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THE POSITION OF WOMAN

IN

THE TALMUD.

A STUDY OF THE GENERAL LEGAL AND SOCIAL STATUS
OF THE JEWISH WOMAN FROM 450 B. C. E. (circa) TO
500 C. E., AS INDICATED IN THE TALMUD.

LEO MANNHEIMER.

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As is known to your honorable body, the class of which I am a member presented the subjects of their theses for your approval during last May. At the suggestion of Dr. Deutsch, I had determined to write upon Mendelssohn's Translation of the Pentateuch, and its Relation to Modern Movements in Judaism. After working upon this theme for some six weeks during the summer, I decided for various and cogent reasons to lay this subject aside. I then cast upon the Status of Woman in the Talmud, a most interesting subject which had been brought to my notice by Dr. Mielziner. The result of my labor upon the latter theme is embodied in the pages of the following essay.

In presenting this thesis for your consideration, it is but natural that I should feel some diffidence, inasmuch as the field of thought embraced under my theme has been so ably and so thoroughly exploited by such authorities as Dr. Zacharias Frankel and Dr. Moses Mielziner. In view of this fact I have, of course, been debarred from making such researches as might be denominated original. For to produce out of the chaotic confusion of the Talmud some manner of orderly and coherent arrangement, to treat the various questions which are connected with my subject with logical method and accuracy, is indeed a most difficult task.

I have not attempted, therefore, to bring to notice new and startling facts, or hypotheses which may have originality as their single merit. I have confined myself to seeking information upon a subject which has proven most interesting and instructive. The result of my researches I have sought to present in a clear, orderly, and systematic manner. A mere tyro could not have found his way through the Talmud without the aid and guidance of the authorities which I have found at my disposal. I have, therefore, deemed it advisable and legitimate to make use of other than first hand sources.

I desire to acknowledge my indebtedness to the Hebrew Union College Faculty, and especially to Professors Deutsch, Feldman, Grossmann, Philipson and Mielziner, for their kind assistance and their generous proffers of literature upon the subject. To Dr. Mielziner, I am under special obligation for the material assistance he has so willingly and generously tendered me. To my dear father, I wish to express in this public manner my deep sense of gratitude for his constant co-operation and helpful suggestions.

(copy)

In conclusion, I append the following list of books which I have used and consulted in the preparation of this thesis:

- The Bible,
Talmud Babli.
Midrash Rabba.
Zion Ladoresh. (זיון לדורש)
Tol'doth A'ron. (תולדות אהרן)
Phachad Yisrahak. (פחד יצחק)
Dor Dor Vedorahov. (דור דור ודורשיו) J. H. Weiss.
Introduction to the Talmud, - - - - - M. Mielziner.
The Jewish Law of Marriage and Divorce, - - M. Mielziner.
Slavery Among the Jews, - - - - - M. Mielziner.
The Jewish Law of Divorce, - - - - - D. W. Amram.
Grundlinien des Mosaisch-Talmudischen
Eherechts. Breslau, 1860, - - - Zacharias Frankel.
Real Encyclopaedie (Articles Frauen,
Ens, Witwa, etc.) - - - - - Herzog and Plitt.
History of European Morals, - - - - - W. E. H. Lecky.
The Jewish Religion, - - - - - M. Friedlander,
The Talmud, - - - - - Emanuel Deutsch.

The Jewish Woman, - - - - - Nahida Remy.

(Translated by Louise Mannheimer.)

Die Judische Frauen, - - - - - M. Kayserling,

Some Jewish Women, - - - - - H. Zirndorf,

The Talmud, - - - - - Arsene Darmesteter,

(Translated by Henrietta Szold.)

Dictionary of the Talmud, etc., 1886, --- M. Jastrow,

Aramaisch- Neuhebraisches Wörterbuch,

1897, - - - - - Gustaf H. Dalman.

Neuhebraisches Wörterbuch, 1880, - Moses Schulbaum.

Ancient Law, - - - - - Sir Henry Maine,

History of Christianity,

Volume I, - - - - - Henry Hart Milman.

The Subjection of Women, - - - - - John Stuart Mill,

Die Frau in Talmud, - - - - - J. Stern,

Die Frau im Talmud, - - - - - N. Klugmann,

Woman's Share in Primitive Culture, - - - O. T. Mason,

Our Better Halves, (Forum October 1888) Lester F. Ward,

Principles of Sociology, - - - - - Herbert Spencer,

Treasures of the Talmud, - - - - - P. I. Hershon,

Has Christianity Benefited Woman?

(North American Review, May 1885) J. L. Spalding,

Eheverhältnisse der alten Juden im

Vergleiche mit den Griechischen

und Römischen, Leipzig 1881, - - - Joseph Bergel.

"

Das Leben des Jüdischen Weibes,

Breslau, 1859, - - - - - M. Gudemann,

775 Göttingen, 1882, - - - - - Paul de Lagarde,

Die Familie, nach Mosaisch-Talmudischer

Lehre, Breslau, 1867, - - - - - P. Buchholz,

Die Religiöse Stellung des Weiblichen

Geschlechts' im Talmudischen

Judenthum, Schwerin, 1846, - - - - S. Holdheim,

Jesus in seiner Stellung zu den Frauen,

Berlin, 1872, - - - - - August Wünsche,

The Seven Ancient Monarchies, - - - - George Rawlinson,

The Story of Phoenicia, - - - - - George Rawlinson,

The Story of Vedic India, - - - - - Z.H. Ragozin,

The Middle Kingdom, - - - - - S. W. Williams,

The Dawn of Civilization (Chaldea) - - - G. Maspero,

The Social Life of the Chinese, - - - - Justus Doolittle,

Life in Ancient Egypt, - - - - - Adolf Erman,

The Evolution of the Aryan, - - - - - Rudolf von Ihering

Real Encyclopaedia (Articles relating

to the subject) - - - - - Dr. J. Hamburger,

Woman in the Ancient Hebrew Cult, - - - I. J. Peritz.

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INTRODUCTION.

THE TALMUD. --- LENGTH OF THE TALMUDIC
 PERIOD. --- CHANGES WHICH TOOK PLACE DURING THIS
 PERIOD. --- TWO OPPOSED VIEWS HELD CONCERNING THE
 MORALITY OF THE TALMUD AND ITS TIMES. --- OBJECT
 OF THE THESIS. ---

The Talmud, that huge monument to the freedom of thought and utterance among the Hebrews, represents the uninterrupted work of the Hebrew people from the time of Ezra to the sixth century, C. E. It is the embodiment of the thought, of the learning, of the national and social life, of the religious activities, of the social system, of an entire nation during a period of almost one thousand years.

If we take into consideration the length of the period of which it is the product and expression; if we remember what great changes may and usually do take place in literature as a mode of national expression, and through what evolutions and revolutions it may, in the course of a few generations or centuries, pass; we shall then in some measure realize what it means when we say that this wonderful and Titanic work contains the concrete results of the growing and changing and evolving ideas of some thirty generations of men.

The Talmud contains many passages and sayings of historical interest and value, and the scientific historian has been able, from a careful perusal of its pages, to work out a connected and trustworthy account of the political, social, and legal history of the Talmudic period, and to indicate the social and intellec-

tual conditions -- and the many and constant changes in these conditions -- of the Hebrew people during a most important and significant era of its history.

This work has been attempted with more or less success by such scholars and historians as Graetz, Holdheim, Frankel, Wise, Amram, etc. The pictures which they present of the intellectual and social condition of the Hebrew people at this time, of its high culture and elevated religious feeling, of its piety and enlightenment, serve to form a most pleasing contrast to those drawn by many of the learned professors among the exponents of the "higher criticism." (E.G., Dr. A. Kuenen: National Religions and Universal Religions; Emil Schurer: History of the Jewish people in the Time of Jesus Christ.)

According to the latter, the era preceding the introduction of Christianity was one of ceremonialism, of soul-less formalism and legalism, of petty particularism and rigid nationalism; a period when the letter of the law was observed, to the detriment of the spirit; when, among many other most debased and barbaric conditions, the weaker sex was held enslaved and despised, was deemed far beneath man in all attributes, was reduced to mere dependence and tutelage.

Then, according to these scholars who, accepting unqualifiedly the position of Paul, have been biased by his bitter opposition to and criticism of Judaism, Christianity, with its emancipating doctrine of universal love and its abrogation of the law, came into being. The new religion inaugurated a reign of sincerity, universalism, faith, obedience to the informing spirit; inaugurated, among other beautiful and desirable changes and institutions, a complete revolution in the treatment accorded woman.

Previous to the inception of Christianity, according to these scholars, and according to those who have accepted them as authorities, woman among the Hebrews occupied the position universally bestowed upon her in the Orient. She was a slave, without honor, without freedom, without hope. "The masses of mankind --- the slave and the woman --- had been reduced to a state so pitiable that possibly nothing short of the coming of God himself, in sorrow and in weakness, could have inspired the courage even to dream of better things." (J. L. Spalding, in the North American Review; May, 1865.)

(I may add that the italics are mine.)

Even so learned and influential a writer as John Stuart Mill hesitates, nay, almost refuses to acknowledge the exceptional and advanced morality ^{of} to the Hebrew people. In his luminous essay on the "Subjection of Women", he says:

"The Stoics were, I believe, the first (except so far as the Jewish law constitutes an exception) who taught as a part of morality that men were bound by moral obligations to their slaves." (Page 14; once more the italics are mine.)

It is hardly necessary to refute this assertion. The slightest acquaintance with Biblical or Talmudic literature would have compelled the usually impartial philosopher-economist to bestow far higher and less equivocal commendation upon early and later Jewish law and ethics. (See e.g., Deut. IV, 14, 15; Lev. XXV^V, 43; et.al.)

Christianity, it has often been claimed, introduced monogamy. It fostered reverence for woman and wife. It inaugurated a new ideal for womanhood. It exalted the weaker sex, and made her the mistress of the home. All of these changes were the results and concomitants of the rise and growth of the new faith.

It is my purpose in the following chapters to refute such sweeping assertions on the part of some

theologians and scholars. True it is, unfortunately, that the crassest ignorance concerning the real nature of the Talmud and its contents is wide-spread, that the most absurd misconceptions of its essence are nearly universal. But it would be reasonable to suppose that those who pose as scientific students of the history, life, and thought of a period concerning which the Talmud is our best and most valuable authority and guide, should possess at least a fair amount of knowledge of its contents; especially as this could be acquired, if not a first-hand, certainly from the many essays, treatises, chrestomathies, etc., which have been written and compiled by those competent and possessed of knowledge. It seems to me that those who refuse to make use of such aids, and are at the same time entirely unacquainted with the original, are by no means in a position to pass fair and discriminating judgment. Their utterances -- and they are by many deemed scientific and authoritative -- are in the main unworthy of consideration. In their case the Socratic thought holds good; their ignorance is surely a crime.

The object of this thesis is two-fold. It is my aim to prove (1) that the position of the Hebrew woman in the era of the Talmud was higher than that of her non-Hebrew sisters; (2) that woman in general owes

her emancipation, not to Christianity, as has so often been asserted and urged; but, in large measure, at least, to the Hebrew laws, customs, and ideals existing whole centuries before the rise of the new religion.

The civilization and culture of the present era exhibit to a very marked degree the influence of Christian morality and Christian ideals. It is, however, my contention that these high ideals and this elevated morality were by no means and in no sense new creations, taking their inception from the rise of Christianity. They are, as will be shown in the course of this thesis, merely and almost entirely an inheritance from Hebrew thought, Hebrew ideals, Hebrew morality. The Hebrew people, with an ethical consciousness deep and earnest, originated and, in its social and domestic life and customs, gave concrete and adequate expression to its lofty ideals and to its just and elevated conceptions of life and duty. The status of woman; the treatment accorded the slave; the relations of the sexes; the system of schools and universities; all these indicate the advanced stage of culture and enlightenment which had been attained by the Hebrew people during the period which I have denominated as Talmudic.

One of the best and most significant indices of national character and degree of civilization, is the

position assigned to woman in social and domestic life. I have undertaken to show that the status of woman among the Hebrews during the Talmudic period --- from 450 B. C. E. (circa) to 500 C. E. (circa) --- was far in advance of that assigned to her sisters less fortunately situated among other peoples of the East and West. It has also been my intention to lay stress upon the culture and the high ethical ideals of the Hebrews during this period, and to indicate that much of the influence and many of the ideas popularly known and denominated as Christian, are in truth none other than Jewish to the core.

I have deemed it permissible in my presentation of the various divisions of the subject, to refer not only to Halakha and Haggada - the latter as the lasting expression of the ethical views of life held by the Hebrews - but also to the Bible as the source of Hebrew law and morality, and also occasionally to the Midrashic literature, much of which is contemporaneous with the Talmud. This, I may add, has appeared to me legitimate, because national literature, taken in its entirety, is the embodiment of national life and morals.

With the foregoing in mind, I enter upon the closer consideration of my subject.

CHAPTER I.

THE GENERAL POSITION OF WOMAN.

- (A) IN THE NON-JEWISH WORLD; AMONG THE CHINESE,
HINDOOS, PERSIANS, ARABS, ETC.; ROMANS, GREEKS;
IN THE EARLY CHRISTIAN WRITINGS.
- (B) AMONG THE HEBREWS DURING THE PERIOD OF THE TALMUD.
THE THOUGHTS OF THE SAGES OF THE TALMUD CONCERNING
WOMAN IN GENERAL; THE OLD WOMAN (GREISIN.).

It is not my intention in this chapter to ~~so~~ wrest and distort the laws, customs, maxims, expressions of opinion, etc., recorded in the Talmud, until I am able, by hook and crook, to picture the condition of woman in Talmudic times as equal to and as elevated as the position accorded to her more fortunate sister by modern civilized nations. This error has been committed by many eulogizing apologues who, desiring to oppugn and to counteract the harsh and superficial strictures of not a few critics of the Talmud (notably the non-Jewish critics), have gone to the opposite extreme, and have painted the Talmudic era in light and glowing colors, as a time when all men were noble and learned and tolerant; when, among other beautiful and desirable things, the condition of woman, legal, social, and mental, was in no wise inferior to her status and culture today.

Both the harsh critics and their opponents, the apologues, are in error. Neither one nor the other presents the true state of affairs. Both summon to their assistance only such passages from the Talmud as will support their special and widely diverging stand-points, and are careful to entirely omit or at any

rate to glaze over with but passing mention, those laws, sayings, anecdotes, etc., which in the slightest degree contradict their own pet theories. In my attempt to be entirely impartial, I therefore cite passages on both sides of the question, wherever practical, deeming the tone and opinionated partiality of the apologete out of place in a treatise intended to be scientific.

X The status of woman among all the peoples of the world of whom we have records dating from the Talmudic era, was undoubtedly far lower than ^{is} the position accorded woman in this "enlightened" age. This is evident from even the most superficial reading of the sources. To expect any other order of things would, however, be unreasonable. Civilization is a slow, but constant growth. The evolution of the human race is marked by three stages. The first of these is savagery. Here woman is the slave and drudge of man; she has no influence upon the actions of man, except perhaps a trifling one, and that for evil. The second stage is that of barbarism. Woman has risen somewhat in legal and social status, and her influence has consequently widened, and that for the good of her lord and master. The third stage in the

progress of mankind is what seems to us at present the highest one, and is called civilization. Here woman is released more and more from legal and social restriction, and takes her place as the equal and companion of man. Her influence has widened out immeasurably, and is undoubtedly ennobling and purifying. (This stage, in which we are at present, has just been attained, as it were; consequently the attendant amelioration of the status and influence of woman has not yet had time to work itself out fully.)

