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Between Text and Context:
Scripture, Society and the Role of Women
In Formative Judaism

by

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Why were women treated the way they were in the Mishnah? Judith Wegner, in her book, *Chattel or Person?*, clearly sets forth how women were treated. She explains that the framers of the Mishnah sometimes treated women as property and sometimes treated them as persons, depending on whether or not some man owned their sexuality. If no man owned a woman's sexuality, she was totally autonomous. If a man did own her sexuality, a woman was dependent, but only treated as chattel or property in relation to her sexuality.¹ At the end of her book, however, Wegner asks why the framers of the Mishnah did not keep women under perpetual male tutelage as was done in contemporary Roman law. Why allow any woman to be autonomous? Her conclusion was that scripture acted as a mitigative force to the mishnaic framers' tendency to control women.²

This paper will investigate the reasons for both the mishnaic framers' tendency to control women and their reason for not keeping women under perpetual tutelage. It is the position of this paper that, in both cases, it was the cultural and historical context of Palestine in the late second century C.E. which determined the manner in which the framers of the Mishnah used scriptural texts to state the position of women in their own text. To illustrate this, this paper will first establish the cultural context of women in both Hellenistic and Roman cultures. Ultimately this paper will show that, even though the framers of the Mishnah were more influenced by Hellenistic culture than Roman culture, they were, nonetheless, influenced by Roman law on the subject. Following the sections on Hellenistic and Roman cultures, this paper will then turn to the historical situation of the framers of the Mishnah and show how they used scripture in a selective manner to deal with their historical and cultural context.

¹ Judith Wegner, *Chattel or Person?* (New York: Oxford UP, 1988), p. 170.

² *Ibid.*, pp. 115, 196.

brief overview of status of E in
Hellenism & Roman culture
(context for dev. of Mishnah) - 2nd c CE

- good source to changes list by
Mishnah (from priestly codes of
priests) & how & where viewed
w/m-w, cultic priority for men

- explains dev. of Mishnah in
its cultural context (2nd c. Palestine)

Women in Hellenism

In the Hellenistic age, Greek women were considerably better off than their sisters in the Classical age.³ There was a growing respect for the woman as a person, a greater participation of women in social life and an extension of women's legal capabilities.⁴ A few Greeks, such as Epicureans and Cynics, believed that women should be taught, and literacy was generally on the increase for women.⁵ However, Athenian women were still only trained in domestic matters and Stoicism, the most popular of the Hellenistic philosophies, reinforced traditional roles of women.⁶ The traditional woman would have stayed at home and managed the household. A man apparently still had acceptable access to a wide range of women to meet his other needs, courtesans (hetairai), concubines and prostitutes.⁷

Within a marriage, the husband administered his wife's property and enjoyed the use of it. In the case of a divorce, either the man or the woman could initiate a divorce, but communal property remained with the man. The woman, however, was able to reclaim her dowry.⁸ Women could become wealthy. However, because of their lack of education, they lacked the background to deal with that wealth legally. Greek women, therefore, required a guardian for legal matters.

With the help of their guardians, women could, however, ... buy and sell goods and property, mortgage their own goods, give and obtain loans, assume obligations of work, make wills, be named heirs and inherit legacies and - albeit rarely - personally conclude their own marriage contracts.⁹

The acquisition of wealth allowed some women to use economic power to exert political power. However, their participation in the management of political

³ Eva Cantarella, Pandora's Daughters: The Role & Status of Women in Greek & Roman Antiquity, (Baltimore: John Hopkins University Press, 1987), p. 97.

⁴ *Ibid.*, p. 90.

⁵ Sarah B. Pomerooy, Goddesses, Whores, Wives, and Slaves: Women in Classical Antiquity, (New York: Schocken, 1975), p. 137.

⁶ *Ibid.*, p. 131.

⁷ *Ibid.*, pp. 139-141.

⁸ *Ibid.*, p. 129.

⁹ Cantarella, p. 91.

power was an exception and was recorded as such.¹⁰

The Private Life of Roman Women and Roman Law

The movement toward the improvement of the place of women in society can also be seen in the life of Roman women. Betrothals, marriages and divorces among the upper class in Rome were usually arranged between men for the political or financial profit of their families. However, by the time of the late Republic (70 BCE - 90 CE), women began to initiate their own marriages in order to benefit their families. Even though betrothals were usually arranged between men, the approval of both parents was necessary for the betrothal and the bride was allowed to refuse if she could prove her prospective husband was morally unfit. However, since these marriages usually happened at an early age, it is doubtful that a young girl would have resisted.¹¹ Within a marriage, the woman's dowry did not belong to the husband, but she enjoyed the benefit of it as long as the marriage lasted.¹² By the time of the Mishnah, either a man or a woman could initiate a divorce and the woman was able to recover her dowry upon divorce, unless the man was divorcing her for immoral conduct. Under these circumstances, he retained part of the woman's dowry.¹³

Under Roman law, the pater familias had power over a woman which surpassed that of her husband. The pater familias decided whether his daughter would remain under his control or pass over to the control of another man, and if so, who that guardian would be. That power was not necessarily passed to the husband. It was only legally passed to the husband if the woman was transferred to him with manus or power.¹⁴

If a woman was legally transferred to her husband by means of a marriage with manus, the woman became part of her husband's family. Her husband inherited from her at her death, but the wife in such a marriage also inherited from the husband at his death. If the woman was transferred to her husband without manus, the woman's family maintained control over her property both during her life and after her death. The husband could not inherit from her, but neither could she inherit from him. Because wealthy families desired to maintain

¹⁰ *Ibid.*, pp. 91, 93. See also Pomerooy, p. 125.

