Marriage and Divorce

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The modern academic study of Jewish marriage and divorce in antiquity began with the publication in 1860 of Zechariah Fraenkel's study, *Grundlinien des mosaisch-talmudischen Eherechts*. As the title makes clear, for Fraenkel and his contemporaries the study of Jewish marriage and divorce was first and foremost a study of legal institutions: the laws define the institutions. This legal approach predominated the academic study of Jewish marriage and divorce for slightly over a century, giving some way only in the 1970's to the increasing tendency to see marriage and divorce as social institutions that primarily constitute a subfield of women's studies. It was not until the 1990's that scholars began to study Jewish marriage and divorce as an independent discursive subject, deserving its own systematic and synthetic investigations.

A full survey of the history of scholarship on Jewish marriage and divorce in antiquity is beyond the scope of this essay. The goal of this essay is much more modest: To review the state of scholarship on Jewish marital and divorce practices, primarily the legal institutions governing marriage and divorce (including the *ketubbah*); their demographics; and the customs and rituals associated with them.

Nevertheless, a brief review of the history of scholarship will help to highlight and put into context the questions that have informed much of the recent work on Jewish marriage and divorce. Each of the three approaches mentioned above – legal, social, synthetic – correlates with specific questions that must be kept in mind in order to make sense of and assess current scholarly disagreements.

The study of Jewish marriage and divorce in antiquity as legal institutions traditionally focused on clarification of rabbinic law. This was due in part to its roots in the normative study of Jewish law (halakhah), but also, quite understandably, to the relative lack of evidence outside of rabbinic sources, a

state that lasted until the discovery and publication of the marital documents dating from the first and second centuries C.E. from the Judean desert. Aside from describing "the" rabbinic law of marriage and divorce, though, these studies also tend to focus on two issues, both of which are more generally evident in many areas of study of the Jews in antiquity. The first is the connection between rabbinic law (and non-rabbinic Jewish law to a lesser degree) and reality. Although generally careful, scholars such as Fraenkel (1860), Krauss (1910-12, vol. 2: 24-54), Epstein (1942), and Safrai (1976) have tended to evaluate rabbinic prescriptions as descriptions of popular practice, or at least rabbinic responses to popular practices that can give us a relatively transparent picture of what Jews actually did. While most recent scholars use rabbinic law more cautiously, the questions of *how* this law can best be used still accounts for differing evaluations of our evidence.

A second focus of the legal approach has been on Jewish difference. Viewing marriage and divorce as bounded *institutions* invites comparison: To what degree were these Jewish institutions distinctive? This has largely been an exercise in comparative law. Boaz Cohen (1948/49) for example, compared some the rabbinic and Roman legal instruments of betrothal. The general question at the heart of these inquiries, whether and how Jews used marriage and divorce (whether seen as legal or social institutions) as locations of identity formation, remains strong in recent scholarship.

Scholarship on Jewish marital practices began to shift dramatically in the 1970's. In line in the United States with the general turn toward social history, with a particular focus on women, Jewish marriage and divorce began to be studied as social institutions that primarily concern women.

Scholarship on Jewish marriage and divorce was so thoroughly subsumed to women's studies outside of Israel (and in some cases in Israel as well) that it became common for scholars to treat marriage and divorce only within the wider context of the situation of Jewish women in antiquity (cf. Ilan 1995: 57-157; Hauptman 1998: 60-76, 102-29). This is not simply an issue of classification. Putting Jewish marriage and divorce – and here again the focus has usually been on rabbinic law – within the context of

women's studies has brought with it the question of normative evaluation: Did Jews in antiquity treat women well? The question of the "status" of Jewish women in antiquity can take pernicious forms, as in the invidious (and usually inaccurate) comparison between rabbinic law on women and the stance of Jesus (cf. Kraemer 1999).

Although scholarly interest in the legal status of women has waned (but is still by no means dead), the scholarship produced during this period succeeded in driving a wedge between the law and the study of ancient Jewish marital practices. Interest in women also helped scholars to see the relevance of and incorporate into their accounts long-neglected "non-normative" evidence, primarily inscriptions and pseudepigraphical works. It also fortuitously coincided with the discovery of papyri in the Judean desert, among which were caches of legal documents from some Jewish women, most famously Babatha. These documents may be dry, legal, and formulaic, but they do provide a rare glimpse of actual marital and divorce practices.

