

Rereading the Rabbis

A WOMAN'S VOICE

Judith Hauptman



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In memory of Judy Hurwich,
miyakirei Yerushalayim

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Marriage

SINCE MOST ANCIENT SOCIETIES were patriarchal in structure, it is not surprising to discover that rabbinic society was patriarchal as well. In the rabbinic conception of marriage, a man took a woman to be his wife and could dismiss her at will. He managed all the finances and could, if he wished, cancel, or annul, her vows and even bar her from talking to other men or going out of the house.

But throughout the rabbinic period changes were taking place. By the time it ended, women had acquired many more rights. They occupied a new status, one closer to men's. Although in certain areas they were more equal to men and in others less, in no marital area were women treated merely as chattel or fully as equal.¹

Nearly every one of the biblical institutions relating to marriage was maintained by the rabbis but radically transformed. It is impossible to know if these transformations were the consequence of rabbinic invention or the infiltration of new ideas from other cultures. Or maybe they were the formal record of what had already been established generations earlier. Whatever the case may be, we find in the rabbinic materials a wholehearted endorsement of these changes and, possibly even more important, justification of these changes by means of legal arguments or scriptural interpretation.

The main change we shall observe is that marriage evolved over time from the purchase of a woman from her father to a kind of "social contract" entered into by a man and a woman, albeit with him dominant and her subordinate. The critical difference between her old status in marriage as chattel-like and her new status as "second-class citizen" is that she acquired, in exchange for sexual and other service to her husband, a wide array of rights and protections.

The Framework of Jewish Marriage

The first topic we will examine is the marriage document, or *ketubah*. Some have called it one of the most progressive pieces of rabbinic legislation.²

The principal provision of the *ketubah* is that the husband or his estate will pay a stipulated amount of money to the wife upon dissolution of the marriage by death or divorce. She will be allowed no other claims on him or his estate. In Roman marriage, an institution familiar to the rabbis, a woman did not receive this type of payment. Rather, a wife whose Roman marriage was dissolved retrieved only the dowry that she brought into it.³ Unlike the husband of the rabbinic marriage, who was required to pay out of his pocket the amount he promised in the *ketubah*, the husband in a Roman marriage made no additional payments from his own resources. Mishnah Ketubot opens with a discussion of the statutory amount of the marriage settlement.

A virgin, her *ketubah* is 200 [zuz] and a widow [or any previously married woman or a non-virgin], hers is 100. . . . (M Ketubot 1:2)

The difference in "price" between the virgin and the previously married woman, which appears throughout the legislation about marital matters, is not explained or derived from verses but presented as a given. A premium on a virgin was commonplace in the ancient world and continues today in many places. It tells us that one way of looking at marriage is the acquisition of a woman by a man for the purpose of sexual gratification. The rules reflect a male perspective: He is most pleased if the woman he acquires for himself has not previously known, in a sexual sense, any other man. He will be the first. Making the amount of the marriage settlement vary so significantly with the presence or absence of virginity says, in very clear terms, that her sexual status is a major factor in his choice of a wife. Elsewhere we learn that her lineage also matters.⁴

This opening *mishnah* of tractate Ketubot sets the stage for the discussion of marriage. Other *mishnahs* later in the tractate address various aspects of the marital relationship. Beyond making herself available to him sexually, the wife is expected to perform the basic household tasks.

These are the chores that a woman performs for her husband: She grinds [the grain], bakes, and launders; she cooks and nurses her child; she makes his bed and works in wool. (M Ketubot 5:5)

The passage goes on to allow her to assign these jobs to others, as long as she makes sure that they are fulfilled.