¹¹ Pomerooy, p. 157.

¹² Julie Neuffer, "First-Century Cultural Backgrounds in the Greco-Roman Empire" in Symposium on the Role of Women in the Church, (General Conference of Seventh-day Adventists, 1984), p. 72.

¹³ Pomerooy, p. 158.

¹⁴ *Ibid.*, p. 152.

This coupled with the fact that Roman women could inherit, divorce and retrieve their dowries upon divorce or the death of their husbands, meant that aristocratic Roman women could not only be 'emancipated' but also quite independently wealthy.²¹

The Public Life of Roman Women

Unlike Athenian girls, Roman girls did get an elementary school education (ages 7-12) and Roman women could increase that education by reading and attending lectures. Women studied philosophy, became poets, writers and even physicians.²² Some followed cults, such as the cults of Isis, Vesta, Ceres and Fortuna. These cults not only allowed them to participate, but also allowed them to exert leadership.²³ Roman women did not hold political office, but they did exert influence on the political scene, especially through marriages. They were also able to exert the influence which their money could buy through becoming patronesses of men's guilds.²⁴ As we can see, Roman women benefited from and contributed to culture much more than Hellenistic women did because they were involved in the public domain of culture in ways that Hellenistic women were not.

The Historical Context of the Mishnah

The Mishnah is a book of laws compiled by Jewish sages around the end of the second century C.E. in Palestine. It appears to have been written out of a need for the survivors of the Jewish-Roman war to re-order their world after the destruction of the Temple.²⁵ What the writers of the book described was what they wanted the world to be, not necessarily the world as it was. This is apparent from the fact that four of the six divisions of the Mishnah deal with Temple cult as the central institution of the Israelite society at a time when the Temple did not even exist. Since the Mishnah presents a projected way of life, it may not actually describe the life of women at the time, only the ideal place of women in the mishnaic society. Nevertheless, it is important to look at the place of women in the Mishnah because the Mishnah did help to create an actual

²¹ Pomerooy, p. 163.

²² Neuffer, p. 72.

²³ Pomerooy, pp. 183-184, 206-226.

²⁴ Ibid., p. 200.

²⁵ Jacob Neusner, Method and Meaning in Ancient Judaism, (Missoula, Montana: Scholars, 1979), p. 20.

control over the property of people in the family and wealth generally increased in Rome by the time of the late Republic, marriages without *manus* became common by that time.¹⁵

At the death of the pater familias, unmarried daughters and daughters married without *manus* were not automatically autonomous. Power over the Roman woman was transferred to the nearest male relative (agnate) unless the father had appointed a different guardian in his will.¹⁶ In this way, control over property remained within the family and in the hands of men. Women needed their guardian's approval for any legal transaction such as selling property. This tutelage, however, was not necessarily perpetual by the time of the writing of the Mishnah as Judith Wegner seems to imply.

To encourage childbirth, Augustine (reigned 27-14 BCE) did allow freeborn women with three children and freedwomen with four children to be freed from a male guardian.¹⁷ Later the laws of Claudius (reigned 41-54 CE) abolished automatic guardianship of agnates over freeborn women. Only the libertine woman had to have a guardian who would have been her former master.¹⁸ Even before these laws, however, the power of the guardian had been limited. By as early as the last centuries of the Republic, a complex mechanism called *coemptio fiducia causa* allowed a woman to replace her guardian with someone who allowed her to do as she wished.¹⁹ The result of these laws seems to be that freeborn women did not have to have a guardian and neither did freedwomen with four children. Those who did have a guardian, by choice or by necessity, could still become functionally autonomous through the use of *coemptio fiducia causa*. Thus it appears that a woman married without *manus*, which was the common practice by the late Republic, could become autonomous or at least functionally autonomous at the death of her pater familias. Eva Cantarella affirms this notion when she states,

That beginning at the end of the Republic there were 'emancipated' women at Rome and that the number of these women greatly increased between the first and second centuries is beyond dispute.²⁰

¹⁵ Ibid., pp. 152, 155.

¹⁶ Ibid., p. 151.

¹⁷ Ibid., p. 151.

¹⁸ Cantarella, p. 139.

¹⁹ Ibid., p. 139. See also Pomerooy, p. 151.

²⁰ Cantarella, p. 142.

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social system by becoming the foundation for the Babylonian and Palestinian Talmuds.²⁶

In re-ordering their world without the Temple, the framers of the Mishnah turned to the very laws of scripture which dealt with the Temple, the Priestly Code. In its day, the Priestly Code had presented a coherent world view and way of life. It was able to maintain the conscious identity which the people had attained through exile and return at a time when this identity was threatened by living in a society without barriers and boundaries between cultures. In mishnaic times, the focal point of that identity, the Temple, had been destroyed and once again there were not any barriers or boundaries between cultures in the Holy Land.²⁷ Cultural identity needed to be redefined if the community was to survive. To deal with this reality, the framers of the Mishnah went back to the Priestly Code, maintained the sources of uncleanness defined there, but redefined the locus of cleanness and uncleanness in the world beyond the cult. The table at home had to be as clean as the altar of the Temple, domestic utensils were subject to uncleanness and the male Israelite had to be as ritually pure as the Priest.²⁸ Obviously, all of this had an effect on the lives of women who were considered unclean during menstruation. While the organizing principle with regard to the treatment of women in Roman society was property, the organizing principle with regard to the treatment of women in the Mishnah was the ritual purity of the men.