We see then that the entire upward development of mankind is marked by the continued elevation of the position of woman, by the increase of respect and reverence paid her, by the ever widening sphere of influence accorded her. "The emancipation and exaltation of women are the synonym of progress", says Mason, (Woman's Share in Primitive Culture^{ch. III}), and all races have at one time in their history regarded woman as an inferior animal, fit only for the use and abuse of man. (*ibid.*)

Among the various peoples of Europe and Asia, I find that at the Talmudic period woman still occupied a very low and de-

graded position. It is only by a comparison of the status of woman among them with the position of woman among the Jews that we can make any estimate as to the ^{degree} height of morality of the Jews at this period. It would be manifestly unfair to compare the position of woman in the Talmud with the position accorded her in modern times. Yet this is just what has been done by many of the critics of the Talmud, and of course to the disadvantage of the latter. It is, however, only proper to take contemporaneous civilization, or rather barbarism, as our criterion of judgment. For by comparing systems of morality and jurisprudence which are very far apart in point of temporal and physical environment, we can gain little or no certain knowledge as to the worth of each. With this in mind, I approach a consideration of Talmudic morality as evinced by the status of woman, in comparison with the position accorded her among other nations at the same period in the world's history.

Among the Chinese, the position of woman in antiquity was very low. The Chinese wife was compelled to submit to all the pains and hardships inflicted upon her by her husband. The will

of the husband was law, and the wife had absolutely no right of appeal. Thus the husband had the power of beating his wife, ~~and~~ ^{and she} ~~has it still today~~ She could be sold by him at will, just as any other of his slaves or animals. It is asserted by some authorities

that these conditions are in great measure prevalent today. (X)
(Williams, *The Middle Kingdom*, vol. I, ch. 14, p. 791 seq; Justus Doobittle, *Social Life of the Chinese*, ch. .)

In India, we find the position of woman prescribed in the law-book of Manu. According to this, woman is far beneath man in rights and privileges, while her duties to him are many and onerous. She was never permitted to be her own guardian, but was always under the control of some male person. She could be beaten by her husband at will. Finally, "Woman is in duty bound to honor man"; "She must revere him as God". (From the Law-book of Manu,

page 56. quoted by Klugmann.) (X) ^{also} Ragozin, *Story of Vedic India*, ch. 9, pp. 372-373, also pp. 367-368; Maine, *Ancient Law*, p. 153.

Among the Arabs, it is certain that woman was even more degraded.

(It is to be noted that the Arabs were Semites, and therefore related by blood to the Hebrews. The contrast afforded by these two peoples is all the more marked.) Woman was oppressed and debased to the lowest depths of infamy. She was a plaything to the wealthy, a slave to the poor husband. It is well known that among some Arabic tribes, the host would customarily honor his guest by furnishing him with his own wife or daughter as temporary concubine. Wife-beating was prevalent. Even Mohammed, though protesting against this custom, acknowledges its necessity. "Wives, concerning whom you fear lest they anger you through their conduct,..... withhold yourselves from them, lock them in their chambers, and chastise them." (Koran, Sura iv, 30.) The harem was a firmly established and far extending institution. "In the Orient, the house was not woman's home, but her prison," says Riehl, and his remark seems to be justified by the facts. *(In this connection v. Maspero: Revue of Civilization, pp. 707, 739.)*

Woman's lot in the Orient was indeed wretched, and even the consolation derived from the hope of immortality, of reward in the future life, was denied her. For it was commonly thought^h that

she had no soul. With such views, with such laws and customs, with polygamy and concubinage, nay even prostitution, prevalent and sanctioned by state and cult, we can hardly expect to find marriage being looked upon as a sacred and inviolable institution, based upon love and faithfulness.

Perhaps one of the most fruitful causes of the degradation of woman in antiquity was the sensuality of religion. Woman was taken into the service of the temples, and was compelled to put a price upon her virtue. The payment for her services as courtesan (קדשה i.e., holy, consecrated, set apart) formed no small item ⁱⁿ of the income of these great institutions of the ancient religions. Among the Syrians, Medes, Babylonians, Phoenicians, Armenians, and Scythians, in fact among most Oriental nations, compulsory sacrifice of woman's honor, debauchery, polygamy, and infanticide were common and lawful. (cf. Rawlinson: *Ancient Monarchies*, vol. II, pp. 41-42; vol. III, pp. 29-31, same author's *Story of Phoenicia*, p. 37.)

Among the European nations, the status of woman was not quite as low as in the Orient. But nevertheless she was regarded as the property of man. The husband had not only the right to beat his wife, he could even put her to death. "The husband is the judge of

his wife; his power over her is unlimited." (Aulus Gellius, quoted by Klugmann.¹⁵⁰)

In Greece, the lot of woman was that of an inferior being. She was kept in what seems to us to have been Oriental seclusion. With the exception of a class of public women, she was reared in complete ignorance. She was never allowed to be her own guardian. She was never permitted to leave the Gynakonitis, the Greek harem, unless accompanied by a female slave. Indeed, she was herself almost one of the domestic slaves, a veritable household drudge. When her husband entertained his friends, she was not permitted to sit at table. We see then that virtuous women were kept in ignorance and seclusion, and the place of honor was accorded to courtesans. The wife could be transferred to the possession of another as a gift, and could be left as a legacy, by the testament of her husband. In short, she was considered and treated as a chattel, a part of the necessary furniture of the house, intended for his convenience and comfort. Further, Hesiod calls woman "an accursed brood, and the chief scourge of the human race". In fact all Greek literature betrays a deep contempt for woman, even at the most brilliant period in the history of Greece. "The poets are particularly sarcastic. Simonides winds up a bitter invective against

women in general by saying, 'Zeus made this supreme evil — woman; even though they seem to be good, when one has got one, she becomes a plague'." (Myers, History of Greece^{p. 544.}.)

In Rome, the status of the wife in early times was extremely low. She was treated as an inferior and a slave. The husband was the head of the family, and he exercised uncontrolled authority over his wife or wives and children. He could repudiate his wife at will. The courtesan class, as also in Greece, was numerous and almost uncontrolled. "The Romans habitually contrasted the majesty of man with the imbecility, frivolity, and weakness of woman." One of the harsh and heartless sayings popular at Rome was that "a wife was good only 'in thalamo, vel in tumulo,'" i.e., on the day of marriage and on the day of her death. (A similar saying is popular in Greece.) (Maine: *Ancient Law*, p. 153.)

Among both Greeks and Romans the wife was looked upon as merely a means for race-propagation, for giving to the state a sufficient number of citizens. Marriage was considered a psychopolitical institution, existing as a necessary evil, in the interest of society. There was no trace of the higher sentiment which we call love.

After this hurried glance at the foremost nations of antiquity, I turn for a moment to examine the early writings of Christianity. It has been a source of pride and self-praise ~~of~~ to many Christians, to point out that Christianity was the first religion to liberate woman, that it ennobled marriage, that it sanctified the marriage-relation, that it gave birth to the lofty sentiment of love, etc. From a careful review of the passages in the New Testament bearing upon the status of woman, and from the history of Christianity during the first eight or nine centuries of the Christian era, the opposite seems to be nearer the truth. Woman, inter-sexual love, marriage, are everywhere censured and declared to be contrary to the "Love of God". This is evident not only from the Christian scriptures and from the writings of the early church fathers, but Lecky and other writers claim that this is shown by the history of the last eighteen centuries.

"Whoever leaves home, and brothers, and sisters, and father, and mother, and wife, and children, and acres, for the sake of my name, he will receive a hundred-fold, and gain the eternal life."
 (Matthew XIX, 29)
 "The children of this world take in marriage and are taken in marriage, but those who will be deemed worthy of gaining the other

world and of resurrection, they will not take in marriage nor permit themselves to be given in marriage." ^(Luke: XX, 34, 35.) ~~Thus said the~~ ^{Jesus} ~~and~~, and there are many other passages of the New Testament conceived in the same vein. "With Paul, the sole reason for marriage is that man may gratify his instinct without sin." (Cf. Matthew i, 19; v, 31 seq.; xix, 3, 7, 8, 9; Mark x, 4; iPeter, 3, 1 seq.; Col. iii, 18 seq.; iTim. ii, 9 seq.; etc.)

"Man's destiny is the state, woman's destiny is the house. God, in His care for peace, and considering the correct order, has separated life into these two divisions. The more necessary He gave to man; the lesser, the more imperfect, to woman." This ^(347-407 G.E.) utterance of St. Chrysostomus, as well as other remarks by the same writer, shows very clearly that the sphere of woman was deemed far beneath that of man in importance. "As if the welfare of the state were not dependent on the welfare of each individual house," ^(Jeriah Homan, 1137-38) is the apt comment of Nahida Remy. St. Chrysostom in further speaking of woman, says that she is "a necessary evil, a natural temptation, a desirable calamity, a domestic peril, a deadly fascination, and a painted ill"!!

^{further}
Some quotations from the New Testament may not be inept in

this connection. The following sentences are characteristic.

"Wives, be in subjection unto your husbands, as unto the Lord. For the husband is the head of the wife, as Christ is the head of the church. Let each man love his wife even as himself, and let the wife see that she fear her husband." (Ephesians v, 22, 23, 33.)

"Let a woman learn in quietness with all subjection. For I permit not a woman to teach, nor to have dominion over a man, but to be in quietness." (1 Timothy ii, 11, 12.) "The man was not created for the woman, but the woman for the man." (1 Corinthians xi, 9.)

As a kind of fitting climax to these citations, I bring to notice here a striking passage from the treatise "De Resurrectione" by Tertullian (200 circa), in which he embodies an idea which was quite prevalent among the early church fathers. "The resurrected will lose their blemishes and defects, the blind will see, the lame will walk, and the women will arise from the dead as men!!" (*Remy, Jewish Woman, p. 41.*)

Early Christianity fostered the ascetic ideal. A life of joyless austerity and simple severity was conceived to be the most holy method of passing through this sinful world. Asceticism of course included and laid stress upon celibacy. Its influence

and effect were therefore to depreciate marriage, to detract from the holiness and beauty of wedded life. It is also well-known that the priests, although commanded to be celibates, almost habitually broke this rule, and since they could not marry, introduced all kinds of lewdness and immorality. (See Lea, History of Sacerdotal Celibacy.) The influence of such a corrupt and profligate priesthood could not but prove most demoralizing and vitiating. Aside from the hypocrisy such a life involved, the effect upon the ideas and ideals of the laity was most fruitful of evil results. When however, the vow of celibacy was faithfully kept, the character attained, though beautiful in some respects, was nevertheless very one-sided. It embodied the grave fault of lowering the dignity and sanctity of marriage.

We see then that both profligate and austere priesthood must have had and did have a degrading influence upon the morality of the early Christian world. For the status and dignity of woman is lowered from either standpoint. She is regarded as something to be avoided and shunned by the ascetes. To them "Woman was represented as the door of hell, as ^hthe mother of all human ills. She should be ashamed at the very thought that she is a

woman. She should live in continual penance on account of the curses she has brought upon the world." (Lecky, History of European Morals, Vol. ^{1. 338.} ii.) Such was the thought^h of the celibates. To the profligate priesthood who habitually broke their vow, woman was merely an instrument, a means of gratifying their passions, of ministering to their pleasures. Thus was the inferior and degraded position of woman maintained by them.

In ⁿconsequence of the terrible example set by the priests, the lay standard of male purity was extremely low, and naturally the effects upon female chastity were disastrous. Under the influence of the dissolute priesthood, vice was rampant and flaunted shamelessly in the full light of day. Literature was gross in the extreme, and the marriage-relation was violated with impunity. Such were some of the concomitants of early Christianity, consequent upon the ^rintroduction of its system and the inculcation of its doctrines.

After this brief and hasty glance at the position accord- *
ed woman among the various peoples of antiquity, it appears very clear to me that the status of woman among the Jews during the Talmudic period was of comparatively far higher. A sentence char-

acteristic of the Hebrew thought of this period is the follow-

לעולם יהא אדם זהיר בכבוד אשתו שאין ברכה מצויה
ביתוך ביתו של אדם אלא בשביל אשתו :

ing:

"A man shall ever be careful to honor his wife; for no blessing is found in his house except it be due to her." (Baba Mezia, 59a.)

* Suggestive in this connection are the special instances of Beruria, the daughter of Chanina ben T'radjon and wife of R. Meir

(150 circa); Ima Shalom, daughter of R. Simon b. Gamlielⁱⁱ and wife of

~~50~~ R. Eliezer b. Jacob (200 circa); Choma, daughter of R. Chisda

Abba Mari
(300 circa); Jalta, daughter of ~~R. Nachman~~ and wife of R. Nachman

b. Jacob (300 circa); Em, the foster-mother of Abaji (290 circa);

and Rachel, wife of R. Akiba (130 circa). That these women could at-

tain prominence and could make their voices heard and heeded in

the Talmudic world, and that the rabbis deemed their sayings and

doings worthy of record, is certainly sufficient evidence of the

honorable position accorded to women by the teachers of the Law.

Further, it is plain from the tales told of these heroines of the

Talmud that the women of the Talmudic era must have possessed no

insignificant amount of culture and knowledge of the Law. Thus,

f. e., the beautiful prayer recorded in the name of a woman in

Sota, folio 22a, indicates that its author must have possessed more than average intelligence and spirit.

It is without doubt true that many of the legal enactments of the Hebrews were unfavorable to woman, and withheld from her many rights and privileges now accorded her. But this is only natural when we take into consideration the Oriental origin and environment of the Hebrew people. To those who are constantly criticizing the Talmud because of its supposed moral inferiority, because of the low position which they deem the rabbis to have assigned to woman, I would make the following reply.

Among other peoples at the same era in the history of the world we find the right to sell the wife, to give her away, to chastise her, and even to kill her, in full force and in actual practice. Almost universal was the degradation of the wife to complete tutelage. She was the mere slave, the household drudge of her husband^d. But we do not find this to be the case among the Hebrews. Neither Bible nor Talmud contain a trace of such rights as the above mentioned. Klugmann would even go so far as to ascribe to woman in the Talmudic period, the right of complete independence over herself and her property. Whether this be entirely warranted or not,

it is certain that the position of the Jewish woman was far higher than that of her non-Jewish sister. For at the early age of thirteen she acquired the right of choosing her own husband, and it seems, almost complete independence (v. Kethuboth, '39a).

Her position as wife and mistress of the home was generally high and honorable. She was not "as a prisoner of war" to her husband, as Mohammed says of the Moslem wife, nor was she kept in complete subordination and inferiority by her husband, as the laws of Manu ^(vide supra) prescribe. Nowhere in all Talmudic literature do we find such a sentence concerning woman as the Servian-Croatian proverb: "The husband is the head, the wife is the grass"; meaning the grass which the husband treads under foot. (Kraus, Sitte und Brauch der Südslaven; quoted by Klugmann.)

The harsh and unfavorable dicta of the Talmud concerning woman must be examined with an eye to context and attendant circumstances. Otherwise the whole trend and bearing of Talmudic thought will be missed and perverted. Thus the single sentence:

כל המלמד בתו תורה (כאילו) לומדה תפלות ;

"He who teaches his daughter the Torah, teaches her impiety (folly)", (Sota, 20a) "torn from its context, and falsely interpreted,"

has given rise to most absurd theories with regard to the views of Talmudic times on the matter of woman's education". We must remember that its author, Rabbi Eliezer ∇ ben Hyrcanos (100 circa), to whom the saying "Woman's place is at the distaff" is also credited, was the husband of the "clever, highly cultured, but irascible" Ima Shalom, whose shrewish temper often made life miserable for him.

It is clear from many passages of the Talmud that during youth, the social intercourse and social relations of the sexes among the Jews were little restrained (v. following chapter). After marriage the freedom of the wife was somewhat $\&$ restricted, but she never was subjected to the Oriental custom of seclusion in the harem, nor to the Greek usage of confinement to the Gynakonitis.

A striking sentence of the Talmud is the following: "The Bible considers woman equal to man with regard to all the laws in the Torah." (Kiddushin 35a; Baba Kama 15a.)

השוה הכתוב אשה לאיש
לכל דינים שבתורה :

But this refers only to the penal laws. To deem the sexes equal in psychical attributes and in social and religious function was

certainly contrary to Jewish thought.