As for his obligations to her:

A father has the right to betroth his daughter . . . and he is entitled to whatever she finds or earns; and he may cancel her vows . . . but he is not entitled to the income of her assets in her lifetime. When she marries, her husband has more rights and privileges [than her father]: He is also entitled to the income of her assets, even in her lifetime; he is obligated to support her, to redeem her [if taken captive], and to bury her. . . . (M Ketubot 4:4)

If he appoints a third party to manage his financial obligations to his wife, . . . he must give her a *kippah* (!)⁵ for her head, a belt for her waist, shoes on the holidays, clothing valued at 50 zuz each year . . . spending money. . . . (M Ketubot 5:8, 9)

Notice that his financial outlay for support and other payments is offset by his right to the usufruct of her assets and to any other moneys that she earns or anything she finds.

All these rules describe a situation in which she enters his home, provides a wide variety of service to him, has all her needs met by him, and is even promised a lump sum payment by him upon dissolution of the marriage. But the arrangement is rather uneven: He controls her time, her activities, and her money; she does not control his. For this reason she, but not he, needs a guarantee of basic rights. The general social construction of Jewish marriage in the Bible and Talmud is, thus, sexist in the extreme. This is not surprising for the ancient world. What is surprising, however, are the rules the Mishnah institutes to modify this state of affairs. As we examine selected passages on marriage, we will see in each case how its sexist bias was altered but not eradicated.

The Marriage Contract: From Bride-Price to Ketubah

The changes that took place in the payments associated with marriage are probably the best indication of an evolving rabbinic perception of the nature of marriage. The following derivation, although rather intricate, makes a simple point: The *ketubah* is based on Scripture. The verses about rape and seduction that will be cited are the only legal passages in the Pentateuch that make explicit reference to the exchange of marital moneys.

. . . Have we not learned in a *baraita*: "He [the seducer] shall weigh out silver according to the bride-price of virgins" (Exodus 22:16). [This implies] that the [fine of the seducer] should be like the bride-price of virgins [paid by the groom,⁶ an amount of fifty shekels] and the bride-price of virgins should be like this [like the fine of the seducer, paid in silver shekels]. From here the rabbis learned [מכאן]

סמכו חכמים] that the *ketubah* was stipulated by the Torah. R. Simon b. Gamliel says: The *ketubah* was not stipulated by the Torah but by the rabbis [מדברי סופרים]. (BT Ketubot 10a)

According to the first view expressed in this passage, the words "the bride-price of virgins," that is, the fifty silver shekels that the husband paid to the father of the bride (Deuteronomy 22:29) in normal circumstances, not just following rape or seduction, imply the establishment of the *ketubah*. But the *ketubah* is not a bride-price. On the contrary, the differences between the two are so great that it is at first hard to understand how anyone could see those words as the scriptural basis for the *ketubah*. The bride-price of virgins is paid to the father by the husband at the time of marriage, whereas the *ketubah* is paid to the woman herself, upon the dissolution of the marriage by death or divorce. That is, it is paid at the end, not at the beginning; it is paid to her, not to her father. Therefore, one can only argue that the *ketubah* is Torah mandated in the broad sense of a marriage payment. The following passages clarify this matter by pinpointing the "historical" reasons for this change.

. . . And a man may not say to his wife [upon betrothal]: Behold, your *ketubah* is on the table. Rather, all of his assets are responsible for the payment of her *ketubah*. (M Ketubot 8:8)

This *mishnah*, and even more so the *baraita* that follows, imply that it used to be the case that a man could acquire a wife by putting her *ketubah* moneys on the table, that is, paying for her in advance. But this practice was later outlawed. Instead, the man had to create a lien on all of his assets and make them responsible for the payment of the *ketubah*. Should he die leaving insufficient funds for the payment of the *ketubah*, she could seize properties purchased from him by others after he married her. She was first creditor on his estate.

The Gemara gives a fuller account of this transformation.

--R. Judah said: At first they used to write⁸ for a virgin 200 zuz and for a widow 100. And the [men] would grow old and not marry. Until Simon b. Shetah came and enacted that all of his [the groom's] assets are responsible for the payment of the *ketubah*.

It was also taught thus in a *baraita*:

At first they used to write for a virgin 200 zuz and for a widow 100. And they, [the men], would grow old and not marry.