The Mishnah portrays its comprehensive world view by assuming basic laws and concentrating on problem cases.²⁹ Most of the rules about women are found in *Seder Nashim* (Division of Women). Within this division, there are seven tractates which deal mostly with the formation, duration and dissolution of marriages. The focus of this division is not really women, however. The focus is on the male Israelite and how his personal sanctity might be impaired in relation to a woman whose sexuality might belong to another man. In fact, the main concern of the Mishnah in general is for the male to avoid cultic

²⁶ Eugene J. Lipman, *The Mishnah: Oral Traditions of Judaism*, (New York: Schocken Books, 1970), pp. 19-20.

²⁷ Jacob Neusner, "Scripture and Mishnah: Authority and Selectivity" in *Scripture in the Jewish and Christian Traditions: Authority, Interpretation, Reference*, ed. by Frederick E. Greenspahn, (Nashville, Tennessee: Parthenon Press, 1982), pp. 78-83.

²⁸ Jacob Neusner, *From Mishnah to Scripture: The Problem of the Unratified Saying with Special Reference to the Division of Purities*, (Chico, California: Scholars, 1984), p. 123. See also, Jacob Neusner, "Scripture and Mishnah: Authority and Selectivity," pp. 82-83.

²⁹ Wegner, p. 5.

pollution.³⁰ This is a direct result of the mishnaic framers' choice to deal with their historical context by turning to a particular part of Scripture (the Priestly Code) for direction and applying that code to all male Israelites.

The Mishnah's Use of Scripture

Neusner explains that it is not unusual for a Jewish community to focus on one particular section of Scripture. He states, "...scripture is authoritative once we have made our choice as to which part of scripture we shall read."³¹ While Jewish-Christians turned to apocalyptic prophecies, the framers of the Mishnah turned to the laws of the Priestly Code. However, even beyond selecting what will be considered authoritative, there is a further flexibility in the use of Scripture. Neusner states that there is a "varied relationship" between the components of the Mishnah and Scripture, ranging from total dependence to no dependence to something in between. Sometimes Scripture supplies the topic and the analytical program, resulting in the Mishnah simply repeating what Scripture already says, but stating it in an Aristotelian philosophical framework. Sometimes scripture simply sets forth the topic, but does not dictate the inner logic, resulting in a scriptural topic being treated in a way Scripture never intended. Finally, sometimes the mishnaic topic is either unknown to Scripture or is casually or elliptically treated in Scripture.³² By focusing on the Priestly Code as authoritative and using all of Scripture in this flexible manner, the mishnaic framers were able to consider their work as scripturally based even though they rarely referred to Scripture at all. As Neusner says,

It is self-evident, on the one hand, that every expression of Judaism confesses the primacy of scripture's authority and, on the other, that it also says pretty much whatever it wants about scripture.... So the role of scripture in the communities of Judaism is to validate what people want to say anyway.³³

There are limitations, however, to the mishnaic framers' flexible use of scripture to validate what they want to say anyway. Judith Wegner has observed that, "...where scripture speaks explicitly, Mishnah cannot presume to

³⁰ *Ibid.*, p. 5.

³¹ Neusner, "Scripture and Mishnah: Authority and Selectivity," p. 76.

³² Jacob Neusner, *Midium and Message in Judaism*, (Atlanta, Georgia: Scholars, 1989), p. 50.

³³ Neusner, "Scripture and Mishnah: Authority and Selectivity," p. 65.

countermand."³⁴ Therefore, to summarize the Mishnah's use of scripture, we can say that the Mishnah...

- 1) Focuses on the Priestly Code as authoritative,
- 2) Makes use of Scripture, but feels free to go beyond scripture,
- 3) And does not countermand Scripture when it speaks explicitly on a subject.

Based on these principles, let us now look at the way in which two passages of Scripture may have affected the private life of women in the Mishnah. The first will be the creation stories of Gen. 1 and 2 and the second will be the section on vows in Num. 30:2-17.

Women in the Creation Story and the Mishnah

Judith Wegner herself wonders whether the impetus to treat women as persons in the private domain stemmed from the sages' interpretation of Gen. 1 where God created man and woman in God's own image (Gen. 1:27).³⁵ It seems entirely possible, however, that the sages were not only influenced positively by the Gen. 1 story, but that they were also influenced negatively by their interpretation of the Gen. 2 story.

Robert Alter perceives the final editor of Gen. 1 and 2 affirming a dual status for women. Throughout the Torah, Alter sees the editor of the Torah purposefully leaving discontinuities, duplications and contradictions in the text so as to creatively express a multifaceted truth. With regard to woman and Gen. 1 and 2, he believes this multi-faceted truth is that women were recognized at the time of the editing as morally, psychologically and intellectually equal to men, yet legally and socially subordinate to them.³⁶ If Wegner is correct that the sages were positively influenced by Gen. 1, then it seems possible that they were also negatively influenced by Gen. 2. Such a view would seem to be supported by Paul Fleisher in his study of the Mishnah's view of the cosmos.

Fleisher states that the Mishnah's view of the cosmos can be understood as a conflation of the two versions of creation.³⁷ He deals with the dual topic of God as sole actor in classifying creation with human beings merely being objects to be classified (Gen. 1) and the archetypal human being as the classifier of what

³⁴ Wegner, p. 196.

³⁵ *Ibid.*, p. 179.

³⁶ Robert Alter, The Art of Biblical Narrative, (New York: Basic Books, 1981), pp. 140-146.

³⁷ Paul Fleisher, Oxen, Women, or Citizen?, (Atlanta, Georgia: Scholars, 1988), p. 60.