The most recent trend of scholarship on Jewish marriage and divorce takes the next logical step, understanding Jewish marriage and divorce as a discrete field of inquiry not necessarily connected to women's studies. These synthetic studies (Satlow 2001; Schremer 2003), which to some extent are modeled on developments in classics (e.g., Treggiari 1991; Evans Grubbs 1995), view marriage and divorce as both social *and* legal institutions, embedded in a wide mesh of contexts. This development encourages the application of a wide range of scholarly approaches, especially those drawn from anthropology, sociology, economics, and ritual studies.

This brief survey is not by any means meant to be comprehensive. Even if only seen heuristically, however, it does help to create a map on which most of the present scholarly disagreements can be plotted.

1. Legal Institutions

The legal aspects of marriage and divorce among Jews in Roman Palestine appear to be fully documented. Although the non-rabbinic literary evidence such as Philo and Josephus scarcely mention these institutions, rabbinic literature devotes several entire, frequently long and complex, tractates to the formation of marital unions (e.g., *Qiddushin*, *Yebamot*), the economic relationship between the spouses (*Ketubot*), other matters that impinge upon marital life (e.g., *Nedarim*, *Niddah*), and divorce (*Gittin*). Other texts pertinent to marriage and divorce also are scattered liberally throughout both Talmudic and midrashic literature.

The basic legal structure of the rabbinic understanding of marriage and divorce is relatively well-known and uncontroversial (cf. Juster 1914, vol. 2: 41-61). For the rabbis, there were two constitutive acts for the formation of a marriage. The first act is "betrothal" ('erusin; qiddushin). Mishnah Qiddushin 1:1 enumerates three modes by which this might be affected: money, contract, or sexual intercourse. The rabbis preferred the first of these modes, and assumed that in a typical betrothal a man would give an object of modest value to a woman with a statement of intent, and that she would accept it in front of witnesses. From this point they are legally married, and divorce or the death of a partner is required to dissolve it. The second stage, huppah, generally refers to the sexual consummation of the marriage, which might take place at a time much later than the betrothal. The marriage is accompanied by a contract, the ketubbah, which deals with the mainly economic rights and obligations of the partners (although it is supposed to be signed by the groom and his father-in-law or other male guardian, acting on behalf of the wife), and which takes its name from the endowment pledge that the groom promises to his bride upon dissolution of the marriage by either death or divorce. Divorce in rabbinic law is understood as a unilateral action that, except in relatively rare cases, can be instituted only by an unforced husband, and to which the woman's consent is legally irrelevant.

Although most scholars would agree with this basic outline of the rabbinic laws of marriage and divorce, there is wide disagreement on the relationship of this law to lived experience. Does it

prescribe, respond to, or even describe actual Jewish behavior, or is it largely theoretical? Obviously, this relates to wider issues of rabbinic authority and the legal practices of the Jews of Palestine.

The publication of three caches of papyri in the twentieth century has thrown this issue into stark relief. Two of these caches are largely outside the scope of this essay; the documents from the Jewish community in Elephantine, in the Nile Delta (fifth to fourth centuries, B.C.E.) and those from Hellenistic Egypt. The "documents of wifehood" from Elephantine (cf. Porten 1968: 205-13, 221-25) exhibit nothing that might be labeled as distinctively Jewish. Given the early date and relative isolation of this community, that might not be unexpected. More surprising, however, is the similar absence of distinctively Jewish legal traits among the extant papyri from Jews in Hellenistic Egypt. At least some Jewish communities in Egypt were organized as politeumata, semi-autonomous communal organizations that may have had the authority to administer their own civil laws. In one document dated 218 B.C.E., for example, a woman who apparently married according the civil law (politikon) of the Jews, divorces her husband. This puzzles an editor of the text, Victor Tcherikover, who writes: "[I]t is worth noting that no trace of any mention of Jewish law concerning marriage can be found in the remaining parts of the papyrus.... Is it because there existed no fundamental discrepancies between Hellenistic and Jewish law in marriage matters, Jewish law in Egypt being influenced by Hellenistic?" (Tcherikover 1957-64, vol. 1:238, n. 2). Despite the lack of any evidence of a distinctive Jewish marital law within these papyri, Tcherikover was still committed to positing the (theoretical) existence in the third century B.C.E. of such a body of law.