So the rabbis instituted [a change]: They would place it in her father's home. But still, when he would grow angry with her, he would say, go [home] to your *ketubah*.

So they instituted [a further change]: They would put it in her father-in-law's home. Rich women would fashion it into baskets of silver and gold and poor women into brass tubs. And still, when he grew angry with her, he would say, take your *ketubah* and leave.

[This obtained] until Simon b. Shetah came and instituted that he write for her that all of his assets are responsible for the payment of the *ketubah*. (BT Ketubot 82b)

This text is hard to understand. First, what is the relationship between the statement of R. Judah—the Amora, not the Tanna—and the older passage, the *baraita*, that follows? They seem to be saying the same thing in the same words. Why would an Amora repeat verbatim the first and last clause of a *baraita*? Second, and even more serious, parts of the *baraita* make no sense.

R. Judah says that men did not marry because they could not afford to put either 200 or 100 zuz on the table at the outset of the marriage. At that early period in their lives they were not in a position to make such a large outlay of cash to the father of the bride. The *baraita* begins by repeating the first part of R. Judah's statement verbatim. It continues and says that they would put the *ketubah* in her father's home in order to solve the problem. How the new location solves the problem of a young man's inability to give up such large sums in cash is not at all clear. However, if we overlook this difficulty, we see that this "solution" created a new problem: It made divorce too easy. Since no financial outlay was required for divorce, if a groom lost his temper, he could simply ask his bride to leave. Therefore, to promote the stability of marriage, the rabbis decreed that the *ketubah* be placed in the marital home, that of the groom's father, where the bride could then turn the moneys into silver or gold or brass utensils. But since divorce still required no financial outlay, the groom could easily dismiss her along with the utensils that she had fashioned from the money.

Marriage was stabilized only with the advent of Simon b. Shetah, who arranged for the groom not to lay out the money in advance, upon taking a wife, but to defer payment until the dissolution of the marriage. This deferral solved two problems at once: one, young men's inability to part with large sums of cash at the time of marriage; second, men's impulsive divorce of their wives. Not only did Simon b. Shetah's solution encourage a man to marry, but it also discouraged him from divorce, which became too costly: He would have to liquidate assets in order to pay the marriage settlement. Since the husband could no longer simply send his wife out with the *ketubah* utensils in hand, many a marriage could be saved. By the time the husband was able to raise the money that he needed to pay her settlement, he had calmed down and come to the realization that he did not want to divorce her.

According to this source, the monetary arrangements in effect before the time of Simon b. Shetah were akin to the bride-price of the Bible, money paid up front. Simon b. Shetah transformed marital moneys owed by the husband from a prepayment into a deferred payment, thereby creating the *ketubah* as we know it. We thus find that both the Sages and R. Simon b. Gamliel, mentioned earlier, are right: The origin of the *ketubah* as we know it is both biblical and rabbinic.

The above *baraita*, which, as we noted, seems illogical, is actually the conflation of two distinct sources—the preceding amoraic statement by R. Judah, which looks at the change from a male perspective, and Simon b. Shetah's rather radical change in practice, which looks at the issue from a woman's perspective or at least from the point of view that women, in general, do not want to be summarily dismissed by their husbands. R. Judah read the tannaitic source, which also appears in slightly different form in both the Tosefta and the PT.⁹ Those passages talk about the need to stabilize marriage to benefit women but make no reference to men's hardships at that period of time. R. Judah added that, in his opinion, this change benefited men too by putting marriage within the reach of most of them, rich or poor. Over the course of time, his statement, which appeared in the Bavli text right before the *baraita* because it was based on it, was assimilated by the *baraita*, probably because the two statements were, in many ways, similar. As a result, the *baraita* became hard to understand and his statement became superfluous.¹⁰