"Never have I called my wife anything except my home^e". (Sabbath, 118b.)
 מימי לא קריתי לאישהי אשתי אלא ביתי :

This idea is fundamental in Talmudic law and custom. Woman, it is true, was debarred from taking part in public affairs. But this was not because ^hshe was deemed mentally or morally inferior to man. It was due to the fact that the Jew of antiquity cherished the thought that the sphere of woman is the home, not the court or the school or the social club. She is to be the helper of her husband (עזר כנגדו). Thus the Talmud speaks of her functions in the following manner: "A man brings ~~w~~ wheat home; can he eat raw wheat? He brings flax home; can he clothe himself with flax? But who is it, who brightens his eyes and helps him (to make use of these)? Is it not his wife?" (Gebamoth, 63a.) "Woman can earn more praise than man through the kind of charity she gives; he can only give to the poor the inedible coin, while she, being usually at home, can immediately still the poor man's pangs of hunger by giving him food." (Taanith, 23b.) The same thought is embodied in the following quotation: "In what lies the special merit of the wife? In sending the children to be taught in the synagogue, in attending to the domestic concerns, and in leaving her husband free

to study in the schools." (Berachoth, 17a.) The Talmud looks with disfavor upon the gadabout woman, saying of her:

Midrash Bereshith
Rabba 18'. דרכה של אשה להיות יושבת בתוך ביתה:

We see then, that happiness to the Talmudic Jew was rooted in and dependent upon the family and the home. These it was essentially the function of woman to maintain. The wife was thus the nourisher and sustainer of home-life and home-comfort. To her was entrusted the sacred task of rearing and instructing the children up to their sixth year.

How favorable to the Hebrews is a comparison with the status of woman among the Greeks and Romans. If we are to take the degree of honor accorded to woman as the barometer of civilization and culture, how highly cultured must the Jews of the Talmudic period have been! For many of their maxims are as tender, delicate, and refined, as the utterances of the most highly civilized nations of the present day. As indication of this, I instance the following:

כל אדם שמתה אשתו בימיו עולם חושך בערו:

"For him whose wife died during his life-time, the whole world is darkened." (Sanhedrin, 22a.)

איתתך גופא דחין ומלחוש לה:

"If thy wife be small, bend down to her and listen to her advice."

(Eaba Mezia, 59a.) (v. Rashi:

) אשתך קטנה כפוף עצמך ושמע דבריה

לְעוֹלָם יֵהָא אָדָם זָהִיר בְּאִנְיָתָהּ אִשְׁתּוֹ שְׂמִתוֹךְ דְּמַעְתָּה
מִצִּוִּיה אִנְיָתָה קְרוּבָה :

"Let a man be ever careful lest he afflict his wife; for God counts her tears." (Eaba Mezia 59a) (according to Mielginer.)

אִשָּׁה טוֹבָה מִתְּנָה טוֹבָה לְבַעֲלָהּ :

"A good wife is a good gift to her husband." (Jebamoth 63b.)

לְעוֹלָם יֵהָא אָדָם זָהִיר בְּכָבוֹד אִשְׁתּוֹ שְׂאִין בְּרַכָּה מִצִּוִּיה בֵּיתוֹ
בֵּיתוֹ שֶׁל אָדָם אֵלָּא בְּשִׁבְלֵי אִשְׁתּוֹ :

"A man should be ever careful to honor his wife; for no blessing comes to his house, except on her account." (Eaba Mezia 59a.)

הָאוֹהֵב אֶת אִשְׁתּוֹ כְּגֻפוֹ וְהַמְכַבֵּדָהּ יוֹתֵר מִגֻּפוֹ
עָלִין הַכְּתוּב אוֹמֵר וְיָדַעַת כִּי שְׁלוֹם אֹהֶלְךָ :

"He who loves his wife as himself, and honors her more than himself; concerning him Scripture says: 'And thou shalt know that peace is in thy tent!'" (Jebamoth 62b.)

נָתַן הֵךְ"בָּה בִּנְיָה יִתְרִיה בְּאִשָּׁה מִבְּאִישׁ : (Nidda 45b.)

"God has given greater understanding to woman than to man".

נָשִׁים רַחֲמָנִיּוֹת הֵן : "Women are more merciful (charitable)."

(Megilla 14b.)

From these citations it would seem that I intended to omit any mention of the unfavorable dicta of the Talmudic doctors concerning woman; or perhaps that the latter were so one-sided as to entirely overlook and take no notice of the blemishes in the character and disposition of woman. In disproof of these suppositions I instance the following passages, which show that the

eyes of the Rabbis were not blinded to the faults of woman, however highly they prized her for her virtues.

עשרה קבין שיחה ירדו לעולם תשעה נשלו נשים:

"Ten measures of light talk descended into the world; nine of them the women received." (Kiddushin 49b.)

נשים רעותן קלה עליהם: "Women are frivolous-minded." (Sabbath 33b.)

"The more women, the more superstition (or witch-craft)." (Aboth ii 7.) (Ascribed to Hillel.)

חייב אדם לבירך בכל יום שלא עשני אשה:

"A man is in duty bound to thank God every day that he was not created a woman." (Menachoth 43b.)

As a fitting climax to these passages, I cite here the misogynistic sentence ascribed to José ben Jochanan (150¹ circa):

אל תרבה שיחה עם האשה באשתו אמרו קל וחומר באשת חבירו
מכאן אמרו חכמים כל המרבה שיחה עם האשה גורם רעה לעצמו
ובוטל מדברי תורה וסופו יורש איהנם:

"Do not discourse much with woman. They said this concerning one's

own wife; how much the less, therefore, with the wife of one's neighbor. From this the sages derived their saying: 'Whoever converses much with woman, brings evil upon himself, neglects the study of the Torah, and in the end will inherit hell.' (Aboth 1 5.)

These quotations show indisputably that the authorities of the Talmud were well aware of the flaws and weaknesses in the character and nature of woman, that they recognized the possibilities of evil in her influence, and that they did not ignore the disadvantages, physical and social, under which she labored because of her weaker constitution and traditional inferiority. The praise which they bestow upon her is therefore all the more valuable, because they are, or at any rate intend to be just.

As a final proof of my thesis that the position of woman among the Hebrew people was comparatively high and enlightened, during the Talmudic period, may be cited the thought of the Jews, as recorded in their early literature, concerning the old woman. A comparison with the status of the old woman among other peoples is here ^s instructive.

I find that among many races and tribes of the Orient and Occident it was considered a bad omen to even meet an old woman, when setting out, for instance, upon some expedition or enterprise. The old woman was considered in the main a mere burden, an en-

cumbrance upon society: for her utility was gone. (Cf. The proverb: "Obiit anus -- abiit onus.") It is recorded of many peoples of antiquity that they freed themselves from these useless burdens by simply making way with the old and infirm, and especially with the old woman.

Among the Jews, however, we find the old, whether man or woman, held in high honor. Many are the sentences inscribed in the Bible concerning the respect and reverence due to the aged, irrespective of sex. (V. Lev. xix 32; Pro. xvi 31; Pro. iii 16; etc.) The Talmud does not fall below the sentiment of the Bible with regard to the old woman (Greisin). This is evident from the now proverbial maxim recorded in Arachin, Folio 19a:

סבתא בביתא סימא בביתא :

"An old woman in the house is a treasure in the house."

CHAPTER II.THE DAUGHTER.

TENDER SENTIMENT TOWARD CHILDREN IN THE TALMUD --
BIRTH OF THE FEMALE CHILD -- EXPOSURE OF CHILDREN --
PROVISION FOR CHILDREN -- SALE OF DAUGHTER --
EDUCATION OF DAUGHTER -- HOUSEWORK -- MUSIC
AND DANCING -- HIGHER EDUCATION -- MARRIAGEABLE
DAUGHTER -- AGE OF MATURITY -- WEDDING OUT-FIT --
DOWRY.

Many a beautiful saying and custom recorded in the Talmud manifest the tender feeling for children which seems to have been a permanent characteristic of the Jew. Thus many of the Biblical verses that refer to flowers and gardens were applied by the Talmudic sages to the children and their schools. ^(Sanhedrin 96 b.) The children were deemed the greatest blessing which God had bestowed on man, and the Rabbis regarded the childless man as dead. ^(v. e.g., Sabbath 119, b.; Bala batra 8 b.)

This feeling of love for the children was manifested with regard to the female child as well as to the male. We search in vain for such a saying as the following taken from the Koran (Sura xvi 60): "When the birth of a daughter is announced, sorrow colors the face (of the father) black."

Such was the sentiment of many European and Asiatic peoples with regard to the birth of the female child. ^(v. Hering: Evolution of the Family, p. 35.) This was very natural, if we take into consideration the general sentiment towards woman and the position allotted to her in the family and household among most of the peoples of antiquity (see Chapter i). Thus the Chinese authoress Pan-hoc1-pan writes concerning the birth of a daughter as follows: "When, centuries ago, a girl was born, no one took care of her for three days; she was laid on a few rags, next to the bed of the mother, and the

household routine went on as if nothing had happened. The silence with which the birth of a girl was passed over; in comparison with the loud joy at the birth of a boy, proved her inferiority. Her lair of rags on the floor indicated that hers was the lowest place in her father's household, and that she could expect nothing in life but disdain." (Quoted by Remy, ^{1.19.})

This state of affairs was far from uncommon. If among some nations there was perhaps a little joy expressed at the birth of a daughter, it was far less than the exultation over a newborn son.

Somewhat similar was the case also among the Hebrews in the Talmudic period. According to the sayings of some of the Rabbis, the birth of a girl was far less desirable than that of a ~~girl~~ boy (f.i., Kiddushin 82a). Thus the Biblical verse, "And God blessed Abraham in all " (Gen. 24') is explained by R. Meir (150 circa) שלא היה לו בת "because he had no daughter" (Baba Bathra 141a). Further, some material discrimination is made against the daughter from her very birth*, as is shown by the following quotation:

ילדה זכר ונקבה הזכר נוטל ששה דנרין והנקבה נוטלת שני דנרין: (Baba Bathra 141a.)

On the other hand, we find that R. Chisda (300 C.E., circa)

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was of the opinion that it was more desirable for the first-born to be a girl than a boy; for if a daughter was the first to see the light of day, it was a good omen that future offspring would be males. (Eaba Bathra 121a.) For this reason the first-born, if a girl, was welcomed with especial joy.

בת החילה סימן יפה לבנים:

Among most of the races of the world the form of the family at the dawn of history was that known as the patriarchal. Its principle was the absolute authority of "the oldest male ascendant". The father and husband, as the head of the family, was possessed of almost unlimited power over the life, limb, and property of all those dependent upon him, over wives, children, and slaves. His rule within the family was supreme. This paternal despotism among many peoples carried with it the exposing and killing of superfluous, weak, sickly, and deformed children, and especially of female children, as they were considered useless burdens upon the father. This was customary among both Asiatics and Europeans, and among the latter we find the Greeks and Romans. ^wNo, in spite of their vaunted civilization and culture, were not at it advanced beyond contemporaneous savagism in this respect. There is a special Arabic word for the killing of new-born female infants, which shows how frequent this practice was among the Arabs. And according to some

authorities, the custom is still in vogue to-day in the wilds of Australia and ⁱⁿ Polynesia, and perhaps also in China to some extent. (v. c. g. Thering: *Evolution of the Organ*, pp. 35, 333.)

This practice was an abomination in the eyes of the Hebrews. The daughter was cherished and cared for in parity with the son. She was accorded the same treatment. Never could she, according to Hebrew law and morality, be killed or exposed. The law bound the father to rear the children alike, and it made no distinction between male and female in this regard. According to the law, the father was compelled to provide for both male and female children up to the sixth or seventh year. If he refused to do so, the court (בית דין) provided for them out of the father's property (Kethuboth 85b). When the children had attained their seventh year, the duty to support them could no longer be legally enforced, but it was nevertheless considered a moral duty to do so. The court could not interfere then, except to admonish. If these warnings of the court proved fruitless, the children were provided for, as above, out of the property of the father, but this was done under the name of charity (Kethuboth 49b). The children of one who was on a journey, or who had become insane, were provided for out of the property of the father (Kethuboth 45 a). It is noteworthy that all these Halachic measures draw absolutely no distinctions between sons and

daughters. An ethical maxim, contained in Jebamoth 49 b, records this same fact.

המרריך בנו ובנותיו בדרך ישרה
והמשיאן סמוך לפירקן עליו הכתוב אומר וירצת כי שלום אהלך:

"He who leads his sons and his daughters in the right way, and marries them at the proper time^{of maturity}; concerning him Scripture says: 'And thou shalt know that peace is in thy tent.'"

Upon the death of the father, the sons received the right of inheritance, and the daughters were provided for up to the time of their marriage out of the estate of the deceased. If there was only sufficient to provide a subsistence for the daughters, the sons received no inheritance. מי שמת והניח

בנים ובנות בזמן שהנכסים מרובין והבנים יורשין והבנות נזונות ובעלים בנים ובנות בזמן שהנכסים מועטים הבנות יזונו והבנים יחזרו על הפתחים: (Mishna Kethuboth xiii 3.)

Among such peoples as sanctioned the exposure of infants, it naturally followed that the sale of children into slavery was not prohibited. This was another concomitant of the paternal despotism which is found to have existed among most races at the time from which dates our first authentic information as to ^{the} life, ^{manners}, and customs. Among the Romans it is recorded that the father could sell not only his minor children, but also his adult ones. The Greeks and Germans also accorded this right to the father. And when a child was sold into slavery, it did not gain its freedom on arriving at the age of pu-

berty or of maturity, but remained a life-long slave. Among some of the peoples of Africa and Asia, the daughter is still looked upon as merely a means of increasing the wealth of the father. She is sold by him into marriage or slavery.

Now according to the Biblical and Talmudical law, the Hebrew father, though certainly never permitted to kill or expose his children, was nevertheless allowed to sell them ^{female ones} into slavery (v. Ex. 21^{7acq.}). But this right was restricted and minimized in the Talmud. Thus the father, if in great distress and poverty, could sell his daughter, but only before she had reached the age of puberty (Arachin 29 b), that is, before her twelfth year (Kethuboth 39 a). And further, he must already have sold his house, land, chattels, and all his other property (Kiddushin 20 a). The sale was only made on the condition that her master or his son should marry her on her attaining maturity. If this condition was not complied with, she was set free and received a compensation for the work she had performed in her master's house. Further, her father could no longer exercise the right of sale over her. (Kiddushin 4a, 17 b, 18 a.)

As said above, these and similar laws originated in the constitution of the patriarchal family. The fundamental principle was the undisputed and absolute right of the father or "oldest male ascendant" over his wife, children, and slaves. The early traditions of the Hebrews contain many illustrations

of this unconditional paternal authority. Thus Jephtah, a judge of Israel, makes a vow to sacrifice, as it proves, his only daughter, and she willingly submits to her father's command. (Judges xi 30, 40.) As we have seen, this absolutism was continually modified and restricted in the course of the history of the Hebrew people, and of course always in favor of the weaker members of society, i. e., the wife, (or wives), children, and slaves. Thus the paternal authority came to be diminished more and more, until we find in the Talmud that the father could only sell his daughter after he had exhausted all other means at his command. (Kidouschin 20 a; based upon this, Maimonides, Hilchoth Abadim iv 2: **עַן הָאִשָּׁה רִשְׁאִי לְמִכּוֹר אֶת בִּתּוֹ אִפְּסָה**

הָעֵץ וְלֹא נִשְׁאַר לוֹ כְּלוּם לֹא קִרְקַע וְלֹא מִטְלָטְלִים וְלֹא כֶסֶת שְׁעָלָיו:

We come now to the matter of the education of the daughter in the Talmud. As the sphere of woman was deemed to be essentially and primarily in the home, (according to the saying:

מִימֵי לֹא קִרְאָתִי לְאִשְׁתִּי אֲשֶׁתִּי אֵלָּא בֵּיתִי: Sabbath 118 b), the

training of the female child was mainly concerned with such work as was necessary to make her a good house-wife, to fit her for her important duties and responsibilities as wife and mother. Thus the Hebrew girl was taught to cook, bake, wash

(Kethuboth 59b.)

clothing and utensils, to grind corn into flour, etc. Great weight was laid on her ability to spin and to weave. In the latter it seems that Jewish women have always been most proficient. (vide Ex. xxxv 25, 26; Pro. xxxi 10 seq.) According to Kethuboth 106 a, the work of the women in these branches of industry formed no inconsiderable factor in foreign commerce. Kayserling, moreover, tells us that the silk ^{woven by} ~~weaving of~~ the Jewish women of Morrocco and Algeria is still considered one of the most valuable of commodities.