Directly relevant, though, are the trove of legal documents of Jews that date from the first and second centuries C.E. found in caves in the Judean desert, among which are those from Nahal Hever (published in Cotton/Yardeni, 1997). These documents were written in Aramaic and Greek, and most, like those from Egypt, show few signs of distinctively Jewish legal institutions. While publishing several of these documents, Hannah Cotton came to the conclusion that, "We should be wrong, though, to

assume without compelling proof that the documents reflect the still-to-be-codified halacha" (Cotton 1998:179). For Cotton, the varied legal institutions found within these papyri rather provided the material from which the rabbis would later codify a single and distinctive marital law. At the same time, there are isolated features of some of the contracts (e.g., an explicit statement that the marriage contract is "according to the law/custom of the Jews", perhaps a parallel to the term *politkon* in the divorce document from Egypt) that draw attention to self-conscious distinctiveness, and the Aramaic marriage contract of Babatha ("Babatha's *Ketubba*," as the editors title its first publication; cf. Friedman 1996) bears strong resemblance to the *ketubba* as described in rabbinic literature. Despite a series of studies by Ranon Katzoff that have argued that particular clauses within these documents can make sense best within the context of rabbinic law (see, for example, Katzoff 1996), the weight of scholarly opinion, especially outside of Israel, appears to me to lean more towards Cotton's position. In any case, this question will best be addressed within the broader context of an understanding of the legal institutions that applied to and were used by the Jews of Roman Palestine.

If rabbinic authority is one of the broader background issues against which this scholarly disagreement takes place, women and gender studies is another. From that perspective, the question usually brought to this material is the "status" (primarily legal status) and rights of women in creating, maintaining, and dissolving unions. This has often, but not uniformly, been accompanied (implicitly or explicitly) by the apologetic/polemical question of whether Jewish/rabbinic law was "good" or "bad" for women, especially within the context of their times. There is, again, little disagreement about the relevant stances of rabbinic law itself: men are allowed to betroth their daughters without their consent when they are still minors (cf. Reines 1970); women can be "acquired" by means of a payment (to the woman herself; M. *Qiddushin* 1:1); the *ketubba* is an agreement made between a groom and his wife's male legal guardian; a husband has the right to annul his wife's vows (and not the reverse; cf. M. *Nedarim* 10-11); women have no statutory inheritance rights under most circumstances (M. *Baba Batra*

8:2); only men can institute divorce (M. *Yebamot*. 14:1), to name only a few. Taken by themselves and against today's standards, these laws present a rather bleak assessment of the legal position of Jewish women (or at least those living under rabbinic law) in antiquity. Some scholars, such as Judith Hauptman, have argued that as bleak as it might look to us today, the rabbis were actually somewhat progressive for their time (Hauptman 1998: 244). While the normative question of whether the rabbis were good or bad for women might be relevant within religious communities, formulating the issue thus – with acceptable answers having to fall on a spectrum between two poles – has served to limit a fuller application of gender theory to discussions of marriage and divorce among Jews in Roman Palestine.

Following a suggestion of Naphtali Lewis, Hannah Cotton has argued that one of the Jewish papyri from Nahal Hever is evidence for the institution of "unwritten marriage," a legally recognized but undocumented cohabitation (*P. Hev.* 65; Cotton/Yardeni 1997: 227-9). Tal Ilan has more provocatively referred to this arrangement as pre-marital cohabitation, suggesting that it was relatively common and represented, in contrast to the patriarchal institution of marriage, a way for women to maintain their autonomy (Ilan 1993; cf. Schremer 1998). Ilan probably pushes the evidence too far here, but the issue she raises begins to push the question of legal status beyond judgmental assessments.

The apparent disparity between elements of rabbinic law and the evidence of the papyri might itself be problematized. Why would (largely unenforceable) rabbinic law seem to limit what appears to have been the greater autonomy of women evidenced in the papyri? It is possible that rabbinic law did not serve to limit this autonomy but to square the reality, mentally, with the ideals of an honor and shame culture. Men *should* have more power than they actually did. From this perspective the rabbinic laws can be considered to do cultural work. Whether right or wrong, this model points toward the need for a more sophisticated application of theory to the little evidence we have (Satlow 2001: 109-11).

A full survey of the scholarly debates about specific legal institutions is far beyond the scope of this paper. Rather, I want to briefly survey three larger topics in order to illustrate how the broad issues

discussed above play out in modern scholarly treatments. The topics are betrothal, the *ketubba*, and a woman's right to initiate divorce.

a) Betrothal

In rabbinic law, "betrothal" ('erusin; qiddushin) is the legal act that creates a marital union. The institution has parallels in ancient Babylonian law, where scholars have termed the period between betrothal and full cohabitation as "inchoate marriage." Such an institution was unknown, however throughout most of the ancient Near East, Greek, and Roman worlds, where betrothal was seen as an engagement agreement between families, violation of which might have had pecuniary penalties but would not require a formal divorce of the betrothed couple.