The image of men in this *baraita* is not flattering. A husband's decision to divorce did not follow a lengthy period of introspection and deliberation but was based on a whim: For some reason, most likely slight, he grew angry with his wife and decided to send her away. Only later did he realize that his hasty actions would hurt him as well as her. In fact, this image of impulsivity reappears in many different places in the Talmud, in particular with respect to *kohanim*, who, if they divorce a wife in a fit of pique, are not allowed to take her back.¹¹ The Talmud makes the standard assumption that one cannot trust men to act rationally when embroiled with their wives over some matter, large or small. When Bet Hillel says, at the end of Mishnah Gittin, that a man is within his rights to divorce his wife even if the only unseemly thing she did was burn the food (M Gittin 9:10), they are probably making reference to this same emotional instability.¹² R. Judah, by explaining the transformation of the *ketubah* from prepayment to deferred payment in terms of men's financial straits and not their hot-headedness, as does the *baraita*, redeems their image.

This transformation of the *ketubah* from bride-price to marriage settlement benefits women. Although the price structure did not change—virgins were still valued more than nonvirgins—the woman was paid the money directly, at a time when she needed it, in between marriages or facing years

to come as a widow. In addition, she may have benefited from the obstacles that paying this money placed in the way of a quick and easy divorce. Couples in marital trouble may have remained together because of the difficulties of getting divorced.

The question now arises: Once the *ketubah* was transformed into a terminal payment, a way of providing a woman with some assets to tide her over into her next marriage, then why was the *ketubah* of a virgin twice the amount of the *ketubah* of a previously married woman or nonvirgin? The *ketubah*, as a deferred payment, was no longer a gauge of her sexual intactness.

The distinction seems to be a carryover from the bride-price era. It was not discarded because the notion that "unused" women are worth more and are more desirable than "used" women still resonated deeply within the (male) population. If nothing else, this distinction was an incentive to women to remain virgin, in anticipation of an easier "retirement" at the end of marriage. But it is also true that this distinction paled in significance once the rabbis had instituted a voluntary payment called "*tosefet ketubah*," additional moneys written into the *ketubah*, to be paid upon dissolution of the marriage. These did not vary with a woman's sexual history. As M Ketubot 5:1 states, "If he wishes to obligate himself to an additional 10,000 zuz, he could do so." It would seem, then, that the *ketubah* monetary stipulations varied with the economic status of the husband and did not reflect, for the most part, the virginal or nonvirginal state of the bride. So, although the 200 and 100 zuz payments appear frequently in rabbinic literature and suggest that virgins were treated differently from nonvirgins, those sums were only a starting point, not the actual price agreed on. The difference between virgins and nonvirgins thus appears to have lost much of its financial significance no later than the time of the Mishnah.¹³

What we have seen so far does not yet qualify the *ketubah* as one of the "most progressive pieces of rabbinic legislation," even though the document, as it was written then and as it is still written today, does enable her to collect a stipulated amount from his estate and receive her dowry intact upon dissolution of the marriage. We must also look at other rules associated with the *ketubah* that were not necessarily included in writing but were obligatory nonetheless. They are called "stipulations of the court" [תנאי בית דין] because they could be upheld in a court of law. It is the combined set of written and unwritten benefits that allows the *ketubah* to be properly considered a landmark document.

The additional stipulated benefits are as follows:

1. If she is taken captive, he will redeem her and take her back as his wife, even if she was raped in captivity. This rule does not hold for the wife of a *kohen*, who promises only that he will return her to her home, not that he will resume his marital relationship with her.¹⁴ A *kohen*, according to

the rabbis, may not live with a wife who had sex with someone else while married to the *kohen*, even if the sex was not consensual (M Ketubot 4:8).

2. If she falls ill, he must provide her with medical care (M 4:9).

3. If she predeceases her husband, her sons—and not his sons from other wives—inherit the *ketubah* money that her husband never had to pay out to her, as well as her dowry (M 4:10).

4. If she outlives her husband, her daughters will be able to continue to live in the same house and receive support from his estate until they marry (M 4:11).

5. If she outlives her husband, she has the right to remain in his house and maintain herself from his assets for as long as she lives there (M 4:12).