It is characteristic of the general training of the Jewish daughter, that she received as a plaything a kind of miniature stove, called 'Girls' ^{oven} ~~stove~~, instead of the common and useless toys of childhood. (Nidda 26b.)

Besides being trained in the household work and home duties, the Jewish girl also received instruction in singing, instrumental music, and dancing. This was evidently customary from the earliest times. Thus "Miriam, the prophetess, the sister of Aaron, took a timbrel in her hand, and all the women went out after her with timbrels and with dances." (Ex. xv 20); see also Judges v 2 seq, and Samuel xviii 6.) Thus further, Jeremiah in one of his grand prophecies of hope and restoration says

in the name of God: "Thou shalt be built up, O virgin of Israel! Again shalt thou be adorned ^{with} ~~with~~ thy tabrets, and shalt go forth in the dances of them that are merry." (Jer. xxxi 4.)

There were even in very early times choruses or choirs of women (שרית), and Barzillai (ii Sam. xix 35) is heard to complain that their songs no longer please him, because of his

burden of years. As several passages in the Bible and Talmud attest, it seems to have been the custom to invite rhapsodizing or verse-making women to funerals and other social gatherings, in order to have them compose and sing elegiac songs.

(Vide e.g., Ketuboth 17 a; Mishna Moed Katon iii 9.) At religious and political festivals, it was customary to have the singers march first in the procession, the minstrels or instrument-players following them, and all surrounded by "damsels playing with timbrels". (Psalm lxxviii 25.)

According to a Talmudic law, it was forbidden for men and women to sing together in one choir. This Halacha is undoubtedly based upon the wish to minimize lewdness, and to afford no opportunity for it. (It is evident that the Talmudic sages did not favor co-education. Many other passages point to this .) One authority, R. Samuel, goes so far as to affirm that even the

voice of a married woman leads to lewdness and to incest; he bases his startling opinion (according to the Talmudic custom of founding every thought on a Scripture passage), on Canticles, ii 4: "Let me see thy countenance, let me hear thy voice; for sweet is thy voice, and thy countenance is comely." (Vide Berachoth 24 a, and Rashi to the same.)

The Talmud is replete with the most contradictory, the most diametrically opposed views and dicta. The rabbins discussed all questions from every side, seeking to find truth and reason on both sides of the questions discussed. Like the Bible, the Talmud bears out in no slight degree the familiar sentence, that many men are of many minds. Concerning no subject is there so much difference of opinion as with regard to the education of woman. I find ^{significant} utterances on both sides of the question. Some of the Talmudic doctors are wholly opposed to any instruction of woman in the higher studies and duties incumbent upon man (such as those of worship). On the other hand, there are opinions recorded which go to the opposite extreme in this matter. The question then is to seek to establish which view was the one more authoritative.

Ben Azai, who was one of the foremost teachers of the Mish-

na, is known to have remained unmarried all his life. (Jebamoth 63 b). He may therefore be considered as looking upon this question from an unbiased point of view. Most significant, in view of this fact, is his maxim that it is the duty of the father to instruct his daughter in the Toran. (Sota 20 a: ^{הייב אדם ללמד} את בתו תורה)

In striking contrast to Ben Azai's opinion we find the harsh saying of R. Eliezer ben Hyrcanus, to the effect that he who instructs his daughter in the Toran, teaches her folly or impiety. (Sota 20 a: ^{כל המלמד בתו תורה כאילו לומרה תפלות}) This same authority is further reported to have said, in answer to a woman who desired to discuss a question of the law with him: ^{אין חכמה לאשה אלא בבליך:} , which may be paraphrased as: "Woman's place is at the spinning-wheel, and nowhere else." (Sota 20 a .)

It seems to me that these ^H dicta of R. Eliezer are almost without authority. Further, we should not determine such a wide and important question as the status of woman's education in Talmudic times from the opinions of a single teacher. It is, moreover, well-known, that there were special causes and circumstances which account for R. Eliezer's severe, one-sided, and misogynistic opinions. (Vide also Chapter i.) The fact must

be taken into account that his life was certainly not rendered happy and placid by his own wife, who was, it will be remembered, the perhaps cultured, but rather shrewish Ima Shalom. It is recorded in Sannhedrin 68 a that he remarked that she appeared to him to be out of her mind. Opinions upon this subject coming from such a source, may certainly be looked upon as biased and without authority. It would therefore be unjust to the Hebrews of the Talmudic period to take R. Eliezer's sentences as indicative of their thought and customs, as some writers have done.

Notwithstanding all that has been written and said to the contrary, the standpoint of the Talmud in general is that Knowledge, education, and culture are an especial ornament to woman. The examples of the highly cultured wives of the rabbins instanced in the first chapter of this essay, may serve to show in what high honor learning was held, especially when exhibited by woman. Had R. Eliezer's opinion that to teach one's daughter Torah is equivalent to initiating her in the paths of folly, been universally prevalent, could we have had such pictures as are presented to us by such interesting figures as Beruria, the noble wife of R. Meir; Choma, the spirited daughter of R. Chisda; Yalta, the witty wife of R. Nachman; and other no less

notable women of the Talmud?

It may be urged that ~~that~~ these women present merely isolated instances, and that they are therefore to be taken as the exceptions which go to prove the rule; the rule being little, if any, learning or education among the women. This phenomenon finds its direct and easily traceable origin in the primal standpoint, not only of the Talmudic Jew, but of the Jew throughout his history, as evidenced by his literature. The sphere of woman, her responsibility, centres in the home; this is its central thought, and it is certainly due to this that woman was educated in her household work and duties, rather than in such studies as would be of no practical use or benefit to her. There is no doubt, however, but that woman was always permitted to busy herself in the Torah, and to study the traditions of the Hebrew people. (V. Kiddushin 29 b; 34 a; Sanhedrin 94 b.) In the Talmud Jerusalmi, Ketuboth v 2, is found the remarkable sentence: "A man may marry a woman on the condition that she teach him the Law (Torah)": from which it seems clear that the women were not so ignorant nor their education so neglected as R. Eliezer's sayings would at first sight warrant us in believing.

Woman was therefore not prohibited from pursuing her studies in the 'Law'. Such study was merely made optional for her, while it was obligatory for man. And this decision may be ascribed to the fact that the Talmudic doctors recognized the undoubted inferiority of woman in physical strength and endurance. The dangers and troubles of him who devotes himself to a life of study are spoken of as follows: כד היא דרכה של תורה בת ביולה /
 האכל ומים במשורה השתה ועל הארץ הישן וחיי צער תחיה ובתורה אתה עמל: ✓

"Thus is the manner of the Toran (i.e., study); thou shalt eat thy bread with salt; thou shalt drink water by measure (i.e., sparingly); thou shalt sleep upon the ground; thou shalt lead a life of trouble; and thou shalt labor in the study of the law." (Aboth vi 4; cf also Sanhedrin 100 b; Berachoth 63 b.) 3

To a similar reason may we ascribe the freedom of woman from many of the religious, i.e., ceremonial duties (מצוות). She was released from the performance of such positive commandments (commandments of commission) "as were dependent upon the time" (Kiddushin 34 a). It is to be noted that the word here used is פטורה, which means "free from performing", "not obligated to perform". The privilege was thus left to woman to choose for herself whether, or not, to perform the ritual duties.

She was certainly at liberty to comply with the ceremonial law, if she so desired. Thus Erubin 96 a informs us that Michal, the daughter of Saul, 'laid Tephillin', and that the wife of the prophet Jonah used to go to Jerusalem at the time of the Festivals; Sukka 2 b tells us that Queen Helena lived in a booth, i. e., observed the Feast ritually, during Sukkoth.

Having made a slight digression from the original subject with which this chapter was to deal, I now return to my theme, with a consideration of the status of the marriageable daughter.

And first, what was the usual age of betrothal and marriage. Now, it is well known that the climatic conditions, as well as other natural causes, brought both male and female children to the state of puberty and to full maturity very early in life. The age at which a young man customarily entered upon married life was, according to the ethical teachings of the Talmud, eighteen years (Aboth v 13). This custom was restricted somewhat by the authoritative maxim^{would-be} that the bridegroom should first have acquired some learning (Kiddushin 29 b), and also some means whereby to secure a subsistence, ere he took a wife.

(Sota 44 a.) לימדה מורה דרך אין שניה אדם ביה ויטע כרם ואחר כך ישא אשה)

The marriage of the maiden usually took place at an earlier age

than that of the youth. For it was recognized to be even more desirable for her than for him to be married early in life.

(Jebamoth 113 a.) יותר משהאדם רוצה לישא אשה רוצה להנשא:

Further, the maiden reached full mental and sexual development at an earlier age than did the youth. Thus with regard to vows, those of a girl who was still a minor were deemed binding at an earlier age than those of a boy, because "God hath given to woman a better understanding than to man". (Nidda 45 b.)

(נתן הקב"ה בינה יתירה באשה יותר מבחיש:)

The daughter was usually married soon after her arrival at puberty. (Pesachin 118 a.) The age of puberty was taken to be the completed twelfth year. (Pesachin 44 a.) A marriage contracted by one under this age was void and invalid. (Kiddushin 50 a.) A father could, however, give his daughter in marriage before her arrival at puberty, (although she could refuse or confirm the marriage at will, upon her coming of age.) (Kiddushin 41 a.) This legally sanctioned custom is explained by Dr. Meisner (The Jewish Law of Marriage and Divorce⁷²) as follows:

"In order to understand the impulse toward the custom of contracting marriage in behalf of a minor daughter, which prevailed in Oriental antiquity, it must be borne in mind in what a pitiable

state of forlornness an unmarried female was, in case of her father's death or poverty. Careful fathers therefore tried to insure their minor daughters against such consequences by contracting marriage in their behalf, while under their authority. Such contracted infant marriages were, as a rule, not actually consummated before the parties had reached the age of puberty."

Abba Areka (generally called Rab in the Talmud; 175 - 247 circa), one of the most authoritative of the Talmudic teachers, emphatically discountenanced and condemned this practice of infant marriage. He is reported to have said: אסור לאדם

שיקדש את בתו כשהיא קטנה עד שתהיה יתאמר בפלוגי אני רופה: (Kiddushin 41 a.)

From the Hagadic account it seems evident that great freedom was given to the maiden, in the choice of a husband. On the fifteenth day of Ab and on Yom Kippur the youths and maidens used to go out to the vine-yards to dance and sport and make merry. (Mishna Taanith iv. ¹³.) (How different from our notions regarding the proper observance of the Day of Atonement!) The girls would appear in white robes, which all of them had to borrow from one another, in order that none might be put to shame because of her poverty. (Ibidem.) Even the daughters of the king and high-priest had to borrow their white festal gar-

ments. (Taanith 31 a.)

What were the qualities and traits which the young men prized most highly in those whom they sought out as their brides?

יפיפיות שבהן מה היו אמרות הנו צינכם ליופי שאין האשה אלא ליופי

מיוחסות שבהן מה היו אמרות הנו צינכם למשפחה לבי שאין אשה אלא לבנים

(Taanith 31a.) מכוערות שבהן מה היו אמרות קחו מקחכם לשום שמים:

From this quotation and from other passages in the Talmud (e.g.,
Jebamoth 68 b), we readily perceive that the bride was to be
chosen because of her beauty, nobility of birth, piety, virtue,
character, etc. Of course the fundamental impulse to marriage
was affection. Concerning marriage for ulterior considerations,
such as money or social position, The Talmud contains the fol-
lowing dicta: כל הנושא אשה לשום ממון הויין לו בנים שאין מהוגנים: (10)

(Kiddushin 70 a.) ושם תאמר ממון בלע חרש נכנס וחדש יוצא וממנום אבד:

(Ibid.; also Derech Erez i.) כל הנושא אשה שאינה הוגנת לו אליהו

כופתו והקב"ה רוצצו:

(Derech Erez Suta x.) הנושא אשה לשום גדולה לסוף שמורידים אותו מגדולתו:

(Kiddushin 70 b.) כל הנושא אשה שאינה הוגנת לו כשהקב"ה משרה שכינתו

מציר על כל השבטים ואין מציר עליו:

From these passages it is evident that marriage was not
to be a matter of material or mercenary consideration or of

convenience; it was to be founded on the affection of the contracting parties.

The Talmud deems learning to be the most desirable quality of the husband, and therefore speaks of marriage with an illiterate man as follows: כל המשיא בתו לעם הארץ כאילו כרפתה ומניחה לפני ארי:

"To give one's daughter in marriage to an ignoramus, is like binding her and laying her before a lion." (Pesachim 49 a.)

The bride and groom were to be of fitting age for marriage and for each other. There were to be no unions of "blooming Spring with serene ^AAutumn" so frequent in modern society.

אם היה הוא ילד והיא זקנה הוא זקן והיא ילדה אמרים לו מה לך אצל ילדה
מה לך אצל זקנה כלך אצל שכמותך וגל תבנים קטטה לתוך ביתך:

"If he was young and she old, or if he was old and she young, they would say to him: 'What have you in common with this child, or with this old woman? Take as thy wife one who is more suitable for thee, and do not bring strife into thy house.'" (Jebamoth 101 b.) Finally, special attention was given to the health of the contracting parties. (V. Ketnuboth 72 a; Jebamoth 112b.)

The wedding ceremony usually took place twelve months after the betrothal, in order to give the bride ample time to make all the necessary preparations. (Ketnuboth 57 a.) If the bride was a

widow, the time between the betrothal and the wedding was shortened to one month. (Ibid.) The wedding-outfit of the bride had to be worth at least fifty Zus. (Ketuboth 67 a.) This minimum was given to an orphan girl out of the public charity-box. (Ibid.) If there was more money at hand, she received an outfit commensurate with the larger amount. (Ibid.) Noteworthy is the following fact. If an orphan-boy and an orphan-girl both needed a wedding-outfit at the same time, and there was not enough money in the charity-box to pay for both, ^tthe girl received the preference. (Ibid.) This custom or law is another link in the chain of proof which I bring forward with regard to my thesis, namely that woman among the Hebrews met with a consideration and tenderness which is only paralleled in modern times.

The wife brought the husband a certain amount of property, which constituted the dowry. If he was willing to marry his betrothed without a dowry, he had to provide a wedding-outfit for her while she was still in her parental home. (Ketuboth 67 a.) Attention is called to the fact that the husband was only the usufructuary of the dowry, and as will be shown in Chapter iv, this had to be returned to the wife upon divorce or the death of the husband.

CHAPTER III.

THE WIFE.

A MARRIAGE.

WEDDING CEREMONY. --- FESTIVITIES AT MARRIAGE ---

THE KETHUBA OR MARRIAGE-DOCUMENT. --- NATURE OF MARRIAGE

AND THE MARRIAGE CONTRACT. --- THE TALMUDIC TREATISES

ON MARRIAGE. --- PROHIBITED MARRIAGES. --- THE DUTIES

AND RIGHTS OF THE HUSBAND. --- THE DUTIES AND RIGHTS

OF THE WIFE. --- HONOR DUE TO THE WIFE. --- CONJUGAL

FIDELITY. --- MONOGAMY AND POLYGAMY. ---

ETHICAL MAXIMS CONCERNING THE WIFE AND MARRIAGE. ---

אשה טובה AND אשה רעה.