God had already created (Gen. 2). His idea of Gen. 1 and 2 as playing an implicit role in the way man is viewed within the cosmos in the Mishnah seems to be supported by Neusner.

The Mishnah's evidence presents a Judaism which at its foundation and through its parts deals with a simple fundamental question. What can a man do? Man, like God, makes the world work.... Man by his word and will initiates the processes which force things to find their rightful place on one side or the other of the frontier, the definitive category holiness.³⁸

If Fleisher and Neusner are correct that Gen. 1 and 2 played such an important role in how the cosmos was viewed and how 'man' was viewed as both a passive object to be classified and an active classifier, then it would appear that Gen. 1 and 2 could have also played an implicit role in how 'woman' was viewed within this classified cosmos as both equal to man in some ways and yet subordinate to him in other ways. Fleisher does note in his research, "Where the two stories differ, the Mishnah's system presents both versions."³⁹

What the Mishnah appears to have done, is to have taken Scripture's creatively expressed multifaceted truth regarding women in society as found in Gen. 1 and 2 and classified it in accordance with its own major interest of cultic purity. In their efforts at classifying women in their dual role, the framers of the Mishnah appeared to have turned to Num. 30:2-17 for help. We will now look at how Num. 30:2-17 exhibits a classification of women according to their relative autonomy in professing religious vows.

Religious Vows in Scripture and the Classification of Women in the Mishnah

According to Num. 30:2-17, the legal control of the father over the religious vows of the daughter is limited to when she is still in her father's house by reason of her youth (vv. 4-6, 17). The husband has control over the vows of the wife (vv. 7-9), but no one has control over the vows of a divorcee or widow (v. 10). Wegner notes that control over the women's vows was viewed as a symbol for legal authority over the woman.⁴⁰ Thus, Num. 30:2-17 speaks of two types of dependent women, the minor daughter and the wife, and two types of autonomous women, the divorcee and the widow. Mishnaic logic of defining rules from Scripture by the use of analogy and contrast expanded the four categories to six. Neusner describes this analogy and contrast approach as

³⁸ Jacob Neusner, Judaism: The Evidence of the Mishnah, (Chicago: The University of Chicago Press, 1981), p. 282.

³⁹ Fleisher, p. 61.

⁴⁰ Wegner, p. 169.

48 follows:

...something (1) is like or (2) unlike something else. If (1) it is like that other thing, it follows its rule. If (2) it is unlike that other thing, it follows the exact opposite of its rule. If, again, scripture states a rule and its condition, then the presence of the opposite condition will generate the opposite rule.⁴¹

Therefore, if the father has control over the minor daughter, by contrast, he does not have control over the daughter who has reached majority (12 1/2 years and 1 day). The commitment of the framers of the Mishnah to Hellenistic polarities combined with scriptural passages on the levirate widow (Dt. 25:5-10) to create the sixth category. If the widow is autonomous, then the levirate widow is not.

The mishnaic tractate on vows (Nedarim), thus approaches Scripture in the 'in between' way spoken of earlier. It takes the rules of Scripture regarding vows, but goes beyond Scripture to deal with the philosophical problem of classifying the genus and species of those vows. In the process, however, it also presents six classifications of women. Wegner notes that the classification of women in the Mishnah is based on "...the presence or absence of a legal relationship in which some man owns the exclusive right to use or dispose of a woman's biological function."⁴² The resultant taxonomy of women based on who owns their sexuality can be shown by a chart which Wegner developed.⁴³

OWNER	DEPENDENT	AUTONOMOUS	OWNER
father	minor daughter	adult daughter	herself
husband	wife	divorcee	herself
levir	levirate widow	widow	herself

Flesher further differentiates what it is that is owned. He states that the father owns the minor daughter's virginity, the husband owns the wife's sexual activity and the levir owns the levirate widow's productivity. In contrast, the daughter who has reached majority owns her own virginity, the divorcee owns her own

sexual activity and the ordinary widow owns her own productivity.⁴⁴

Given the mishnaic framers' concern over cultic purity, and the fact that a man could become unclean by having sexual relations with a woman whose sexuality belonged to another,⁴⁵ it is understandable that they would be interested in classifying women according to who controlled the woman's sexuality. The result of such a classification was an element of freedom for women who owned their own sexuality since "(i)n the private domain, the Mishnah's framers always treated autonomous women as persons, never as chattels."⁴⁶ It also resulted in having a positive affect on dependent women since "...the sages treat a woman as chattel only if her sexual function belongs to a specified man and only when the case involves a challenge to his ownership of that function. In all other circumstances, mishnaic law regards a woman as a person."⁴⁷

We will now turn to look more closely at the autonomous woman and the dependent wife in the private domain and all women in the public domain to provide us with points of reference by which we can compare women in the Mishnah with women in the broader Greco-Roman world.

The Autonomous Woman and the Dependent Wife as Persons in the Private Domain

The autonomous woman in the private domain had complete control over her property and over her sexuality in the Mishnah.⁴⁸ She could arrange her own marriage, engage in litigation, testify in court for limited purposes, swear oaths regarding legal claims, make binding vows and be subject to the same criminal responsibilities as a man.

Like the minor daughter, the wife was dependent. Since the daughter was usually betrothed before she reached majority, the woman generally would have

⁴⁴ Paul Flesher, "Are Women Property in the System of the Mishnah?" in From Ancient Israel to Modern Judaism Vol. 1, ed. by Jacob Neusner, E. Freerichs, N. Sama, (Atlanta, Georgia: Scholars, 1989), p. 226.