There is, in fact, almost no evidence that throughout the period of the Second Temple Jews practiced, or even knew of, betrothal as creating an inchoate marriage. The earliest attestation of the institution appears in Matthew 1:18-19, and then in legal dicta ascribed to the schools of Hillel and Shammai. By the last first and early second century C.E. rabbis took the institution of *qiddushin* for granted.

Most previous scholarship, to the extent that it discusses betrothal at all, has tended to uncritically accept rabbinic claims for its antiquity and to assume that it was widely practiced by the Jews of Roman Palestine. But this is far from clear (Satlow 2001: 69-82). While the passage in Matthew, in which Mary becomes pregnant between the time of her betrothal to Joseph and marriage to him, suggests that the rabbis did draw from ancient Near Eastern law and limited local practices, rabbinic literature itself suggests that many Jews did not practice it (cf. Gulak 1934; Gulak 1994: 46-71). Indeed, from a social perspective a binding betrothal accomplishes nothing that a civil agreement with pecuniary penalties does not, while at the same time it creates several serious, potential problems (e.g., the betrothed man disappears, leaving his inchoate bride "anchored," and unable to remarry). Rabbis

might have been interested in it because it solves a technical, legal problem, namely, the legal means for the relinquishing of a right of male control over a woman (Satlow 2001: 77-79). Moreover, the derivation of the word *qiddushin*, often derived from *q-d-sh*, "holy," is far from clear, and is debated in the Talmud itself (B. *Qiddushin* 2b.

The scholarly discussion of betrothal frequently has been colored by apologetics and polemics. Is it an act of sanctification (e.g., Hauptman 1998: 69) or a sale (e.g., Wegner 1988: 42-5)? Is it an ancient or a novel institution? These questions open out into the wider issues of Jewish female autonomy in antiquity and rabbinic legal activity.

b) Ketubba

As used in rabbinic literature, the term *ketubba* can refer to three separate things: dowry (property that a bride brings into the marriage); a delayed endowment pledge made by the groom, payable to his wife or her heirs on dissolution of the marriage; or the contract that stipulates the legal rights and obligations of each partner. There has been much scholarship on both the *ketubba* as a marital payment (of whatever kind) and as a written contract.

The point of departure of nearly all discussions of the *ketubba* as a particular form of marital payment has been a historiographical tradition found in several versions in rabbinic literature (T. *Ketubot* 12:1; Y. *Ketubot* 8:11, 32b-c; B. *Ketubot* 82b). The tradition appears in different forms and attributes to the decree different motivations, but all versions associate the establishment of this payment with a decree (*taqanah*) of Shimon ben Shetah. Thus, according to the conventional scholarly narrative, until the first century B.C.E. the normative Jewish practice (at least in Judea) was for women to bring a dowry into their marriages. From the first century on, this norm was modified to include a delayed endowment pledge from the husband (cf. Ilan 1995:90; Schremer 2003: 233-241).

The extant papyri challenge this narrative (Satlow 1993). Both rabbinic and documentary (i.e., the papyri found in the Judean desert) instead point toward a more complex, non-normative mix of marital payments, among which the delayed endowment pledge entered in the late first century C.E. Like many rabbinic historiographical traditions, it is possible that the story of Shimon ben Shetah's taqanah was based less upon some kernel of a remembered historical event than it was on a rabbinic attempt to establish, explain, and reinforce their norms.

Contemporary scholars are divided on this issue. Adiel Schremer (2003: 235-7) and Bernard Jackson (2003) have defended the essential historical reliability of the rabbinic narrative of the *taganah*. The specific points of controversy go beyond the scope of this essay (and would, in any case, undoubtedly reflect my own bias), but it does raise two larger issues. First, it largely reflects the intricate interconnection between (often unstated) theoretical models of how Palestinian society functioned and the place of specifically Jewish law within it with the interpretation of the evidence. My thesis dovetails well with a larger model of local Jewish communities displaying wide variations of customs and law (cf. Schwartz 2003); "Jewish law," in its sense as a single actual system of operative norms, is largely an invention of the rabbis, and even then would not receive institutional backing (with coercive power) until the end of late antiquity, if not later. Schremer and Jackson, on the other hand, share an understanding of Jewish law that ascribes to it continuity, development, and – at least in some sense – popular support and adherence. Hence, they (along with Hauptman 1998: 62-8) assert the "development" of a legal institution from *mohar* (the biblical bride price, paid by a man to his bride's family) to *ketubba*, and argue that the latter became a standard Jewish marriage payment in late antique Palestine.