The celebration of a wedding was always a joyous family event among the Hebrew people, and the Talmud contains many a passage telling of the feasting and merrymaking which marked such an occasion. Wednesday was usually selected as the day for the wedding, in order that there should be ample time for the preparation of the banquet. (Kethuboth 2 a.) The bride, dressed in beautiful garments and with bridal veil covering her face, (Kethuboth 15 b), and accompanied by music and dancing (Kethuboth 16 b; Gittin 57 a), was led to the home of the bridegroom. The duty of conducting the bride was deemed an important and desirable one. Public opinion compelled compliance with the request to perform this מצוה, "for thus did God, when he led Eve to Adam". (Erubin 18 b.) Everywhere along the path of the procession the bride was greeted with expressions of honor and congratulation. (Kethuboth 17 a.) ^{The bridal procession} ~~R~~ was given precedence by all. The Talmud relates that even King Agrippa showed it this honor. (Ibid.)

When the bride arrived at the home of her future husband, the actual marriage ceremony took place. This consisted of three steps.

a) The bridegroom handed the bride a coin (At least a Peruta, ^{or Dinar}) or a ring, uttering at the same time the formula: הרי את מקודשת לי (Kiddushin 5 b; 2 a.) To these words was afterwards added the clause: כרת משה וישראל (Tosefoth to Kethuboth 3 a.) [The law concerning marriage was as follows, האשה נקנית בשלשה דרכים בכסף ובטהר ובכח]

(Mishna Kiddushin 1 1.) The third method of concluding marriage, namely cohabitation, was forbidden and declared immoral and punishable by Rab, in the third century C.E.] *(Note: this ceremony took place 12 months before the actual wedding)*
 The bridegroom also gave his bride the marriage-document (כתובה), which constituted an essential and integral element in every valid marriage ceremony. I shall describe the Kethuba below.

b) The marriage benediction (ברכת נישואין, Kethuboth 8 a) was next recited in the presence of a מוהל (v. infra), and then the blessing was pronounced upon the bridal couple (ברכת חתנים, also called שבע ברכות, Kethuboth 8 a).

c) Finally the bride was led by the groom to the bridal-chamber (חופה). This completed the marriage ceremony.

The Kethuba was a document dating from ancient times, written in Aramaic, enumerating the obligations of the husband towards the wife. By it she was entitled to receive a certain amount of money from his estate in case of divorce or of his death. The minimum of this sum was fixed at two hundred zuz (זוז, a silver coin of uncertain value) for a virgin, and one hundred for a widow or divorced woman. This amount could be increased, however, at the option of the husband. As security for the amount fixed as the wife's portion by the Kethuba, all the property of the husband, both personal and real, was mortgaged.

The Kethuba was certainly a most important and momentous document as long as the ancient law was in force, by which a husband could divorce his wife even against her will. Its provisions often proved an effective means of protecting her against hasty and impulsive action on the part of an irritable spouse. Very significant is the enumeration of the obligations of the husband towards the wife, with which the Kethuba begins. "Be thou my wife in accordance with the laws of Moses and Israel, and I will work for thee, and I will hold thee in honor, and will support thee, and provide for thee, in accordance with the custom of Jewish husbands, who work for, honor, and support their wives, and provide for them in truth." (Meilziner, Jewish Law of Marriage and Divorce; ^{p. 87.} v. also Kethuboth 46 b, 52 b, 63 a.)

Among many nations and peoples of antiquity, the wedding ceremony was not considered complete unless some symbolical act had been performed, by which the wife showed her complete submission to the husband's authority. It is to be noted that among the Hebrews such a symbolical act was at no time customary; in neither Bible nor Talmud is it ever even mentioned.

After the prayers and benedictions had been pronounced, the newly married couple received the felicitations of the relatives

and other guests (Kethuboth 8 a), and then all partook of the wedding banquet, which was very elaborate among the wealthy. At this feast at least ten guests, constituting a *מנין*, had to be present. (Kethuboth 7 b.) It was the duty of the guests to cheer and "rejoice the hearts of" the bride ⁿ and groom with jests and witticisms/(Berachoth 6 b.), and to add to the happiness and festiveness of the occasion by dancing and sport. (Kethuboth 17 a.) The Talmud reports that the learned and pious rabbis frequently used to take an active part ⁱⁿ the wedding festivities. Thus Rabbi Jehuda bar Ilai (D 160 C.E., circa) used to dance before the bride with a myrtle-branch in each hand; another rabbi juggled with three myrtle-branches; ^{disciples of} Hillel ^{are} said to have sometimes flattered the bride, deeming this justifiable on such an occasion; R. Acha (200 C.E., circa) used to take the bride upon his arms and dance about with her. (Kethuboth 17 a.)

The wedding festivities customarily lasted seven days when the bride was a virgin(i.e., when this was her first marriage), and three days when she had been married before (i.e., if she was a widow or divorced woman). (Kethuboth 7 a.) The festivities were sometimes held at the home of the bride's parents, but usually in the house of the bridegroom. (Baba batra 91 a.) Thither it was that the relatives and friends of the bridal couple

brought their various gifts. (Eaba batra 144 b.)

A very curious and interesting custom is recorded in Eero-choth 8 a (v. also «Jebamoth 63 b).

במערוה כי נסיב אינש אהתא אמרי ליה הכי מוצא או מוצא מוצא דכתיב
מוצא אשה מוצא טוב ויבך רצון מיהוה מוצא דכתיב ומוצא אני מר ממות את האשה ואנ:

" In the west (i.e., in Palestine), when a man took a wife, they used to question him (presumably after a few days or weeks of conjugal life): 'Is it מוצא or מוצא with you?' מוצא, as it is written (Prov. xviii 22), 'Whoso findeth a wife, findeth a good thing, and obtaineth favor from the Lord'; מוצא, as it is written (Eccl. vii ⁶ 26), 'And I find a thing more bitter than death, even the woman whose heart is a snare, etc.'"

Hebrew custom and law conferred especial privileges and exemptions upon the newly married husband during the entire first year of his marriage. Thus according to both the Bible (Deut. xxiv 5/), and the Talmud (Sota 43 a), "the young husband shall not go to war, nor be charged with any (public) business; he shall be free at home one year, and shall cheer the wife whom he has taken."

It is noteworthy that neither priest nor Levite are ever mentioned in the Talmud as having taken part in the wedding ceremony in their official capacities. The father of the bride

usually pronounced the benedictions of the marriage. Otherwise ^{in the presence of two witnesses} the entire ceremony was conducted by the bridegroom and bride.

The rabbi, i.e. the learned man, was never called in except to adjust some difficulty or to decide some point of the marriage law.

Regarding the ethical significance of marriage, I can do no better than to quote the words of my teacher, Dr. Mielziner. In his work, 'The Jewish Law of Marriage and Divorce', ^{A.B.} he says: "Marriage is the most important and sacred of all domestic relations. It is the origin of all other relations of life, and forms the foundation of human society. Besides, it is a relation in which man's happiness for life is materially involved, and which serves to protect and promote moral purity."

From Genesis i 28 and ii 18 - 24 were derived the following lofty principles which were fundamental to marriage among the Hebrews.

- 1) "Marriage is a divine institution for man's happiness and welfare.
- 2) "Woman is a part of man's own being; hence not, as according to the degrading views of almost all nations, his inferior and slave, but equal to him in dignity, and destined to be a help at his side (17720 724).

3) "Through mutual sincere affection, which is more intense than ^{that} which naturally exists between children and their parents, husband and wife shall become one flesh; i.e., they shall coalesce in one being, one person.

4) "Marriage was ordained and blessed by God, not only for ~~the~~ the purpose of securing the material and moral welfare of the individual, but also to preserve and continue the human race."

(I am indebted for much of the substance of the following to Dr. Mielziner's treatise on "The Jewish Law of Marriage and Divorce in Ancient and Modern Times", and to Dr. Z. Frankel's "Grundlinien des Mosaisch-Talmudischen Eherechts".)

The Talmudic view as to the nature of marriage is very elevated and at the same time most rational. Marriage was of course regarded as a contract, requiring the consent of both parties, and the performance of certain formalities for its valid consummation, just as was the case with other contracts.

"But, inasmuch as the marriage concerns a relation which is based on morality and implies the most sacred duties, it is more than a civil contract. In such a contract, the mutual duties and rights emanate from the optional agreement of the contracting parties, while those who enter upon the state of married life must submit to the reciprocal duties which have been imposed

by religion and morality." (Mielziner, p. 26.) Thus breaking the marriage-covenant by adultery was considered not merely unfaithfulness to the other party in the marriage, but an infraction of a divine law, a crime committed not only against one individual, but against society at large. It attacked the very foundations of marriage, and made the continuation of the relation impossible between the adulterer or adulter^{ess} and the injured party. Thus, e.g., the husband was compelled by court to divorce his adulterous wife. (*Gittin* 45 b.)

The terms by which the Talmudic law denotes the marriage-contract further indicates its higher nature. It was known as קדושין from קדש (Piel), which means to consecrate, to set apart as holy and inviolable. The rabbis defined the term as follows: "The act of contracting marriage is termed קדושין, since by this act the wife is set apart for her husband, and rendered inviolable and inapproachable in respect to any other man." (Mielziner to *Kiddushin* 2 b.) The act of contracting marriage is further designated in the Talmud as אירוסין, from the Biblical root ארס, which means to betroth, to espouse, to bind in marriage. (*Jebamoth* 43 a; *Mishna Kethuboth* i 2.) A further designation is נישואין, from נשא, to take, to lift up, to carry off. (*Jebamoth* 23 a, 64 b; *Mishna Kethuboth* iv 1.) The Talmudic law terms the state of matrimony or the legal relation of marriage as אשת, from אש,

man, husband. (Jebamoth 76 a; Aboda Zara 36 b.)

There are five treatises in the Talmud devoted almost exclusively to the laws and customs of marriage and divorce, and to kindred questions arising out of the central topics under discussion. I say 'almost exclusively' advisedly, for in accordance with the loose and discursive Talmudic method, many discussions on subjects entirely extraneous and unconnected with the central themes of the treatises, are embodied into the text of the *Gemara*. And likewise, the laws and customs treated of in these treatises are also occasionally discussed elsewhere in the Talmud.

The laws of marriage and divorce in the Talmud are found in the following five treatises (cited in the order in which they occur in the Talmud *Eabli*):

- 1) *בבב*, Sisters-in-Law; treats of the Levirate marriage (based on Deut. xxv 5-10) and of Prohibited Marriages.
- 2) *בבבב*, Marriage Deeds; treats of Dowry and Marriage Settlements.
- 3) *בבבבב*, Betrothals.
- 4) *בבבבבב*, Divorces (based on Deut. xxiv 1-5).
- 5) *בבבבבבב*, The Faithless Woman; treats of the Woman Suspected of Adultery (Based on Num. v 12-31).

According to The Talmudic law, there were certain marriages

which were prohibited: a) because of relationship, *i.e.*, ^{and affinity} consanguinity between the contracting parties; b) because of considerations of decency and chastity (*i.e.*, for the sake of public morality); c) for religious reasons.

a) The Talmudic laws concerning the prohibition¹ of marriage on account of the consanguinity of the contracting parties are based upon the Biblical decrees, Leviticus xviii and xx 11-21. Such connections were regarded as incestuous (*אונא*). The Talmud considers these prohibitions to have the same foundation in common sense and morality as those concerning murder and theft. (Yoma 67 b.) The list of Biblical prohibitions is further extended by ~~the~~ additional degrees of relationship in the ascending and descending lines, of collateral^r consanguinity, and of relationship by marriage.

b) In addition to the above mentioned prohibitions, ^{the} Talmudic law contains several restrictions which are evidently based upon considerations of chastity and decency. Thus a man was not permitted to remarry his former wife whom he had divorced on the express ground of her bad reputation or on account of barrenness. (Mishna Gittin iv. 7, 8.) He who had committed adultery with another man's wife, or was even suspected of having done so, was not permitted to marry her in case she was divorced or left a

widow. (Sota 25 a.) He who assisted at a divorce, as witness or agent (i.e., as agent of the husband who sent the divorce), was not permitted to marry the divorced woman, if there was justifiable suspicion that his co-operation was prompted by the intention of marrying her. Likewise, the witness to the death of an absent husband could not marry the widow of that husband. (Jebamoth 25 a.)

Marriage between a ~~ישראל~~ (i.e., one born of incest or adultery) and an Israelitish woman, or between a female ~~ישראל~~ and a Hebrew, was prohibited. (Jebamoth 49 a.) Foundlings and persons whose paternal descent was unknown or doubtful were not permitted to intermarry with Israelites, although their marriage with proselytes was not regarded as objectionable. (Kiddushin 74 a.)

c) Marriages between Israelites and non-Israelites are prohibited in the Talmud. (Aboda Zara 31 b.) This prohibition is founded on Deut. vii 3, 4, where intermarriage with certain Canaanitish peoples, seven in number, is interdicted and forbidden. The reason for such injunction is religious: "For it will turn thy son from following me, to serve other gods." There was no special provision in the Talmudic law concerning intermarriage with Christians. Although these were ^{not} regarded like the heathens in other matters, (v. 7 Chullin 13 b), they were undoubtedly included in the

general prohibition of intermarriage with non-Israelites.

d) A widow whose husband had died childless was forbidden to marry anyone except a surviving brother of her deceased spouse, unless the latter declared himself unwilling to marry her and submitted to the prescribed formality termed *חליצה* (from *חלץ*, to draw or pull off the sandal or shoe). This ceremony consisted in her drawing off the shoe of the *יבם* (brother-in-law), in spitting before his face and saying: "Thus shall be done to the man that will not build up his brother's house". (v. Deut. xxv 4-13.) When this had been done, the widow *י* was at liberty to marry whom she pleased. The law concerning the Levirate marriage, termed *יבום* (from *יבם*, brother-in-law), and the act of *חליצה* are minutely detailed in the tractate *Jebamoth*. The Talmudic authorities differed as to whether *יבום* or *חליצה* is to be preferred, i.e., whether it is more desirable for the surviving brother to marry the childless widow, or for him to undergo the ceremonial ordeal of *חליצה*. For it was thought that the Levirate marriage, unless undertaken from the purest motives, approximates very closely to actual incest. (*Jebamoth* 39 b.)

The laws concerning the mutual rights and duties of the *י* husband and wife, imposed upon them by the marriage relation, are prescribed and minutely elaborated in *Kethuboth*, chapters iv

to xiii. At the moment the marriage was concluded, the husband took upon himself a number of specified duties towards his wife. He was legally obligated to furnish her with the necessities of life, i.e., with food, shelter and clothing (Kethuboth 46 b); to cohabit with her (ibid.); to provide her with suitable medicine and nursing in case of illness (Kethuboth 51 a); to ransom her in case she was taken captive (ibid.); and to provide for her burial in case of her death (Kethuboth 46 b.).

The quantity and quality of the food, shelter, and clothing with which the husband was obligated to furnish his wife depended upon his wealth and upon the local customs. If he was poor, she was obliged to content herself with his modest mode of life. But if he was wealthy, he was bound to maintain her in accordance with his fortune, and with out regard to her inferior station in life previous to her marriage. The Talmudic maxim:

אֵין אִשָּׁה יוֹרֶדֶת עִטָּה holds good here. / (Kethuboth 48 a^{also 44 b.}) This means that she was entitled to all the privileges and advantages arising from her husband's wealth and social standing, without losing those of which she was possessed in her parental home.

If the husband refused to support his wife, the court could compel him to do so. (Kethuboth 77 a.) According to some author-

ities, he had even to hire himself out as a day-laborer, in order to support his wife, if he was without other means of subsistence. (v. Tosafoth to Kethuboth 63 a.) If the husband had gone on a journey without making due provision for the sustenance of his wife, or if the husband had become insane, the court provided for the support of the wife out of the property of the husband. (Kethuboth 107 a, 48 a.) The husband was bound to repay what the wife had borrowed for her subsistence during his absence. (Jebamoth 75 a.) But if someone had of his own free will furnished the wife, in the absence of her husband, with the necessities^s of life, he has "laid his money on the horn of a deer" (למנוח על קרן אייל), i.e., he has lost his money; he could not by law regain what he had thus furnished her. (Kethuboth 107 b.)

As is natural, the husband was not answerable for debts contracted by his wife before her marriage, or without his authority after the same.