⁴⁵ Wegner, Chattel or Person?, p. 17-18.

⁴⁶ Ibid., p. 115.

⁴⁷ Judith Wegner, "Dependency, Autonomy and Sexuality: Woman as Chattel and Person in the System of the Mishnah" in New Perspectives on Ancient Israel vol.1, Religion, Literature and Society in Ancient Israel: Formative Christianity and Judaism, Brown Judaic Studies 206, ed. by Jacob Neusner, P. Borger, E. Freerichs, R. Horsley, (Atlanta, Georgia: Scholars, 1990), p. 89.

⁴⁸ Wegner, Chattel or Person?, p. 116.

⁴¹ As quoted in Wegner, p. 169.

⁴² Judith Wegner, "Tragelaphos Revisited: The Anomaly of Woman in the Mishnah," Judaism 37:164.

⁴³ Ibid., p. 164. See also Chattel or Person?, p. 169.

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moved from being under the control of her father to being under the control of her husband. However, while the father's control over the minor daughter may be considered to be total control, the husband's control over his wife was not total. This is because the wife who would had reached majority was considered to have obtained the age of reason. According to Judith Wegner, as a woman of reason, the wife had certain rights, powers and duties which defined her legal personhood.⁴⁹

The rights of a wife included the right to be treated humanely by her husband. He had to do such things as let her visit her parents, eat her favorite foods and wear her favorite ornaments. If he failed to treat her humanely, even though only the man could initiate a divorce, the woman could petition the courts to force him to divorce her (*Ket. 7:1-5*). This rule may have as its foundation the scripture passage which states that a slave-wife who is not treated humanely when a man takes a second wife must be set free absolutely at no cost to her (*Ex. 21:10-11; Dt. 21:14*). If wives who were originally slaves had such protection, it could be inferred that any wife would have had the same protection. Such an interpretation of a law would allow the mishnaic framers to bring their community into conformity with the broader cultural context which allowed women to initiate a divorce.

Besides petitioning the courts, the woman could also induce her husband to divorce her by agreeing to forgo the marriage portion.⁵⁰ Ordinarily, a woman retrieved her marriage portion if her husband was divorcing her without cause. She only forfeited her marriage portion if her husband was divorcing her because she was caught in adultery or if he suspected but could not prove adultery. This latter case involved the woman being caught in the company of a man whom the husband had prohibited her from seeing because he suspected an adulterous relationship existed between them. This rule of allowing the woman to recover her marriage portion unless her husband was divorcing her on grounds of immorality is similar to the Roman law which allows a woman to recover her dowry as long as the man was not divorcing her because of immorality.

The wife under mishnaic law had a right to maintenance from her husband while he was alive and, upon his death, she had a right to be maintained by his estate as long as she stayed in his house. Even though she could not inherit from her husband, a woman had a right to recover her marriage portion upon widowhood. Whether she was released from the marriage through a divorce or through the death of her husband, a woman could even put a lien on her husband's property for the payment of her *ketubah* (marriage settlement).

The powers which a wife had included the power to appoint an agent and function as her husband's agent. She could own property and sell property

⁴⁹ *Ibid.*, p. 70.

⁵⁰ *Ibid.*, pp. 70-73, 80-86.

which was not part of the property that she brought into the marriage. Even though her husband had use of the property that she brought into the marriage and she could not sell that property, neither could he sell that property without her permission.⁵¹ These powers acknowledge the woman's intellectual capability. Even though the mishnaic community was more like the Hellenistic culture in keeping women close to home, it is more like the Roman law which existed at the time of the Mishnah in acknowledging the woman's intellectual capabilities with regard to dealing with business matters.

With respect to duties, Wegner notes that "...for purposes of private law, the Mishnah's framers treat a woman of full age as equivalent to a man."⁵² A woman was required to observe biblical and mishnaic laws, especially those which affected her husband's conjugal rights and cultic purity.⁵³ One of the mishnaic laws which she had a duty to uphold was a duty to perform, in return for her maintenance, a minimum of household and economic tasks even if she had servants. Wegner notes that the reciprocal nature of the rights and duties of the husband and wife, while not exhibiting legal equality, does bear witness to the woman's personhood.⁵⁴

If the wife had all these rights, powers and duties which emphasized her personhood, in what way was she treated as chattel? As has already been stated, she was only treated as chattel in relation to her sexuality. Wegner gives several examples of which this paper will list only a few.

The Wife as Sexual Chattel in the Private Domain

Even though *Num. 30:7-9* stated that a man could revoke the religious vows of his wife, the Mishnah limited this to vows which would interfere with their conjugal life.⁵⁵ As with Abraham and Sarah (*Gen. 16:3*), the Mishnah agrees that a man could take a second wife if the woman had not produced an heir for him after ten years of marriage. The framers of the Mishnah saw the command to 'be fruitful and multiply' as applying only to the man (*Yeb. 6:5B*).⁵⁶ This may be due to the fact that they observed some women being incapable of multiplying. Surely God would not command a woman to do something which

⁵¹ *Ibid.*, p. 71.

⁵² *Ibid.*, p. 117.

⁵³ *Ibid.*, p. 71.

⁵⁴ *Ibid.*, p. 71.

⁵⁵ *Ibid.*, p. 56.