The second issue this disagreement raises, however, is a point of agreement. Schremer's argument that the biblical *mohar* was transformed into the *ketubba* supports his larger argument that the Jewish family in Judea/Palestine evolved into a more nuclear structure with a supporting, romantic

ideology. The development of the *ketubba* thus serves a sociological function, providing protection to a woman from hasty divorce. Schremer contextualizes this development within a discussion of marital payments generally (Schremer 2003: 261-98) and thus subordinates the technical issue of the development of a legal institution to the importance of understanding the *functional* role of these payments in Jewish society. The extensive use of anthropological and sociological theory and comparison in order to fill out the rather sparse and eclectic data breaks with much of past scholarship.

The scholarship on the development of the *ketubba* as the Jewish marriage contract is beset by the same tension discussed above: Does it make sense to posit the development or evolution of this legal instrument? In his magisterial study *Jewish Marriage in Palestine: A Cairo Geniza Study*, Mordechai A. Friedman provides a subtle response this tension:

The text of the *ketubba* (plural *ketubbot*), the Jewish marriage contract, is designated in Tannaitic sources as *leshon hedyot*, the language of formulary of laymen. It primarily developed, in the customary law, on the basis of free contract and was given its form by the professional scribes. By the late second Temple period and the early second century, its formula had begun to crystallize. The Tannaim attached legal significance to its precise wording and formulation and based halakhic decisions on it. They also added to the formulary and emended it.

(Friedman 1980: 1.2)

Given the variations within Jewish marriage contracts from the second century C.E., Friedman's dating of the "crystallized" form of the contract might be questioned, but the sensitivity to customary law and local customs is well-placed. Unfortunately, there is extant only a single *ketubba* that dates from the mid-second to the eleventh century C.E., from Egypt, making it impossible to verify whether ordinary Jews saw the rabbinic descriptions of and rules regarding the *ketubba* as normative. M. Geller, however, has noted the similarity of the *ketubba* to some Demotic marital documents (Geller 1978).

Did most Jews, in fact, use any contract to govern their legal obligations to each other? As Catherine Hezser points out (and the relative absence of evidence supports), only families with property might go through the expense and bother of drawing up such a document (Hezser 2001: 301). In fact, as mentioned above, according to one Greek marriage contract from Nahal Hever, Salome Komaïse appears to convert her marriage from an "unwritten" to "written" type (*P. Hev.* 65). "Unwritten marriages" were common throughout the eastern Mediterranean basin and recognized as legitimate and conferring legal rights and responsibilities. There is little reason to suspect that Jews too throughout the region did not employ this institution.

Obviously, the question of enforcement of such marital rights, whether written or not, intersects with the more general question of the legal system(s) used by Judean and Palestinian Jews in antiquity. Scholars who posit a relatively singular normative trajectory can more easily explain enforcement of such agreements. Presumably, judges would be learned in "Jewish law" and know how to apply it to legal contracts. Those scholars who see more local variation and widespread use of arbitration, however, still need to explain better how this might function on the ground, especially with contracts that specify a particular custom/law that govern the contract and in light of the always-available Roman legal apparatus, which in many cases may have consisted of a direct appeal to the provincial governor (cf. Goodman 1991).

c) A Woman's Right to Initiate Divorce.

Many issues relating to the scholarly study of marriage and divorce of Jews in antiquity have been framed as issues of women's rights: Were the laws good or bad for women? Such a framing, even implicitly, further complicates the issue of "Jewish law" and its enforcement (discussed above) with a normative judgment. The question, of course, to a great extent predetermines the contours of the possible answers, which predictably range across the apologetic-polemical spectrum.

One particularly interesting scholarly discussion often framed as a matter of women's rights is whether Jewish women in antiquity could divorce their husbands. Or did their husbands, following rabbinic law, have the exclusive right to divorce their wives, with or without their consent? Josephus (*Antiquities* 15.259), Mark 10:12, and some documentary evidence point to the possibility that Jewish women could and did divorce their husbands (cf. Ilan 1996), although in the same passage Josephus also testifies that this goes against Jewish practice. Bernadette Brooten has argued that Jewish women could indeed divorce their husbands, but the evidence on both sides is more suggestive than conclusive (Brooten 1982). From the third century onwards we have no evidence outside of rabbinic sources on whether a Jewish woman could initiate a divorce.

2. Demographics of Marriage and Divorce

Recent scholarship on Jewish marriage and divorce in antiquity has emphasized the importance of understanding the demographic picture (Satlow 2001: 101-32; Schremer 2003: 73-125). Statistics such as the average age of first marriage of men and women, fertility rates, divorce rates, and life expectancy is not only inherently important but also has potentially far ranging implications. Being able to plot ancient Jewish societies demographically also allows for a richer application of social scientific theory.