The Talmud regulates the duty of cohabitation both legally and ethically. If a husband refused to cohabit with his wife because of hatred, he was fined, and continued refusal was deemed a sufficient cause for divorce. (Kethuboth 63, 64.) The duty of cohabiting was adjusted to the health and daily occupation of the husband. (Kethuboth 61 b.)

The duty of ransoming the wife, which was expressly mentioned in the Kethuba, is to be explained by the fact that the incursions and raids of the wild marauding Bedouins were quite frequent in the Oriental countries. (Mielziner, p. 101.) In case the wife was taken captive by them, the husband was obliged to purchase her freedom even with his whole property, if no other means of securing her release were adequate or feasible. (Kethuboth 52 b; R. Asher to *ibid.*) He was certainly bound to purchase her ^release, even if the ransom far exceeded the amount of her dowry. (Kethuboth 52 b.) This statute held only with regard to her first capture, not for succeeding ones. (*Ibid.*) If both husband and wife happened to be taken captive at the same time, the court was bound to ransom the wife first. (Horioth 13a.)

In the Kethuba the husband obligated himself to provide for his wife's burial in the event of her death. If his wealth and social station were above those of his wife previous to her marriage, he was obliged to regulate the funeral solemnities and ceremonies according to his wealth and standing in society (according to the maxim above cited: עולה עמן ואנה יורדת עמן

(Kethuboth 48 a.) In the absence of the husband, the court buried the wife at his expense. (*Ibidem.*)

The rights of the husband, according to the Talmudic law,

were the following:

He was entitled to whatever his wife might earn or gain, whether by her labor or by chance. (Kethuboth 46 b.) Further, he was entitled to the income derived from her property, whether the latter was her dowry, her marriage-portion, or had been received by her after her marriage, by inheritance, donation, or legacy. (Ibid.) He became her sole heir upon her demise. (Kethuboth 83

The duties of the wife may be summed up in a few sentences. She was obliged to reside in the home of her husband. (Kethuboth 110 b.) If he removed to another region, she had to accompany him, but not into a foreign land where a different language was spoken. (Ibid.) She could not be compelled to remove with him to another town which was inferior in sanitation or in comfort, to her present place of residence. (Ibid.) But if he found it impossible to gain a livelihood in his former place of residence, she was in duty bound to follow him to another region. (Ibid.) The duties of the wife were to attend to the household, to engage in the domestic occupations of the home. She was to cook, bake, sew, wash, spin, weave, etc. (Kethuboth 59 b.) She was generally to nurse her children herself. (Ibid.) Even if she had brought her maids and servants with her from her parental home, or if the wealth of her husband permitted her to have sufficient

number of servants to attend to all the housework, she was nevertheless not permitted to live idle and unemployed, for "idleness leads to lewdness". (הבטלה מביאה לידי זימה, Kethuboth 59 b.) Under all circumstances she was obliged to perform certain services for her husband's ease and comfort, as evidence of her love and goodwill towards him. (Kethuboth 61 a.)

The rights of the wife are the reciprocal of the duties of the husband, the list of which was given above. She was entitled to the necessities of life, i.e., to adequate food, clothing, and shelter (Kethuboth 46 b); to cohabitation with her husband (ibid.); to suitable nursing and medical care, in case of illness (Kethuboth 51 a); to ransom in case of being taken captive (ibid.); to burial with proper honor and ceremony, in case of death (Kethuboth 46 b).

The general principle governing all the rights of the wife, is the one above enunciated, namely that she was entitled to be maintained according to the wealth and social station of her husband when that was superior to her own previous to her marriage. (עולה עמו ואינה יורדת עמו, Kethuboth 48 a.) That is to say, she gained all the advantages of his standing in society, without losing those which she enjoyed in her parental home.

The wife was not the heir of her husband, according to the

Talmudic law; she was not entitled to his property upon his demise. In the latter event she received the dowry she had brought him in marriage, and the amount stipulated in the Kethuba.

The husband, on the other hand, did become the heir of the wife, * and received all of her property upon her death. During her life time he was entitled to the usufruct of her dotal property (i.e., that which she brought as her marriage-portion) and of her paraphernal property (i.e., that which she brought over and above her dotal property at her marriage), but not of her strictly private property. He exercised complete control over the first two, but the third was entirely beyond his disposal and control. In the event of her death, however, he did, as stated above, inherit all her property, dotal, paraphernal, and private. (Kethuboth 83 a; Mielziner pp. 104 - 107.)

The Talmudic doctors laid great stress upon conjugal purity, faithfulness, and loyalty. It is to be noted that they deemed these as important and necessary for the husband as for the wife. (Cf. Sota 10 a; Kethuboth 10 a; Yoma 75 a.) This points to the fact that monogamy was the general, indeed almost universal, form of marriage. For, as I shall set forth below, wherever fidelity to marriage vow is mentioned and recommended, it refers to one husband and one wife. (This was even the case in Biblical

times; see e.g., Proverbs ii 17, Malachi ii 14. Intercourse with prostitutes and harlots is everywhere rigorously forbidden and severely condemned (Deut. xxiii 18; Proverbs v, vi 26, vii; Hosea ii 22; iii 3; Sirach ix 5). All sensual gratification contrary to the laws of morality was strictly prohibited. Thus in Sanhedrin 75 a, it is told that a man lay ill and near to death, because of his passionate desire for a certain maiden. The physicians declared that unless his passion be gratified, he would surely die. The matter being laid before the rabbis, the latter decided that it were better that he should die, rather than that such a disgraceful and immoral thing should take place.

Seduction and breaking of the marriage vow were punished by death, ^{in case the adulterous woman was betrothed to another man} whether the adultery was committed by the husband or by the wife. (Deut. xxi 22.) Adultery on the part of the wife was considered and punished as an infraction of the laws of morality, just as that committed by the husband, not as an infringement upon the husband's right of ownership which he exercised over his wife, as was the case among other Oriental and Occidental peoples.

The method of ascertaining whether or not the wife had been faithless to her husband was by means of the ordeal of the "bitter water", based upon Numbers v 12 - 31. The laws concerning this ordeal are laid down and discussed in the tractate norah.

If a husband suspected his wife of having committed adultery, after having warned her in the presence of two witnesses, he was to lead her before the local judge. (Sota 2 b.) The latter sent the couple, accompanied by two rabbis, to the higher tribunal which sat at Jerusalem. Here the judges, acting under the presumption that the husband would not have gone so far as to bring his wife before them unless he had sufficient evidence or were morally convinced that she had been faithless to him and to her marriage vow, tried by various means to wring from her reluctant lips a confession of guilt and perhaps an avowal of repentance. If she admitted her guilt, her punishment was to lose her dowry and to be divorced from her husband. ^(Mishna Sota 15) She was then free to marry anyone except her former husband and the man with whom she had committed adultery. ^{Mishna Sota 15} (Sota 28 a.) If she would not confess, she was compelled, with many ceremonies, doubtless of such a nature as to inspire her with terror, to drink the "bitter water", and thus to give proof of her guilt or innocence. For this water, according to the Talmud, did not in the slightest degree injure the pure and faithful wife, it was on the contrary most healthful for her. (Sota 26 b. a.) If she was guilty, however, the water would prove very noxious and harmful to her. (Numbers v 27.)

It is to be noted that, in order that the ordeal should be

effective, the accusing husband had himself to be pure and faithful to his spouse. For if he in his turn had been unfaithful to her, and had sought sensual gratification elsewhere, the water was entirely impotent and useless for the ordeal. The rabbis said: "Only when the man is himself free from guilt will the water be an effective test of the wife's guilt or innocence; and if he has been guilty of illicit intercourse, the water will be of no effect." (Sota 47 b.) In the last days of the Jewish Commonwealth, during the Roman invasion of Palestine, the Sanhedrin under Rabbi Jochanan ben Zakkai entirely abolished this ordeal. (Mishna Sota IX, 9.) Rabbi Jochanan (bar Nappacha) with practical common sense remarks: "If one is unfaithful to his wife, she will ~~naturally~~ naturally be unfaithful to him." (Sota 10 a.)

I come now to the important question of monogamy and polygamy. My inquiry here is not, whether the Jews of the Talmudic era were theoretically (i.e. legally) permitted to marry many wives. I am concerned with ascertaining whether they were in reality monogamists by custom and practice.

The ethical principle of monogamy, i.e. of the union of one man with one woman, is found to be laid down throughout the entire Bible. But by the law, polygamy had to be recognized, for it was at one time an actual practical condition. Polygamy seems largely to have been a result of the climatic environment of the Orient. It was practiced by all Oriental peoples, and among many of them still exists to-day. Polygamy is legally permitted in the Pentateuch, but at the same time it is regarded as ethically wrong, as an evil which could not at once be wiped out, like the evils of slavery, blood-revenge, etc., but which was to be gradually eradicated. Polygamy is merely a certain condition in the evolution of the Hebrew people, from which it advanced to monogamy surely and inevitably. From the end of the Exile and during the second commonwealth instances of polygamy became unusual and even rare. (cf. Matthew XVIII, 25; Luke I, 5; etc.)

Although the law permitted polygamy, it is evident that monogamy was practiced by some of the Hebrews from the earliest times. Thus Moses, Aaron and the high-priests lived in monogamous marriage. The prophets also seem to have been monogamists. Nabal (I Samuel 25) and the Gurnamite woman's husband (II Kings 4) were certainly monogamists. In regard to the ideal beauty and sanctity of monogamous marriage, see Proverbs II,17; XII,4; XVIII,22; XIX,14; XXXI,10 seq.; Malachi II,14; Hosea II,19 seq.; Ezekiel, ch.16; Sirach XXVI,1 seq. To be noted in this connection are the passages in the first chapters of Genesis, regarding the story of creation, from which it is clear and beyond doubt that the Biblical ideal of marriage is the union of one man with one woman. (Gen. I,27 seq.; II,18 seq.)

The fact is well known that the actual express legal prohibition of polygamy was not pronounced until the beginning of the 11th century, when Rabbi Gershom ben Juda, called "The Light of the Exile", in 1025 (circa) declared bigamous marriage null and void. But even in the Talmudic era polygamous marriage was no longer ethically sanctioned, though legally it could be entered into. This fact illustrates the saying that the moral sentiment of a people is always many centuries in advance of its laws.

"The laws of most countries are far worse than the people who execute them, and many of them are only able to remain laws by being seldom or never carried into effect." (J. S. Mill, "The Subjection of Woman," page 60.)

In the Talmudic era, although perhaps not in the Biblical, polygamous marriage was considered in some degree immoral. None of the teachers and authorities are mentioned as having been married to more than one wife at a time. Polygamy was, however, legally permitted. The law frequently refers to polygamous marriage, showing that it did exist. (e.g. Jebamoth 34 b.) But there were several Rabbinical enactments which must have proved efficacious in restricting polygamy.

A discussion regarding polygamy is recorded in Jebamoth 65 a. Rabbi Ame said: "He who takes a wife in addition to his first wife, must divorce his first wife and

give her the amount stipulated in the Kethuba.* That is, the first wife is entitled to a divorce upon her husband's entering into marriage with another.

כל הנשא אשה על אשתו יוציא ויתן כתובה :

On the other hand, Raba, who was very wealthy, was of the opinion that "a man may marry as many wives in addition to his first wife, as he is able to support." רבא אמר

נושא אדם כמה נשים על אשתו דאית ליה למיזיננה :

Interesting in this connection is a note appended to the passage on "Monogamy and Polygamy in the Talmudic Period," in Mielziner's "Jewish Law of Marriage and Divorce," (page 29, note 2.) "That polygamy, though permitted by the law, was disapproved by the popular morals and regarded as incompatible with domestic peace and happiness, is, among others, evident from a remarkable passage in the Aramaic paraphrase of the book of Ruth. In this paraphrase (Targum) which originated during the

Talmudic period, the kinsman of Elimelech being requested by Boaz to marry Ruth and redeem her deceased husband's inheritance, answers the following (IV,6): "I cannot marry her, for I am already married, and am not allowed to marry another wife in addition to her. This would mar the peace and happiness of my house. But thou mayest marry her, as thou art not yet married."

To the laws and legal dicta above cited may now fittingly be added the ethical sayings and maxims of the Talmudic sages concerning the status of the wife. It will be seen from these quotations that the ethical consciousness of the Hebrew people, as expressed in the sayings of the rabbis, was very advanced and elevated, and that the position of the Israelitish wife must have been far above that accorded to her among most of the contemporaneous people of the Orient and Occident.

The wife was always treated with great respect

and tenderness, even in cases where she herself by her irritable temper and shrewish actions merited rebuke and punishment. Thus it is related ^{of} by Rabbi Chiya that he had an ill-tempered wife, who often vexed and grieved him very much. Yet he constantly exerted himself to prepare a surprise for her and thus to give her pleasure. It is said that he seldom returned to his home without bringing her some gift. Once it happened that his ^{nephew} ~~colleague~~ Rab questioned him concerning this custom of his, and he excused the perverseness of his wife with the words: "It is sufficient that they (the wives) raise our children and save us from sin (lewdness)" (Jebamoth 63 a.)

דינו שמגדלות בנינו ומצילות אותנו מן החטא:

Regarding the duty incumbent upon every man to enter into marriage, it is written: "Every Israelite who liveth without a wife is not a perfect man."

(Jebamoth 63 a.)

כל יהודי שאין לו אשה אינו אדם:

The Talmudic authorities certainly had a very high opinion

regarding the joys and blessings which the marriage state brings to the husband, as the following sentence attests:
 "Every Israelite who is unmarried liveth without joy, without blessing, without good; in the west (i.e. in Palestine) they say "without religion, without protection;" Raba, son of Ulla, said, "without peace." (Jebamoth 62 b.)

כל יהודי שאין לו אשה שרוי בלא שמחה בלא ברכה בלא טובה במצרבא אמרי בלא תורה בלא חומקרבא בר עולם אמר בלא שלום:
 That crime is less frequent among married men

than among unmarried ones, is a phenomenon to whose truth has been attested by the statistics gathered by modern criminologists. This fact has already been noted by the acute minds of the Talmud. "As soon as a man marries, his sins (decrease) become less heavy." (Jebamoth 63 b.)

כיון שנשא אדם אשה צונותיו מתבטלין:

The following quotations will further serve to illustrate the attitude of the Talmud toward the wife and marriage.

טב למיתב טן דו מלמיתב ארמולן:

"It is better to dwell in ^{grief} ~~widowhood~~" (acc.to Jastrow)

or, "It is better to dwell by two (zu zweien; so Dalman)

than to dwell in widowhood." (Jebamoth 118 b, also

Kiddushim 7 a.)

הפוקב את אשתו כגופו והמכבדה יותר מגופו עלי הכתוב

אומר וידעת כי שלום אהלך:

"He who loveth his wife as himself, and honoreth her more

than himself, concerning him Scripture says (Job 5):

"And thou shalt know that thy tent is peace." (Sanhedrin 76 b.)

שלשה מרחיבין רצתו של אדם אלו הן דירה נאה ואשה נאה וכלים נאים:

"Three things broaden the mind of a man; they are:

a suitable dwelling, a suitable wife, and suitable apparel."

(Berachoth 75 b.)

איזו עשיר כל שיש לו אשה נאה במעשים:

"Who is rich? he who is possessed of a wife whose deeds are

noble." (Sabbath 25 b.)

Regarding the effect of the death of the wife

upon the husband, the Talmud contains the following beautiful sentiments:

כל אדם שמתה אשתו ראשונה כאילו חרב בית המקדש ביומו:

"He who sees his first wife (first love) die, has as it were, been present at the destruction of the Temple."

(Sanhedrin 22 a.) That is to say, the death of the wife is deemed just such a misfortune to the husband as the destruction of the Temple was to Israel.

אין איש מת אלא לאשתו ואין אשה מונה אלא לבעלה;

"A husband's death is felt by none as by his wife; a wife's death is felt by none as by her husband." (Sanhedrin 22 b.)

כל אדם שמתה אשתו בימיו עולם חושך בעדו:

"The whole world is darkened for him whose wife died in his lifetime." (Sanhedrin 22 a.)