⁵⁶ *Ibid.*, p. 41.

nature then kept her from fulfilling. In the Eposusal tractate (*Oiddushin*), the woman is listed at the top of the list of a man's transferable property for no apparent reason. In this respect the Mishnah parallels the list of contents of a house which belong to a man found in the tenth commandment in Ex. 20:17, wife, male and female slave, large and small cattle. What is interesting about this instance is that the mishnaic framers did not have to use Ex. 20:17 for the list of possessions of a man. They could have used the Deuteronomic parallel to this passage (Dt. 5:21) which separates the wife as a different category and does not list her among the things which "belong to" the man. Obviously, there were contextual reasons for their choice of which text of the tenth commandment to follow. They wanted to list women as chattel of men. Their choice allowed them to treat the woman as chattel and that choice is reflected in other passages.

In the Mishnah, the wife is 'acquired' (*nigunei*), a word usually used for purchasing goods. A man can 'acquire' a wife in one of three ways, by money, by deed or by intercourse. This parallels the three ways that Canaanite slaves are 'acquired', by money, deed and by usucaption (*Qid.* 1:2-3). In the eposusal ceremony, the man is the only one who recites anything. The woman has no verbal response to make. Even if she did speak, her words would have no effect (*Qid.* 1:1). Wegner states that this is because it is the man who 'acquires' the woman.⁵⁷

As we have seen, scripture may have played a positive role in moving the framers of the Mishnah to allow some women to be autonomous. It also appears to have helped to grant the wife, who was not autonomous, certain rights, powers and duties which recognized her personhood and her intelligence as someone made in the image and likeness of God. However, as has been shown, it is also evident that the Mishnaic framers used Scripture in the manner which allowed them to deal with women in a way that treated them like chattel or property in private life with respect to their sexuality. We will now look at how scripture was used by the framers of the Mishnah in ways that affected the woman's place in public life.

⁵⁷ *Ibid.*, pp. 42-43.

While Wegner states that the Mishnah use of the term (*qntn*) for regular marriages emphasized the property aspect of the woman with regard to her sexuality, Wright disagrees. In speaking of the use of the verb (*qntn*) with respect to marriage in the Ruth 4:10, Wright does states that the root (*qntn*) is ill-suited for normal use in connection with regular marriage because of its predominant connotation of purchase. He states, however, that its use in Ruth 4:10 is due to the fact that salable objects (the belongings of Elimelech and the field of Naomi) were also involved. He then goes on to suggest that the Mishnaic use of the term was due to the fact that salable objects were also involved in the marriage contract. (See Christopher J.H. Wright, *God's People in God's Land: Family, Land and Property in the Old Testament* (Grand Rapids, Michigan: Eerdmans, 1990), p. 193.

The Public Life of Women in the Mishnah

Judith Wegner notes that "...law and custom conspired to exclude women in general from the public domain in Mishnaic culture."⁵⁸ Women were legally excused from public religious exercises and were excluded from leadership roles in the Mishnaic society on the basis of custom (*Qid.* 1:8).⁵⁹ Such a conspiracy to keep women out of the public domain kept even autonomous women from attaining equality with men.

The way the framers of the Mishnah kept women from leadership roles in the religious sphere of the community was to first exempt women from certain public religious exercises and then to exclude them from leadership on the basis of that exemption.⁶⁰ Wegner states that the Mishnaic framers saw God as excluding women from first fruits (*Num.* 26:1-11) because they never inherited land at the time scripture was written (*Num.* 27:8) (*Bik.* 1:5). They also saw God as excluding women from donations to the sanctuary (*Ex.* 30:13) on the basis that women were not counted in the census (*Num.* 1:2) and only those who were counted were obliged to donate (*Sheq.* 1:3). However, the framers of the Mishnah went beyond Scripture to excuse women also from those public practices which replaced the sacrificial cult of the Temple.

Since only freed males over 20 had cultic obligations (*Num.* 1:2) the mishnaic framers concluded that only freed males over 20 had obligations to do those activities which replaced the Temple. Women were excused from praying the shema twice a day, using phylacteries during prayers, actively participating in public worship and communal study of scripture.⁶¹ Even though women were required to keep all the negative commandments, women were exempt from every positive commandment which was time specific (*Qid.* 1:7C) with the exception of eating unleavened bread.⁶² Economic reasons may have been part of the rationale for this exemption from positive commandments which were time specific since a man benefitted from his wife's efficient use of time for labor. However, women were obliged to recite other prayers (such as the T'fillah and the m'zuzah prayer and the prayer after meals) which were longer than the shema though not time specific.⁶³

⁵⁸ *Ibid.*, p. 145.

⁵⁹ *Ibid.*, p. 151.

⁶⁰ *Ibid.*, p. 153.

⁶¹ *Ibid.*, pp. 147-150.

⁶² *Ibid.*, pp. 150, 240 note #224.

⁶³ *Ibid.*, p. 153.

It seems to this writer that the framers of the Mishnah might have made the general rule of exemption from positive time specific obligations in order to insure men that women would not have to be in the public domain when they were unclean due to menstruation. Any man coming into physical contact with a woman at this time of the month, or with things she used, would also have become unclean.⁶⁴ This would have made the world a dangerous place for a Mishnaic man concerned about his ritual purity. Exempting the woman from all time bound positive precepts would have offset this problem. Even if the exemptions were mainly for the reason of ensuring the cultic purity of the men, they were also used as the necessary first step for the framers of the Mishnah to exclude women from leadership.

Once women were excused from reciting public prayers, they were then excluded from religious leadership by a rule which said that only someone required to recite the prayers could absolve others by leading a communal prayer service as agent of the community and reciting the prayers on their behalf.⁶⁵ Even if the woman was literate and the man illiterate, the man had to repeat the Hallel liturgy after the woman for it to be effective (Suk. 3:10).⁶⁶ The framers of the Mishnah obviously did not want the woman to be in a leadership position, but why? The obvious answer would be that they maintained the male to be superior to the female and that he could not be under her leadership in any situation.

