddushin. It is lengthier, I would content, because the document of marriage is what insures the family and that is more important from a social

point of view than either the method of entering into a marriage or of terminating a marriage.

I have therefore devoted my study to an in-depth study of Tractate Ketubot within the context of the Roman Empire and more specifically to the contours and forms of classical Roman law. I have found innumerable similarities and a great deal of novelty in family law as indicated in Ketubot. In this connection, I have also studied Gittin and Kiddushin for parallel situations or situations of interest to my primary subject.

Clearly, this study is only a beginning. What is required is a greater in-depth investigation of Gittin and Kiddushin in the Mishnah, the Tosefta, and Midrashic literature as well as Talmudic understanding of the subject matter. Furthermore, a greater in-depth study of the substantive dimensions of Jewish family law compared to Roman family law both in terms of documents like Institutes of Gaius and other more limited compilations of Roman law. This of course is a vast undertaking that should be done.

I have learned a great deal from this study. I have come to realize how vast a field is the study of family law in early Rabbinic Judaism. The study requires a deep knowledge of the complexities of early rabbinic law as well as a thorough knowledge of the Greco-Roman world in its manifold dimensions. Nevertheless, this study has opened new vistas for me; vistas which I hope to develop further in the future.

Appendix 1

Differences in Family Mishnah and Bible

The sages amended laws related to family and civil laws. As previously discussed, in the early period of Jewish history, i.e. in the time of the Pentateuch, a woman was considered the property of her father and later of her husband. The father had the right to sell her and to give her in marriage. The groom had to pay a certain sum of money, the *mohar*, to the father of the girl (Exodus 22:16). A *takkana* was introduced by Simon b. Shetah to amend this ancient law. Instead of the groom paying the father money for taking his daughter in marriage he had to write a writ,a *ketuba*, in which he pledged all his property as security for two hundred *zuzim* in the case of his death or divorce. The purpose of this takkana, as Solomon Zeitlin explains, was to raise the social and the economic life of the woman. She was now protected economically in case of divorce of the death of the husband. Also, she was no longer the property of her father but possessed rights in herself.

Women's "right" to Refuse Marriage Partner

According to the *Hebrew Study Bible*, as discussed in chapter 1, marriage, in the Bible and the Ancient Near East, was a contractual relationship. A woman, regarded in terms of her relation to her father or he husband, could not act independently. The woman was not a free agent, either in legal or sexual terms. She remained in her father's household until a suitor paid a bride-price to compensate the father for the reduction of the household. At that point, she became formally engaged in the sense of legally contracted for, although still living, "under the father's authority" (Deuteronomy 22:21; lit. "in her

father's house.). Later, at the marriage feast, the union was consummated (Genesis 29:22-25). The fact of intercourse marked the legal consummation of marriage. Subsequently, the woman took up residence in the household of her husband.[95] No where in this arrangment is the woman given the right to say, I do not want to marry this man.

Without Manus, Roman Women can Choose the Man of their Dreams

Girls whose father's passed away would move from *tutlea impurberum* to *tutela mulierum.* The tutor, as Grubbs notes, was not a personal watchdog but rather would safeguard a women's paternal inheritance. The tutor's consent was required for selling certain kinds of property, manumitting slaves, and making wills. The tutors consent was not needed for a women to enter a marriage without *manus.* This is remarkable. A comparison of the status of Roman women under *tutela mulierum* with Jewish women of varying statuses merits further investigation and study.

Polygamy vs. monogamy

The Jews of the Mishnaic period, were allowed to marry several wives and the Mishnah Ketubot attests that inheritance had the potential to be a quagmire given multiple wives and sets of children. The vast majority of Ketubot 10, including Ketubot *10:1*, 10:2, 10:4, 10:5 10:6, address issues of multiple wives and their and their children's respective rights to inheritance and property upon their father's death.

For example in Ketubah 10:1,

> If one were wed to two wives and died, the first wife has prior claim to the payment of her ketubah than does the second wife.

[95] Jewish Study Bible, p. 416.

While in Ketubah, 10:4

> If one were wed to three wives and died, and the marriage settlement of one were a maneh, and that of the other two hundred, and that of a third, three hundred, but there was only there one maneh, they share this equally. If there were two hundred, she whose marriage settlement was a maneh takes fifty, and they who were to get two hundred and three hundred respectively take each three gold denars. If there were three hundred, she whose marriage settlement was one maneh, takes fifty and she who laimed two hundred gets a maneh, andshe entitled to three hundred receives six gold denars. And similarly also three persons, who contributed to a fund, whether they suffered a loss or made a profit, share the same amount.
>
> These concerns about how to pay the ketubah, specifically in what order and in what amounts, are important in a polygmaous society. This was not the case in Roman culture because polygamy was not legal. Yet, as mentioned previously, when it came to Roman provinces, Rome allowed them to continue to practice their local customs. Here is an example of one in which the traditional customs did not change in face of Roman culture. Not until hundreds of years later would Jewish authorities outlaw polygamy.