לחיים ניתנה ולא לצער ניתנה;

"She (the wife) has been given for life (happiness); she has not been given for trouble (sorrow.) (Kethuboth 61 a.)

איש ואשה זכו שכינה ביניהן לא יכו אש אכלתן:

"God dwells with the faithful husband and wife. Without Him they are consumed by the fire of strife." (Sota 17 a.)

This sentence contains a very ingenious play upon the words

אשק and איש ; take away ה and י respectively,

יה i.e. God, and אש, fire, remains.

נקית דרגא נסיב איתתא:

"Descend a step in choosing a wife." (Jebamoth 63 a.)

לעולם יהא אדם זהיר בכבוד אשתו שאין ברכה

מצויה בתוך ביתו של אדם אלא בשביל אשתו:

"A man shall ever be careful concerning the honor of his wife, (i.e. the honor due her) for no blessing is found

in the home of a man except it be due to her." (Baba metzia 59 a.)

כל ימי עמי רעים זה שיש לו אשה רעה וטוב לב

נושטה תמיד זה שיש לו אשה טובה:

The scriptural verse, "All the days of the afflicted are evil; but he that is of a cheerful heart hath a continual

feast", is explained as follows: "Who is he concerning whom it is written, 'All the days of the afflicted are evil?' He who has a bad wife. And about whom it is written, 'He that is of a cheerful heart hath a continual feast.' About him who is possessed of a good wife."

כתוב בספר בן סירא אשה טובה מתנה טובה לבצלה :

"It is written in the book of the son of Sirach; 'A good wife is a precious gift to her husband.'" (Jebamoth 63 b.)

כמה טובה אשה טובה וכמה רעה אשה רעה כמה טובה אשה טובה
 רכתיב מצא אשה מצא טוב כמה רעה אשה רעה רכתיב ומוצא אני
 מר ממות אההאשה וגו' :

"What a blessing is a good wife! What a curse is an evil wife!" etc. (V. page 68)

From this last quotation it will be seen that the Talmud also contains allusions to the bad qualities of the wife and to the influence she may exert for evil. Further sayings of the rabbis on this subject are as follows:

שלשה אין רואין בני זיהנם ואחד מהן אף מי שיש לו אשה רעה :

"Three kinds of men do not receive punishment (though merited) in Gehinnom; and one of these three is he who has a bad wife." (Erubin 41 b.)

כל רעה ולא אשה רעה:

"Every evil rather than a bad wife." (Sabbath 11 a.)

As an excellent example of what the Talmudic authorities consider אשה טובה may be instanced the life of Beruria, the gifted and brilliant wife of Rabbi Meir, daughter of the celebrated martyr R. Chanania ben Teradion. "Ministering faithfully to her husband's wants, devoted to her children, possessed of a soul pure, but cold as the freshly fallen snow, with a nature hardened by the terrible deeds and dangers quite common in her day - combining, in short, all the qualities which we should expect to find in a truly good woman of this memorable epoch, (i.e. the epoch of the Mishna), she stands out as a classic figure among the female characters of the Talmudic age." (Zirndorf; "Some Jewish Women, p.163.)

A characteristic anecdote concerning her is the following. In the vicinity of the home of R. Meir there dwelt some impudent and noisy men who annoyed and provoked him continually. Driven to the end of his patience, one day, by their spiteful conduct, he began to invoke the curse of God upon them. While he was doing this, Beruria entered, and hearing the imprecation of her irate husband, calmly said to him, "Nay, not the sinners, but the sins shall be destroyed. Then there will be no sinners anymore. So pray for the cease of sins, not for the death of sinners." R. Meir followed her noble advice, and the Talmud naively adds: והדר בתשובה (Berachoth 10 a.)

Another striking reminiscence illustrates her mordant wit. It is told that she once met R. José the Galilean, on the street. He inquired of her: "On which way does one go to ^LLydda?" "Foolish Galilean", she replied to him, "do you not know the saying of the rabbis, "Do not waste words on a woman?" You could have said "Where ^LLydda,"

which could have fully answered the purpose." (Erubim 53 b.)

Well known is the beautiful tale told of Beruria in Midrash Yalkut to Proverbs 31. The episode is so touching and so characteristic of the influence a noble woman could exert upon her husband, that I cannot forbear quoting it here.

One Sabbath afternoon, while Rabbi Meir was lecturing as usual in the Beth Hamidrash, his two sons died. They were lads of unusual promise and manly beauty. The sorrowing mother brought the bodies to their sleeping-room, laid them upon the bed, and covered them with a white cloth. When her husband returned home in the evening, she received him, to all appearances, with her accustomed tranquillity. "Where are my sons?" asked the Rabbi. Beruria said that they were probably still at the academy. "No, I looked for them, but they were not there", answered her husband. "They cannot be far away", said Beruria. She then handed him the wine-cup with which to make Haddala, and gave

him his supper. After partaking of the meal, she said to him: "Rabbi, I desire to ask you a question. Some time ago an acquaintance gave me some jewels to hold in trust for him, and now he demands them back. Shall I return them to him?" "I am astonished that my wife should even ask. Can there be any doubt about the matter?" "No; and yet I did not wish to return the treasures without thy knowing it." Thereupon she led him in silence to the sleeping-room, and, withdrawing the cloth, discovered the corpses of their beloved sons. "O my sons! My sons!" groaned the stricken father, "Light of my eyes! My teachers and guides!" Then Beruria took the hand of her weeping husband in hers and said, "Rabbi, didst thou not teach me just now that we must return to the owner, without complaint, that which has been entrusted to our safe-keeping? The Lord demands the children which he entrusted to us. Blessed be the name of the Lord!"

As examples of what the Talmudic sages term

אשה רעה may be cited the wife of Rab, (Jebamoth 63 a.)

the wife of Rabbi Chija, (Jebamoth 63 a.) Jalta, the wife

of Rabbi Nachman, (Berachoth 51 b.) and especially Choma,

the daughter of Rab Chisda. The last mentioned was of a

very imperious and irritable disposition. The stories

told of her jealousy and quarrels with her namesake,

Choma, a grand-daughter of Rabbi Jehuda ^{bar Jechebel} ~~ha-Nasi~~ ^(Jebamoth 64 b.), are by no

means to her credit. It is recorded of her that she one

day noisily burst into the court-room where her husband

was judging a case, in order to throw discredit upon the

testimony of a certain woman who seems to have been known

to her as being untrustworthy. (Kethuboth 85 a.)

CHAPTER IV.

THE WIFE. (Concluded)

B. DISSOLUTION OF MARRIAGE --- (1) BY DEATH OF THE
HUSBAND. SOCIAL AND LEGAL STATUS OF THE WIDOW: AMONG
NON-ISRAELITISH PEOPLES --- AMONG THE HEBREWS.
(2) BY DIVORCE --- RIGHT OF THE HUSBAND TO GIVE
DIVORCE --- RIGHT OF THE WIFE TO DEMAND DIVORCE ---
KINDS AND CAUSES OF DIVORCE --- SOCIAL AND LEGAL STATUS
OF THE DIVORCED WOMAN.

In the Talmud two causes are considered by which a legally consummated marriage may be legally dissolved.

The first of these is the death of one of the contracting parties; the second, divorce, i.e. the presenting of the

Or bill of divorce by the husband to his wife.

(Mishna Kiddushin I,1.) I propose to treat of these two methods of dissolving marriage, first, according to the Halacha, i.e. according to their legal aspects. Following this, I shall present the Haggadic or ethical doctrines concerning these matters.

The Talmudic laws concerning the dissolution of marriage by death are to be found minutely elaborated in Chapters ^PX, XV, and XVI of the tractate Jebamoth. It is to be noted that the Talmudic laws treating of this subject usually speak only of the death of the absent husband.

This is due to the fact that he, in the pursuit of his daily business, had very often to travel and to leave his

wife at home. "Besides, it must be remembered that the Talmudic Law still had polygamous institutions in view, in which the husband's death was of greater legal consequence than the wife's, in regard to a contemplated marriage of the surviving party." (Mielziner, Jewish Law of Marriage and Divorce; p. 108, note. See also Frankel, Grundlinien des Mosaisch-Talmudischen Eherechts, p.40, note 2.)

Only when the death of one of the parties was proved beyond a doubt, was the marriage considered legally dissolved. The surviving husband or wife was not allowed to re-marry until the death was so established. Now when the husband died abroad, and likewise when he met his death in an accident, it was often difficult to establish his death beyond doubt. This difficulty was probably due to the lack of facilities of communication between the different countries. (Mielziner, Law of Marriage and Divorce, p. 108.)

The death of the husband was regarded as established either by the testimony of persons who were present at his death-bed, or his funeral, or by the unmistakable identification of his body.

"The testimony to the death must be of such a nature as to exclude every possibility of mistake. A testimony based solely upon circumstantial evidence, or upon mere conjecture and presumption, is of no value. If, for instance, the husband was known to have been on board a ship, which was wrecked at sea, his death is not sufficiently proved by this fact, as he might have been saved by another ship which was passing. (Jebamoth 121 a) In a smaller body of water, however, the boundaries of which are within reach of the eyes, the evidence that the boat perished and no one on it was seen to be saved, is sufficient to establish the death. A report that the husband died in battle, if not corroborated by the evidence that he was actually buried, is no sufficient proof to permit

the wife to re-marry, as in the confusion of the battle-field a mere trance caused by severe wounds might have been mistaken for actual death." (Jebamoth 114 b; see Mielziner, p. 109; Frankel, p. 40.)

It is to be noted that the Talmudic law here accepts the testimony of one witness as valid and sufficient, instead of the two which are usually required to establish any case, whether in criminal or in civil affairs. The rabbis were more lenient in this case and favored the widow. They acted upon the principle: "Some allowance is to be made in favor of the unfortunate woman, who otherwise would have to remain in eternal widowhood."

מי שזם עיזונה מקילו בה רבון:

(Jebamoth 88 b.)

The words of a single witness were accorded full faith, for it was thought that he would be deterred

from giving false testimony by apprehension of the return of the husband who had been reported dead.

The Talmudic law further permitted the wife, the near relatives, and other persons usually regarded as incompetent witnesses, to testify in this case.

(Jebamoth 113 a.) Even hearsay evidence was accepted in lieu of more substantial proof, to establish the death of the absent husband. All this legislation was enacted under the principle above stated.

It was pre-supposed that the wife would make very thorough investigations regarding the death of her husband, ere she would even desire to enter upon second marriage. (Jebamoth 115 a.) The consequences of premature marriage were very disastrous to her. If her supposedly dead husband turned up alive after her re-marriage, she had to be divorced from and leave both husbands; she forfeited her Kethuboth (dowries) from both

and the children born of the second marriage were considered bastards (Jebamoth 87 b.) Since her first husband was not really dead, the first marriage was not dissolved. Therefore the second marriage was illegal and could be regarded only as an adulterous connection.

She could not return to her first husband, as according to the Jewish law no man may live with his wife after she has committed adultery. Although this law refers only to intentional or voluntary adultery, it was nevertheless rigorously applied to the present case, in order to punish the woman for her over-hasty marriage. (See Mielziner, p.111, note; and Frankel p. 41, note.)

The lengthy absence of the husband was not regarded as valid proof of his death. Nowhere in the Talmud is there any mention of a declaration by the Beth Din that a marriage was dissolved because of such absence. The wife was not entitled to re-marry until the death

of the husband or until the latter had handed her a divorce. This was due to the fact that marriage was regarded as a sacred institution, of a higher and more lasting nature than a mere civil contract. (Frankel, Grundlinien p.41.)

The position of the widow among many of the heathen peoples of antiquity furnishes us with a sad commentary upon their barbarous customs and laws. The opinion was held almost universally that she had no right to enjoy life after the death of her husband. Among many peoples she was compelled to follow her husband into the world of the shades, in order to render him service as wife and slave also over there. The custom of the suttee, which existed in India even as late as this century, was shared by the Germans, Thracians, Greeks and Slavs. (Thering: Evolution of the Aryan, pp.30 - 32; also Weinhold, quoted by Klugmann.)

In course of time this inhuman practice of the

immolation of the widow disappeared from among most of the peoples of the world. (It does, however, still exist to-day among some savage tribes.) But even when it vanished, it left its traces behind in the custom that the widow was prohibited from re-marriage during her whole life-time. Thus the Law Book of Manu contains the following sentence: "The widow shall remain alone, (i.e. unmarried) and shall not even pronounce the name of another man."

Among the Chinese and Japanese, Slavs, Germans, and Greeks, the marriage of the widow was considered immoral, and as an insult to the memory of her first husband. Tylor (Beginnings of Culture) in speaking of this custom among one of the Eastern nations, reports the following: "The widow and the saddle horse of the deceased were led around the grave three times. No one might thereafter mount the horse, and the widow could never again enter into marriage."

The apostle Paul probably referred to this custom, and sought to make a virtue of the widow's necessity in the words: "Honor widows that are widows indeed,----- That one is a widow indeed, who is alone, unmarried, and who setteth her hope in God, and continueth in supplications and prayers night and day." (I.Tim. V. 3,5.)

Very different was the position of the widow among the Jews. The legislation from even the earliest time was most favorable to her, and special stress was laid upon protecting her against oppression, robbery, and the like, because she was without a natural protector. Thus in Exodus XXII, 22-24, the law-giver warns the people in the name of God against injustice and cruelty to the widow with the words: "Ye shall not afflict any widow or fatherless child. If thou afflict them in any wise, and they cry at all unto me, I will surely hear their cry; and my wrath shall wax hot -----." In Deut.X, 18, God is

pictured by Moses as the protector and upholder of the cause of the widow. And in the same book, in the dramatic chapter of the curses, (Chapter XXVII) we find:

"Cursed be he that wresteth the judgment of the stranger, fatherless, and widow." (Verse 19.) Many laws especially favorable to the widow are laid down throughout the Pentateuch (v. Deut. XXIV, 17; XIV, 29; XVI, 11, 14; XXVI, 12; XXIV, 19, 21; et al.) from which we are justified in concluding that she must have been an object of special solicitude and tender sympathy to the Hebrew people. There are many passages in Isaiah, Micah, Zechariah, Jeremiah, Ezekiel, etc., which show how fearlessly and vigorously the prophets championed the cause of the widow. (V. Is. I, 17, 28; II, 2; Zech. VII, 10; Job XXIV, 3; Jer. VII, 6; XXII, 3; Eze. XXII, 7; et al.)

The custom of the widow accompanying her deceased husband into the grave is nowhere even alluded to, in either Bible or Talmud. Nor was the widow prohibited from entering

upon second marriage. She was at liberty to choose a new husband, and once more to realize all the enjoyments of human companionship. On the death of her husband she received a specified sum of money, at least two hundred Zus (Kethuboth 51 a.), and over the disposition of this and of her other property she exercised complete and unrestricted control. She was, however, prohibited from entering into a third marriage, after having twice been left a widow, "because of suspicion." (Jebamoth 64 b.)

The widow was prohibited from marrying again for three months after the death of her husband, so that in case she became pregnant there should be no doubt concerning the paternity of her child. (Jebamoth 41 a.) But during this period she remained in the house of her deceased husband and was supported by ^{his} heirs, from his property; this without diminishing the sum which she received according to the Kethuba. If the widow had a child which was not yet weaned, she was prohibited from entering into second until a period of two years had elapsed,

counting from the birth of the child. (Kethuboth 60 b.)

Usually, however, the period of widowhood was of short duration. The Talmud says: "A widow may even marry a man who is below her (in wealth or social position,) rather than remain a widow." (Jebamoth 118 b.)

We come now to the important subject of Divorce in the Talmud. Divorce, legally considered, is the dissolution of the marriage relation during the life of both of the contracting parties.

Divorce was certainly disapproved of according to the moral law of the Bible and the Talmud. The ethical principle of marriage, as laid down in Genesis II 24, shows that the ideal marriage was deemed indissoluble. It was to be a relation lasting throughout the lives of the contracting parties. Permanent marriage with the wife of one's youth is frequently instanced in both Bible and Talmud as the picture of deep and unbroken loyalty and faithfulness. Thus Rabbi Elazar (ben Pedath; 300 C. E. circa)

said: "Over him who divorces the wife of his youth, even the altar of God shed tears." (Gittin 90 b.)