Although the framers of the Mishnah perceived women to be made in God's image with, therefore, certain rights, powers and duties as a human being, there are indications that they also perceived the woman to be subordinate to man. Wegner notes that, in spite of Lev. 19:3, which is one case in which the mother is listed before the father, and Ex. 20:12, which would seem to imply that the two were worthy of equal respect, the framers of the Mishnah stated that the father always takes precedence over the mother in every case (Ket. 6:9E).⁶⁷ Another example of male precedence is shown in the case where a man and a woman are both in danger. The Mishnah states that the man should be saved first (Hil. 3:7).⁶⁸ Wegner sees the underlying basis for this commitment to male precedence and for an implicit acceptance of male superiority to be scripturally based. It appears the Mishnaic framers took seriously the scriptural passage "he shall rule over her" (Gen. 3:16) and that they interpreted this phrase

⁶⁴ Ibid., p. 162.

⁶⁵ Ibid., p. 153.

⁶⁶ Ibid., p. 154.

⁶⁷ Ibid., p. 146.

⁶⁸ Ibid., p. 167.

to mean in all situations.⁶⁹

Thus, women were encouraged to stay home by exemptions which might be based on concerns for cultic purity and they were kept from leadership roles because of customs which appear to be implicitly based on an interpretation of Gen. 3:16. Furthermore, the exemptions were used as the explicit basis for the exclusions.

An Analysis of the Role of Scripture in Defining Women in the Mishnah

As we have seen, scripture may have had a positive role in influencing the framers of the Mishnah to allow some women to be autonomous and in limiting the treatment of dependent women as chattel to only those areas which deal with their sexuality. The framers of the Mishnah also, however, seem to have used Scripture to describe woman as a man's sexual chattel and to encourage even autonomous women to remain in the private domain by limiting their participation in the religious culture of the public domain. If, in fact, they used Scripture to say what they wanted to say anyway, what, beside their concern for their own cultic purity, might have led them to want to define women in the way they did. The answer seems to be the influence of their cultural context.

An Analysis of the Role of Women in the Mishnah with that of Women in the Greco-Roman World

First century Palestine was more Hellenized than it was influenced by Roman culture.⁷⁰ The Mishnaic community was immersed in a Hellenistic culture and chose to follow that culture with respect to its traditional notion that the place of woman was in the home. Like Hellenistic women and unlike Roman women, the Mishnaic woman did not take an active role in culture. Even though Mishnaic women were seen as part of the religious community and were bound by the religious laws of that community, they were excluded from leadership roles in religious worship. Although the Mishnaic woman was kept at home like the Hellenistic women, she does seem to be more highly respected than her counterpart in the Hellenistic world. This may be due to the fact that the mishnaic man valued home life more than his Hellenistic counterpart did. There is no support in the Mishnah for the common Hellenistic practice of men using the services of courtesans, concubines and prostitutes.

With respect to education, the Mishnah again seems to have followed Hellenistic practice. Mishnaic women do seem to have been taught to read. Suk. 3:10 involves a situation of the woman being literate and the man being

⁶⁹ Ibid., p. 146.

⁷⁰ Neuffer, p. 70.

illiterate and Meg. 2:4 states that women were allowed to (publicly) read the scroll of Esther (on the feast of Purim). Ned. 4:3c also assumes sons and daughters were taught Scripture (migrā'), but Wegner perceives a distinction between Scripture and Torah. She notes that Ben Azzai, the devil's advocate in the Mishnah, said that women ought to be taught Torah. Eliezer, however, feared that a woman who knows too much would become too liberated, especially with respect to sexual conduct. Joshua, who reflects the thought of the framers of the Mishnah, agreed with Eliezer and said that women value sexual indulgence more than wealth.⁷¹ Therefore, like the Hellenistic world, Mishnaic framers appeared to have debated the appropriateness of educating women. Also, like the majority of the Hellenistic world, the majority decision of the Mishnah was to educate women only to the point where they could function in society without allowing them to become too liberated. Unlike the Hellenistic woman, however, a mishnaic woman apparently was taught enough so that she could function on her own in society without the help of a guardian if she became divorced or widowed.

Unlike Hellenistic culture or Roman culture, the framers of the Mishnah would not allow the woman to initiate a divorce. Doing so would have been perceived as giving the woman power over the man and this would have violated their interpretation of Scripture's explicit statement in Gen. 3:16, "he shall rule over her." Nevertheless, the framers of the Mishnah were aware that marriage could put a woman in a situation that no human being should have to endure. By presuming that the rights granted a slave-wife were extended to all wives in general, they found justification for looking for a way to allow an abused wife to go free while still maintaining the authority of the man. Both the process of the woman petitioning the court to force her husband to grant her a divorce and the process of the woman enticing the man for a divorce by being willing to forgo her marriage portion kept the man in the authority position while also bringing the community into greater harmony with its Hellenistic environment.

As in the Greco-Roman world, the Mishnah allowed the man to have use of the woman's dowry during the marriage and allowed the woman to reclaim her marriage portion upon a divorce. The only exceptions to this is if she agreed to forgo it in order to entice her husband to divorce her or if the man was divorcing the woman on grounds of immorality. In this latter case, the Mishnah seems to be following the lead of Roman law.