How does marriage comes into effect?

In the Bible, a father contracts a marriage for his daughter. A groom pays the father a bride price, a *mohar*, for his daughter. The woman leaves her father's house and enters her husband's house where the marriage is sexually consumated. A father might also give his daughter a dowry in lieu of an inheritance.

By the time of the Mishnah, we find that the father still has authority over his daughter betrothal. *Kiddushin* takes place, as articulated in *Ketubot* 4:4, by money, document or sexual connection. The Mishnah describes three ways of contracting betrothal (Kiddushin 1:1):

1. With money (as when a man hands a woman an object of value such as a ring or a coin, for the purpose of contracted marriage, and in the presence of two witnesses, and she actively accepts);

2. Through a *shtar*, a contract containing the betrothal declaration phrased as "through this contract"; or
3. By sexual intercourse with the intention of creating a bond of marriage, a method strongly discouraged by the rabbinic sages.

Similarly in Roman law, as discussed in *Institute of Gaius*, marriage and a woman passing into *manus* could occur in three ways- by *usus* (cohabitation), by *confarreatio* (religious ceremony), and by *coemptio* (purchase). Marriage by *usus* always required the woman to be married with *manus*. In a marriage involving *manus*, the father of the bride relinquishes his control over his daughter to the new husband. *Usus* also required that the woman had to remain and stay in her husband's house for one year, cohabitating with him, assuming the position of daughter in the family. Marriage by *confarreatio* involved a religious ceremony in which the bride and groom shared a cake of spelt in the presence of ten witnesses. This type of marriage was usually reserved for the wealthy.

Complex Times and Complex Families

Employment

In Mishnah 5:6, we read that not all families were "down on the farm." Now there were camel drivers, sailors, workmen, assdrivers and men of independent means. While these men were expected to fulfill their marital duties, the rabbis were cognizant that the particularities of employment might force a man to be away from home for longer periods. For example, a sailor must minimally engage in intercourse once every six months while a camel drive once every thirty days. The rabbis took into account a woman's needs but also took into account the complex economy in which the Jews operated.[96]

[96] Mishnah Ketubot5:6

Latest fashions

Mishnah 7:6 suggests that Jewish woman were influenced by the contemporary social practices of Roman society and this could create marital conflict. If woman engaged in practices that transgressed Jewish custom, her husband could divorce her without settlement. The transgressions included going outside with one's hair loose, going outside without one's arms covered, or conversing with men on the street. These were Roman customs which obviously had been adopted by many Jewish woman as well. There is a clash of cultures which the rabbis of the Mishnah are seeking to negotiate.

Appearance

In Roman culture and society, divorce was common and woman could leave unhappy marriages relatively easily, as discussed in the Chapter on the Roman Family and the Law. These values seem to have influenced the rabbis of the Mishnah. They are confronted with women who must want to terminate marriages because of the unplesant physical conditions of their spouses. In Mishnah 7:10, R. Meir argues that a husband can be compelled to grant a divorce if he is afflicted with an unseemly skin disease or has bad smelling skin or works at collected dog feces. The rabbis argue that the wife must put up with her husband, except in the case of leprosy. The fact that the rabbis are even addressing such an issue suggests, as mentioned, that they and the Jews are being influenced by the Roman cultural milieu around them.

Data from Ketubot

areas of jurisdiction	Girl/na'arot	signatures/handwriting
adultery	Inheritance (women)	slaves
Adult Woman	judicial temperments	suit
bastard	*Ketubah/marriage settlement*	status
betrothal	*kinas (fine)*	streets/market
bill of divorce (get)	leprosy	studying the Law
boarder	maturation (sexual)	testimony
bondwoman	minor	towns
boshet (disgrace)	mulitple wives	trustee
boy minor	oaths	In trust
capital offenses	orphans	using funds from Ketubah
captive	*pigam (deterioration)*	violator
cattle drivers	pregnancy	virgin
ruthr	priesthood	virginity
chalitzah	priests	vows (ha'madir)
civil law	proselyte	widow
collatoral	Purchase	widow of israelite
compensation for seduction	rape	widow of priest
connubial relations (obligation to have)	redeemed	witnesses
court	sages	writing (documents,contracts)
Defects (Physical)	sailors	
defiled (sex)	samarian	
divorcee	seducer	
Gibeonite	seduction	

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