כל המגרש אשתו ראשונה אבילן מזבח מוריד עליה דמעות :

Rabbi Jeohanah (bar Napacha; 199-279 C.E.) said: "He that putteth his wife away, is hated before God." (ibid.)

שנאוי המשלח : (שנאוי המשלח לבני המקום : רש"י)

But for the exigencies of practical life the ethical principle is not sufficient. "There are circumstances, the evil influences of which sometimes undermine the very basis of a contracted marriage, and defeat its purpose to such a degree as to render the continuation of this relation inadvisable and almost impossible." (Mielziner, p.115.)

The Hebrews have sometimes been stigmatized by controversialists as "a practical people." And in no instance did they exhibit their practical common sense better than in their divorce regulations. With their wholesome regard for human nature and its shortcomings, they did not foolishly sacrifice the realities of life to

the ideal by which they were guided.

But these last remarks apply only to the Rabbinical legislation. The ancient provisions regarding divorce were based entirely upon the patriarchal theory previously alluded to in this thesis. The right to divorce was permitted only to the husband. Deuteronomy (XXIV) reads: "When a man taketh a wife, and marrieth her, then it shall be, if she find no favor in his eyes, because he has found some unseemly thing (*ערוה דבר*) in her, that he shall write her bill of divorcement, and give it in her hand, and send her out of his house." Upon this law is based the ancient right of the husband to divorce his wife at pleasure, and this is the central thought of the entire system of Jewish divorce law. The Talmudic authorities did not and could not set this right aside, although they gradually tempered and mollified its severity by numerous restrictive measures.

As said above, Rabbinical ethics, here as in other cases, far outstripped the law, which lagged centuries behind. For although the absolute right of the husband to divorce his wife at will had been practically non-existent for many centuries, certainly during the period of the Talmud, this right was not formally abolished until in the eleventh century of the common era, when it was so decreed by Rabbi Gershom (טאָר הַגוֹלָה) of Mayence.

According to Mosaic legislation only the husband had the right to give the *ṣer* or bill of divorce, (This *ṣer* was the certificate of the dissolution of the marriage) and the wife could only receive this from his hands. She had no right to demand it or to give it to him. The absolute right of the husband was restricted in but two cases, when he was entirely deprived of the right. These are the cases of the ravisher (Deut. XXII 28, 29) and

the case of the one who had falsely accused his newly-married wife of ante-nuptial unchastity (ibid; XXII,13-19)

The Rabbis greatly modified and restricted the Biblical right of the husband and conferred upon the wronged wife the right to demand a divorce in certain cases. It is to be noted that although this right was given to the wife, i.e. although she could demand a dissolution of marriage, this final dissolution could only be effected by the ḡt which the husband, though under compulsion, handed or sent to his wife. In certain cases, upon the wife's demand, the husband was forced by the court to present the ḡt to his wife. For it was regarded as contrary to the letter and spirit of the law that the wife should dismiss him by giving him the ḡt.

The legal or theoretical absolute right of the husband, as stated above, existed down to Rabbi Gershom (eleventh century C.E.) But long ere this it had been

restricted and almost entirely abrogated by innumerable enactments. It evidently did not pass unchallenged in Mishnaic times, for the schools of Hillel and Shammai, the great doctors of the law who lived during the first century before the Christian era, held radically different views on this subject.

The expression עֵרֶת זָכָר (literally "the nakedness of a matter") in Deut. XXIV, 1, gave rise to their discussions and differences of opinion. The School of Shammai were the "Strict Constructionists" of the Bible, i.e., they interpreted almost all the Biblical laws strictly and rigorously. They took the expression in an ethical sense, as signifying sexual immorality. They therefore held that a man cannot divorce his wife unless she be found guilty of unchastity and immorality.

The School of Hillel were the "Broad Constructionists" of the Bible; they were in general more liberal

in their interpretation of the Biblical enactments. They interpreted the expression as meaning "anything unseemly, or offensive to the husband." They held that the husband may divorce his wife without assigning any reason which would seem to us valid. Thus for instance, he might send her away from him if she spoiled his food. (Gittin 90 a.)

אפילו הקדיחה מבשילין :

The law is undoubtedly correctly interpreted by the school of Hillel, and its interpretation was generally accepted. Rabbi Akiba (died about 135 C.E.) was a very prominent authority of the third generation of Tanⁿaim. He held with the School of Hillel that a man need assign no reason for divorcing his wife. Thus "he may divorce her if he find another woman more beautiful than she. "

(Gittin 90 a., Mishna).

אפילו מצא אחרת נאה הימנה שנאמר והיה אם לא תמצא חן בעיניו :

It must be noted that these are the legal opinions

the school of
 of Hillel and Akiba. They decided in favor of the
 unrestricted right of the husband to divorce his wife, as
 judges who had to state and interpret the law. "It is a
 familiar fact, in modern as it was in ancient law, that
 it is the duty of the judges to state the law as they find
 it, regardless of their personal views or opinions."

(Amram, The Jewish Law of Divorce, p.37.)

The moral sentiment of both schools was certainly
 opposed to divorce, and strongly condemned the practice. The
 disapproval and condemnation of the abuse of the right of
 divorce found concrete expression in many dicta of the
 rabbis. Among these may be cited the following expressions
 of opinion. Rabbi Elazar (vide supra) said: "Over him who
 divorces the wife of his youth, even the altar of God sheds
 tears." (Gittin 90 b.) Rabbi Jochanan (vide supra) said:
 "He that putteth his wife away, is hated of God" (ibid.,
 see Rashi to the passage.) Rabbi Meir (150 C.E.circa) said:
 "He who marries her that is divorced from her husband

because of her evil conduct, is worthy of death; for he has taken a wicked woman into his house" (ibid.)

Rabba (299-352 C.E.) said: "If the wife is living under the husband's roof, and he is harboring designs against her to divorce her (although he may exercise his right under the law); concerning him read the words of Scripture, "Devise not evil against thy neighbor, seeing he dwelleth securely by thee". (ibid) Rabbi Eliezer ben Jacob

(100 C.E.circa) said: "A man shall not take a woman in marriage with the intention of divorcing her; for the Scripture says: "Devise not evil against thy neighbor, seeing he dwelleth in security by thee" (Jebamoth 37 b.)

In the course of time the law regarding the absolute right of the husband to divorce came to be harmonized more and more with the growing ethical consciousness of the people. So exceptions to the generally unrestricted right of the husband grew very numerous, and the old rule in course of time became practically abolished. The Rabbis

demand a moral ground ere they sanctioned a divorce.

One measure restricting the right of the husband was the institution of the Kethuba (marriage-document) by which the wife was secured a dowry of fixed amount, in case of divorce. Another restriction was found in the minute

regulation of the preparation and delivery of the ^{or} bill of divorce.

The numerous and minute rules incident to the procedure made it necessary for the husband to

call in an expert to ^{conduct the act of writing and delivery to} help him to divorce his wife. The man

called in was usually a learned man, ^{דבן}, well versed

in law, and was expected to use every effort to dissuade

the husband from seeking divorce, to prevent passionate

haste on his part, and to reconcile the parties. Further

it was provided that when the wife was insane, she could

not be divorced (Mishna Jebamoth XIV, 1.) Again, she

could not be divorced while she was in captivity. It was

the duty of the husband to ransom her, and he could not escape this by sending her a bill of divorce (Mishna Kethuboth IV,9.)

Further, it was decided that the minor wife, who was so young as not to be able to understand or to take care of her bill of divorce, could not be divorced (ibid.)

When the husband was insane or intoxicated or stricken with a disease which deprived him of his rational faculties, he could not give the bill of divorce, or order it to be delivered to his wife (Mishna Jebamoth XIV 1; Gittin 67 b; Mishna Gittin VII 1.)

As previously stated, in early Jewish law the wife was entirely without the right to sue for a divorce. This was obviously because society was in the patriarchal state, where the will of the husband was law. But the Talmudic authorities, as they greatly modified the absolute power of the husband, also granted to the wife the right

of demanding a divorce from her husband. In naming the causes which were valid for divorce, I shall therefore also bring forward those which entitled the wife to divorce under the Talmudic law.

The Talmudic law treats of four kinds of divorce, in which the methods of procedure were somewhat diverse, but for each of which the *shetar* (bill of divorce) was always the same. These are the following:

- 1- Divorce by mutual agreement. In this case the wife received the dowry fixed in the Kethuba.
- 2- Divorce sought by the husband and enforced upon the wife. If the court decreed the cause of the husband valid and granted the divorce, the wife was mulcted the amount of her dowry.
- 3- Divorce sought by the wife and enforced upon the husband. If the court decreed the cause of the wife valid and granted her the divorce, the husband was

compelled to give her the ~~vd~~ and to pay her her dowry.

4- Divorce sought by neither husband nor wife, but enforced by the court. There were certain cases in which the court compelled the husband to divorce his wife, even though both desired to continue their marriage (vide infra.)
(*Milginer, pages 120-121.*)

Marriage was deemed by the Rabbinical legislators an institution created for the highest self-realization and happiness of the contracting parties. Therefore, when in single instances marriage proved a failure, and the husband and wife agreed to free themselves from the unhappy and burdensome relation, the court could not and did not interfere.

The specific circumstances under which the husband was entitled to divorce according to the Talmudic Law were the following:

- 1- If the wife committed adultery, or led a lewd and immoral life. (Kethuboth 72 a.)
- 2- If she disregarded the dietary laws in her household

management or otherwise transgressed the ritual laws; (ibidem)

3- If she insulted her parents-in-law in the presence of her husband; (ibidem)

4- If the husband discovered after the marriage, such deformity, disease, or bodily infirmity in his wife as to render cohabitation impracticable or dangerous; (Kethuboth 72 b)

5- If she stubbornly or unjustifiably refused for the space of a year to cohabit with him; (Kethuboth 77 a.)

6- If after ten years of married life, the wife remained childless. (Kethuboth 77 a., and Jebamoth 65 b.)

The causes for which a wife was entitled to demand and receive a divorce, according to the Talmudic law, were the following:

1- If the husband refused to grant her conjugal rights; i.e. food, raiment, and cohabitation; (Kethuboth 63 a., 70 a., based on Exodus XXI, 10)

2- If the husband became afflicted with some loathsome chronic disease, or engaged in some disgusting and malodorous occupation after the marriage. (Mishna Kethuboth VII,9.)

3- If the husband was physically impotent; (Mishna Nedarim XI,12) (~~90 b~~)

4- If the wife had vowed to abstain from conjugal intercourse; (ibidem)

5- If the husband restricted the wife's liberty or treated her tyrannically; (Kethuboth 70 a. and 72 a.)

6- If the husband desired to remove to a foreign country and she refused to accompany him, she was entitled to a divorce; (Kethuboth 110 b.)

7- If the husband apostatized; (Kethuboth 30 b., Mishna Gittin IX,8.)

NOTE: The betrothal took place twelve months before the consummation of the marriage; but

during this period the bride was legally and socially considered as a wife, and therefore the various laws of divorce were applicable to her as well as to the actual wife. (Mishna Kethuboth V,2.)

There were a number of causes for which a divorce was enforced against the will of both parties. Judicial separation by the court was practiced according to the Talmudic law, and marriages were declared void on the ground of public policy and welfare.

Among the causes for such judicial decree of separation were the following:

- 1- If the marriage directly violated a Biblical or Talmudic prohibition; (Kethuboth 77 a.)

The incestuous and adulterous marriages enumerated in the 18th chapter of Leviticus were regarded as void and null without the formality of a divorce.

- 2- If the injured husband was willing to condone the

offense of his wife and to continue the marriage;

(Mishna Sota V,1; Mishna Jebamoth X,1)

3- If a couple lived together for ten years and no children were born to them, the court compelled the husband to divorce his wife. (Kethuboth 77 a.) For marriage was deemed a failure unless blessed with children; a large family was considered especially desirable. (Jebamoth 61 b, 62 a.)

The divorced woman, ~~like her former husband~~, being sui juris (בת חורין) was free to be married "to any man whom she desired." (Mishna Gittin IX,3.)

לכל אבר ונתניין:

For one of the clauses in her Get read: "Thou art permitted to be married to any man." (ibidem) היא אישית לכל אדם:

This right was, however, restricted by the prohibition against her marriage with certain persons. Among the latter were:

her paramour (Mishna Jebamoth II,8); her former husband, (in case she had, in the mean time, been married to another).

(Deut. XXIV, 1-4); the messenger bringing the Get from a foreign country (Mishna Jebamoth II, 9); the judge who declared her vows binding and therefore caused her to be divorced (Mishna Jebamoth II, 10); the priest and high priest (Leviticus XXI, 7). In the last case, if she had been divorced during her mere betrothal and previous to the actual consummation of the marriage, she might be lawfully married to a priest.★ (Mishna Jebamoth X, 3.)

The amount due to the wife and secured to her by means of the marriage document, known as Kethuba, was given to her upon divorce only when that divorce had been granted at her own request, by her consent, or had been enforced by the court because of the culpability of the husband.

(Mishna Kethuboth VIII, 2-5.) If she had been guilty of any misdemeanor, and had given her husband sufficient cause to legally divorce her, she did not receive the dowry fixed in the Kethuba. If she had been guilty of a breach of morality or of a violation of a ritualistic prescription,

she lost her right to it. In fact, in all cases in which the divorce had been granted at the instance and request of the husband, such as for her desertion, immoral conduct, refusal to cohabit, etc., she was legally punished by being deprived of the dowry.

The legal status of the divorced woman was one of absolute freedom. She was entirely released from the jurisdiction of her former husband, and even though her father were still living, he had no authority over her property or her person. She had full control of the separate estate which she had acquired before or during her married life.

Socially her position as a divorced woman was by no means an inferior one. On the contrary, she seems to have enjoyed certain privileges which were denied to the married woman. She was, as indicated above, sui juris, ^{אחראית} or ^{בת חורין}. Before her marriage she was subject to

the authority of the father (*patria potestas*); during her marriage her husband exercised control over her and her dotal and paraphernal property. As a divorced woman she was her own mistress.

In Biblical times, when the right of the husband was exercised by him at pleasure, absolutely no odium attached to the divorced woman.

As the right of the husband to divorce his wife became more and more restricted in Talmudic times, divorce without cause of course became rarer, and divorced women were looked upon with suspicion. For unless it was known, or she could prove, that the divorce had been granted at her request or by the order of the court on her application, she was suspected of having committed some offense against morality which caused her husband to send her away.

(Mishna Nedarim IX, 9.)

This sentiment seems to have grown so strong, that it came to be considered a disgraceful thing to marry a divorced woman. (Gittin 90 b.)

To the many sayings and customs of the Hebrews set forth in the Talmud, illustrating the high morality and noble ideals cherished by them, I here add those concerning the treatment of the divorced woman. Just as the widow met with especial consideration and tender care among the Hebrews, so was it also with the divorced woman.

The moral law recommended that she be dealt with with kindness and tenderness, and bestowed especial praise upon him who supported and comforted her.

Thus it is related that Rabbi José, the Galilean, had a very troublesome and unruly wife. After she had made his life miserable for some time, he gave her a divorce. She thereupon re-married. Her second husband became blind and was reduced to poverty. Upon Rabbi José's learning

that she was forced to go begging in order to support herself and her husband, he invited her and her husband into his house and supported them, although when she was his wife, she had made his life wretched. His conduct is the subject of Rabbinic praise and encomium. (Midrash Bereshith Rabba XVII,3; Talmud Jerushalmi Kethuboth, Ch.XI.)

"Do not withdraw from thy flesh," (וּמִכֶּשֶׁךְ אֶל תִּתְּעַלֵּם)
 said Isaiah (VIII,3) and this is to be interpreted to mean,
 "Do not withdraw help from thy divorced wife."

(Midrash Bereshith Rabba XVII, 3.)