This last example illustrates that, although first century Palestine was more Hellenized than it was influenced by Roman culture, the Mishnah does seem to have been influenced by Roman law. Boaz Cohen has demonstrated the mutual affect that Roman law and Jewish law had on each other. He especially notes a similarity of style between the Mishnah and both the Institutes of Gaius (reigned 37-41 CE) and the Digest of Julian (ca. 120 CE). Besides style, he sees

the Mishnah being influenced by Roman laws on dowries and even sees verbal parallels between the Mishnah and the Roman law of XII Tablets.⁷² In addition to the parallels noted by Cohen, the Mishnah further appears to be following the trend of Roman law over Hellenistic practice by not requiring a woman to have a guardian. In this respect, however, the mishnaic framers may have been more influenced by their own scriptural understanding of the woman's intellectual capability as a human being than they were by Roman law. Nevertheless, the mishnaic writers were supported in their decision to allow some women to be autonomous by a similar trend in Roman law.

In terms of inheritance, the framers of the Mishnah rejected both Hellenistic culture and Roman law and followed Scripture, which is explicit on the matter. The wife could not inherit from the husband. Supposedly, however, the daughter in the mishnaic community could inherit from her father if he had no sons. By stating in Bik. 1:5 that women did not inherit land at the time the Scriptural text about the first fruits law (Dt. 26:1-11) was written, the mishnaic writers do seem to acknowledge that some women later inherited from their fathers according to the scripture (Num. 27:8). The Mishnah also speaks of autonomous women having control over their property. It would appear then that a woman could have received property from her father either as part of her mohar or dowry or else could have inherited it from her father if he had no sons.

Conclusion

In conclusion we can say that the mishnaic framers were influenced by Hellenistic culture, Roman law and Scripture. They drew from these three sources to the extent that the sources aided them in their efforts at re-organizing their world without the temple. Since the organizing principle of the Mishnah was the cultic purity of all the men in the community, it seems obvious that the framers of the Mishnah would have followed the Hellenistic culture in which the community was immersed with respect to keeping the potentially "unclean" woman out of the public domain as much as possible. In terms of the private domain, however, the mishnaic framers appear to have been influenced both by Scripture and by the trend of Roman law to grant autonomy to some women. With their focus on the Priestly Code, their interpretation of the stories of Gen. 1 and 2 and the implicit classification of women in Num. 30:2-17, the framers of the Mishnah were able to use Scripture to say what they wanted to say anyway. They were able to re-order their world in such a way as to present a coherent world view and way of life which allowed them to maintain their conscious identity and yet adapt somewhat to the Hellenistic world around them.

⁷¹ Wegner, *Chattel or Person?*, pp. 157-162.

⁷² Boaz Cohen, *Jewish and Roman Law: A Comparative Study* Vol 1. (New York: Stausinger Bros. Inc., 1966), pp. 17, 344, 375.

Without the Temple, all men in the community were to act as priests within the temple of their own home and thus maintain cultic purity. To the extent that women were not a threat to this new world order, they were acknowledged as human beings created in the image of God with certain rights, powers and duties. To the extent that women were a threat to that new world order by virtue of their sexuality, they were to be treated as chattel. A woman's autonomy or lack of autonomy was defined in terms of whether or not some man owned her sexuality and she was only treated as chattel with respect to that aspect of her life. Whether dependent or autonomous, however, no woman could exert authority over any man in the community in any situation. One can only speculate why the mishnaic framers felt compelled to interpret the phrase, "he shall rule over her," in a way which prohibited any woman from exerting authority over any man in the community in the private or public sphere. It may be that they could not imagine any woman possibly having authority over "a priest of God."

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On Being a Religious Woman: Women Proselytes in the Greco-Roman World

by

Sally Overby Langford

What did it mean to be a religious woman in Greco-Roman society? More specifically, what can we learn about the lives of women in the Hellenistic world by noting that many women chose to associate themselves with or be converted to other faiths? Consider this inscription from Smyrna, Ionia, second century, CE:

Rufina Loudata, president of the synagogue, constructed the tomb for her freedpersons and for the slaves raised in her household; no one else has the right to bury anyone (in it). Anyone who ventures to do so shall give 1500 denaria to the sacred treasury and 1000 denaria to the Jewish community. A copy of this inscription has been placed in the (public) archives.¹

A careful reading of the inscription raises many questions. Was Rufina Jewish by birth, or does the word "Loudata" signify that she was a proselyte to Judaism? Was she married? If so, is it significant that no husband is mentioned? And why are fines for violating the tomb paid both to the city's sacred treasury and to the treasury of the Jewish community? Was Rufina perhaps a wealthy woman of Smyrna, who converted to Judaism without the blessings of her family?²

There are no easy answers to any of the questions. But by trying to answer them we may come to a clearer understanding of the religious lives of Hellenistic women — Jewish, Christian, and pagan. This essay contributes to the reconstruction of the religious lives of women in Greco-Roman society, by examining women, women proselytes, and particularly women proselytes to Judaism. In what is usually understood to be a highly hierarchical and male-dominated society, women did make religious choices. During the first centuries of the common era, many women were able to participate in the mystery religions of Isis and Dionysus, in Christianity, and in Judaism, apart

¹ Ross Kraemer, ed., Maenads, Martyrs, Matrons, Monastics (Philadelphia: Fortress Press, 1988) p. 218.

² These questions are raised by Kraemer in her articles "On the Meaning of the Term 'Jew' in Greco-Roman Inscriptions," HTR 82/1 (1989) 45, and "Hellenistic Jewish Women: The Epigraphical Evidence," SBL 1986 Seminar Papers (Atlanta: Scholars Press, 1986) p. 196.