How one demographically plots Jewish societies, however, is hardly clear. Unlike the situation n Egypt, there is no extensive collection of extant census documents from Judea/Palestine (cf. Bagnall/Frier 1994). Nor, as in Rome, are there statistically significant collections of epitaphs (cf. Saller 1987). Many previous scholarly discussions of the average age of first marriage, for example, were based on a single late addition to Mishnah *Abot* (5:21), which sets eighteen for a man as "the time for marriage".

In his far-reaching reassessment of the issue, Schremer (1996) is more skeptical of this and other rabbinic snippets in the face of other contradictory and comparative evidence. Putting more weight on

the testimony of Josephus (who married when he was about thirty), other apocryphal and pseudepigraphic works compiled in the late Hellenistic or early Roman periods, and a few other rabbinic dicta, Schremer concludes that Jewish men in Palestine (and perhaps also in the western diaspora), like their Roman counterparts, most typically married when they were around thirty. Presumably, women too would have been somewhat older at marriage than suggested in some rabbinic sources, with an average age at first marriage most likely in their late teens. Schremer buttresses these conclusions with appeals to both modern anthropological approaches and comparisons with other ancient cultures and the model life tables of modern pre-industrial communities. At the same time, these ages, even if accurate, might apply to the upper classes only.

There are several ramifications of this reassessment. If what appears to be the most relevant model life table for a modern pre-industrial community is applied, we can expect that about half of all women would have fathers living at the time of their marriage. Obviously, given their later age at marriage, few men would have living fathers when they married (Satlow 2001: 109-11). Given these demographic facts, it appears that in contrast to the picture found in rabbinic texts of men arranging marriages for their sons and daughters, in fact most men and women (whose fathers had already died) likely would have taken a more active role in their own mate selection.

This then returns us to the general problem: Why do rabbinic texts seem to prescribe a lower age of marriage than actually occurred? Perhaps these rabbinic dicta create a patriarchal façade of an "idealized" world in which the male authors can control not only their children, but even their own mortality. This complicates the usual typological distinction of rabbinic literature as offering either "ideal" or "accurate" historical portrayals, instead understanding rabbinic literature as ideals that respond to what would have been perceived as an imperfect reality (Satlow 2001: 109-11).

Demographic simulations and the use of cross-cultural comparisons are potentially very powerful tools. On the one hand, they must be used with caution: we must frankly acknowledge that

element of speculation involved in the selection and application of any modern theory. But on the other hand, even if they do not yield reliable results they often raise new questions. Most discussions of marriage in antiquity focus primarily on first marriages. Yet the demographic life tables suggest that anyone, man or woman, who married at the age of twenty years old could expect to be widowed over the next twenty-five years. The two Jewish women (Babatha and Salome Komaise) whose archives dating from the late first and early second century CE were found in the "Cave of Letters" at Nahal Hever (and thus are arguably the two Jewish women from antiquity about whom we know the most) were both widowed, with one, Babatha, having been widowed twice (Goodman 1991; Satlow 2001:97-100). We have very little data about the rates of divorce among Jews in antiquity, but it might be reasonable to assume that divorce too would have added a statistically significant number of potential mates for second (or later) marriages. Although ancient texts and modern scholars often hold up first marriage as exemplary, it remains to be determined if they were in the statistical minority.

Polygyny (marriage of a man to more than one woman at a time) is another topic to which demographic and anthropological approaches can fruitfully supplement textual historical analysis.

Scholars have long noted both that no biblical or Jewish texts from this period prohibit or even condemn polygyny, and that there is almost no actual historical evidence that Jews of Roman Palestine practiced it (Gafni 1989). The discovery of Babatha's archive, though, has reopened this question: her second marriage appears to have been to a man who already had a wife (Lewis 1997, but see Katzoff 1995).

Was this phenomenon a statistical blip, or was it actually widespread, although barely visible to modern scholars? Using anthropological studies, Schremer (2001) sensibly draws a contrast between the actual practice of polygyny and the notion of a "polygynous society." Jewish society of Roman Palestine, he argues, was polygynous, even if the actual practice of polygyny within it (as within other polygynous societies studied by anthropologists) might have been uncommon.

Anthropological categories can also reframe the discussion of "intermarriage" as an issue of endogamy vs. exogamy (Satlow 2001: 133-61). Such terms help to highlight the shifting boundaries of who counts as "in" and who as "out." Shaye Cohen has demonstrated a general shift in attitudes toward intermarriage from the biblical to the rabbinic periods (Cohen 1983) while also, in a separate study, has pointed to the changing nature of Jewish identity (Cohen 1999). Even though most Jews in antiquity would most likely have valued endogamy and condemned exogamy (as also attested by Roman writers of the first century, C.E.), even different Jewish societies within Roman Palestine would have differed with regard to the definition of their boundaries. In the sectarian documents of the Dead Sea scrolls, for example, priests appear to have been prohibited from marrying Jewish women who were not descended from priests (cf. Himmelfarb 2006: 27-8, against Hayes 2002: 82-9), whereas rabbis were more deeply concerned with prohibiting marriages between Jews and gentiles, the latter of whom they considered labeled as ritually impure precisely for this reason (Hayes 2002: 145-63).

Levirate marriage was yet another kind of domestic union. According to the Hebrew Bible, if a man died childless his brother should marry the widow and any resulting progeny should be ascribed to the deceased brother (Deuteronomy 25:5-10). As with polygyny, there is little evidence that the Jews in Roman Palestine were at all troubled by this, while at the same time there is equally sparse evidence for its actual practice. Whether the tannaim preferred the performance of levirate marriage or the "release" (halitzah) of the widow (cf. Friedman 1997; Satlow 2001: 186-9), it is clear that Jewish writers from Roman Palestine understood the biblical levirate marriage as a Jewish equivalent of the Greek epiklarate – i.e., the claim that a man has on the property and widow of an heirless male relative – in which the disposition of the family's estate was the primary concern. This might relate to why Palestinian amoraim prefer that a man release the widow from the obligation of levirate marriage.

texts) changed, moving to a more urban economy with smaller or fragmented landholdings, levirate marriage made less sense to them.

Levirate "marriage" was not the only non-marital domestic arrangement legally recognized and practiced by the Jews of Roman Palestine. Rabbinic law does not particularly sanction but nevertheless recognizes concubinage as an institution with a distinct standing. Hezser has discussed the rabbinic law relating to marriages among slaves, and the kinds of intimate relationships that might have existed between slaves and masters (Hezser 2005: 179-201).

This brief survey points to both the slipperiness of the extant evidence and potentially new directions for research. Most of the extant data is so incomplete and ambiguous that the only way to make sense of it is to interpret it within some larger model. Previously, the preferred model was that of internal development that assumed that there existed a singular social institution, "Jewish marriage," that changed through time. The evidence, that is, was interpreted against specifically Jewish evidence from an earlier period. The results of this interpretation could then be compared to Greek, Roman, and Christian marriage, for evidence of similarity and difference.

Some of the scholarly treatments surveyed above use different interpretive frameworks. One such approach is cross-cultural. This approach takes as its hypothesis that Jews live embedded within the wider, hegemonic culture, and that the shreds of evidence about marriage among Jews can be filled out with what we know about these surrounding cultures. Schremer, for example, claims to boost the plausibility of his claim about the average age at first marriage from evidence of Roman practice.

Yaakov Elman uses this approach in his study of Babylonian rabbinic positions on marital property (Elman 2003). While there is, in my opinion, much to recommend this approach, it is also somewhat circular: we assume some of what needs to be proved, only to find that the conclusions support the initial assumptions. Another, far less explored kind of comparison, is that between Jews in antiquity and

other, non-contiguous ancient societies, such as India, China, or the Maya. Such comparisons would undoubtedly raise fresh questions.

The application of social scientific, especially demographic and anthropological, models might hold more promise. There is a rich collection of scholarly approaches to the family, and they have only just begun to be applied to families in antiquity. Whether the results are compelling or not (the spottiness of our data severely hampers our ability to use some of these models effectively), they at least serve the purpose of raising new questions. Non-marital Jewish unions remain understudied, and might be an especially promising topic to which these social scientific models can be applied.

3. Marriage Customs and Rituals

There is far less scholarship on (and arguably less data about) the Jewish marriage customs and rituals in antiquity than exists on the topics surveyed above (cf. Goldberg 2003: 114-60; Marcus 2004: 124-92). Much previous scholarship read depictions of marriages in ancient Israelite and Jewish texts as normative or at least representative of wide Jewish practice – the biblical narrative of the marriage of Jacob and Rachel, the description of Tobias's marriage in Tobit, or the more peculiar marriage of Joseph and Aseneth found in the pseudepigrapha, for example, were taken as reflecting widespread marital customs throughout all of antiquity (cf. Krauss 1910-1912, vol. 2: 37-42; Falk 1966: 35-85; Safrai 1976). Today, even those scholars who subscribe to a model that stresses the continuity of Jewish norms would hardly be comfortable with such an approach.

This, however, does not mean that all such previous scholarship is irrelevant. Modern scholars have increasingly recognized the importance of local custom. Different Jewish communities – even down to the level of town and village – in antiquity undoubtedly followed their own local wedding customs. They most likely shared, with each other and with the non-Jews around them, many of the most important customs: a procession, dancing and rejoicing, a feast, a request for divine blessing, and

consummation of the marriage. Given the lack of biblical prescriptions about how a wedding is to be contracted or celebrated, this is hardly surprising. The modern challenge, though, is to try to reconstruct so-called thick descriptions of regional practices. Ancient Jewish literature, primarily rabbinic, testifies to many different wedding practices. These testimonies, however, must be sorted not only to separate description from wishful thinking, but also to recognize regional distinctions. All texts cannot be assumed to refer to a single prototypically "Jewish" wedding.

Related to the issue of description is that of rabbinic ritualization. As with most other lifecycle events, rabbis leave weddings relatively "unritualized." That is, despite the enormous body of law that they develop concerning marriage, they rarely script or prescribe what needs to be done or said at a wedding. Rabbis legislated and ritualized matters pertaining to weddings only when they touched upon or were potentially in conflict with other rabbinic concerns (Satlow 2001: 162-81). Further work is necessary to plot how and why rabbis ritualized these local customs and, of course, whether they were drawing on or influencing wider popular practice.

One area that rabbis do eventually ritualize is the relatively brief wedding liturgy. The scholarship on the bits and pieces of extant Jewish wedding liturgy (found almost exclusively in the Babylonian Talmud) tends to be relatively narrow and technical. These studies usually focus on four areas: origins, especially of the "seven blessings"; apparent repetitions within the "seven blessings"; the relationship between these blessings and other contemporary liturgy; and the place of these blessings within the history of liturgy (e.g., Katz 2007). Recently one scholar has begun to compare some of these texts and marital images found in the *piyyutim* to Syriac liturgy, a direction that might hold great promise (Münz-Manor 2006).

Another area of potentially fruitful research concerns the meanings or interpretations of wedding and divorce customs and rituals. There is a deep and rich comparative and theoretical literature on ritual generally, much of it by anthropologists and scholars of religious studies (cf. Turner

1967: 93-111; Bell 1992). These models are by no means easily applied to an eclectic set of ancient texts, but they can at least sensitize scholars to the importance of trying to understand the functions performed by ancient Jewish rituals.

4. Conclusions

Nearly all of the scholarship surveyed here treats Jewish marriage and divorce as discrete institutions, whether legal or social. This institutional approach has advantages and disadvantages. On the one hand, it sometimes encourages disembedding marriage and divorce from the larger social and economic contexts that are critical to understanding its practice. Rather than being a fixed system, for example, marital law above all is a set of strategies that families deploy for their specific needs. Even when seen as a social institution, Jewish marital practices can hardly be understood outside of the demographic and economic realities faced by different Jewish communities.

On the other hand, understanding marriage and divorce as an institution allows for comparison and the application of modern methodologies. There are still significant opportunities for this approach, especially as hitherto neglected disciplinary approaches, mainly from the social sciences, are better applied.

Understanding "marriage" and "divorce" as discrete and independent institutions, whether social or legal, has to a large measure predetermined the preoccupation of some scholars with questions of distinctiveness. Those questions, though, have now largely been settled. There is now wide (but not unanimous) scholarly agreement that there was little that was substantively and significantly distinctive about Jewish marital and divorce practices in antiquity. This is hardly surprising, and comports with recent scholarly appraisals of Jewish slavery (Hezser 2005), family (Yarbrough 1993), and childhood (Tropper 2006).

I have highlighted the institutional approach to marriage and divorce also in order to problematize it. While there is still much work to be done within its parameters, one might also understand marriage and divorce not as discrete and reified institutions, but as *dynamic sets of relationships tightly embedded in larger social networks*. It is this direction – considering marriage and divorce as tightly linked to the social, cultural, religious, and economic lives of those who practiced them – that to my mind offers the most exciting future scholarly possibilities.

Suggested Reading

Two recent synthetic studies are Satlow 2001 and Schremer 2003. The former discusses both the marital ideologies and practices of Jews in antiquity (in both Judea/Palestine and Babylonia), with a particular focus on Jewish distinctiveness (or its lack). Schremer's study, in Hebrew, concentrates more on the *realia* of marriage in Roman Palestine. Friedman (1980) remains the classic study of the *ketubba*. For all of their methodological problems, Epstein (1942) usefully compiles the relevant rabbinic law, and Safrai (1976) provides a wealth of information on marital practices.

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