In a sense, this is a complete insurance policy. She will be provided for if catastrophe strikes during the marriage. She will be provided for after she is widowed. Her children will be provided for after the death of her husband: Her sons will inherit his estate as well as hers and her daughters will be maintained by it.

Having reviewed these laws, we must now ask again: What does the *ketubah* tell us about social structures? We learn from it that a married woman is dependent upon her husband and needs to have her rights protected. No *ketubah* is written for him, not because he had fewer rights, but because he had, in the past, all the rights and resources. He alone makes promises to her, whereas she makes none to him. So even though the *ketubah* guaranteed many rights that women would not have had otherwise, still, the married woman's need to have a *ketubah* drawn up for her indicated, very clearly, that she was under her husband's thumb: He controlled all the financial assets of the family and could dole them out to her as he saw fit.

We thus see that as enlightened a document as the *ketubah* is, it was necessary only because the society in which women lived and the laws that that society developed were patriarchal. Since the *ketubah* consolidates some basic rights for women, even though it leaves patriarchy in place, it was an improvement over what was the case prior to the time it was instituted, the bride-price. But this transformation of the bride-price into the *ketubah* benefited women not only for the reasons stated in the *baraita*. By deferring the *ketubah* payment to the end of the marriage, the nature of marriage could no longer be described as the purchase of a bride from her father. As long as the bride-price was paid at the outset, marriage had to be looked upon as a purchase. But from the time that the *ketubah* was paid at the end, the arrangements at the beginning of the marriage are more correctly termed negotiation rather than purchase. I think the importance of this paradigm shift for women cannot be overestimated. The patriarchal construction of marriage, although certainly not dismantled with the development of the *ketubah*, was significantly altered. Marriage became a relationship into which two people entered. Even though the man and woman

were not on equal footing, they worked out the details between themselves, as we will now see.

A look at betrothal procedures will provide further evidence of this trend toward greater women's participation.

The Betrothal: From Purchase to "Social Contract"

Chapter 1 of Tractate Kiddushin opens with the basic rules of betrothal

A woman is acquired in three ways and buys herself [back] in two ways. She is bought by money, a document, or sexual intercourse.

By money: Bet Shammai says with a dinar or something worth a dinar; but Bet Hillel says, with a perutah [copper coin of least value] or something worth a perutah. . . .

And she buys herself back with a *get* or by means of the death of her husband. (M Kiddushin 1:1)

A Hebrew [Jewish] slave is bought by money or a document. And he buys himself [back] with years [that is, the end of his period of indenture], the jubilee [which sets him free], or paying [back] the difference. . . . (M 1:2)

A Canaanite slave is bought by money, a document, or being taken possession of. . . . (M 1:3)

A large animal is bought by handing it over. . . . (M 1:4)

Real estate is bought by money, a document, or being taken possession of. . . . (M 1:5)

This chapter deals with how a person/man buys various kinds of property, both animate and inanimate. The wife's position at the head of the list indicates that she is the most important and precious kind of property, but property nonetheless. Moreover, the means listed for buying women are virtually identical to the means listed for acquiring other items. Note also that acquiring a woman by sexual intercourse is parallel to taking possession [מִשְׁכָּח] of a slave or field. That is, in this context, sex is something that he does to her to demonstrate that he owns her and wields power over her. Not an uncommon feminist observation in the contemporary world as well.

But more subtle points are being made here. If we move beyond the remarkable similarities between buying women and buying fields, we see that there are equally remarkable differences. The amount paid for fields corresponds to their value, as does the amount paid for the other items listed. The amount paid for a woman may be minimal. It can be described in no

way other than symbolic: The perutah and the dinar (zuz) are the smallest units of currency, the first in copper and the second in silver. These legal differences show that acquiring a woman may be identical *in form* to acquiring a variety of other objects, but it is not similar *in content*. The form of purchasing a woman has been maintained over time, even to this very day in traditional circles, but the essence of the transaction changed. Notice also that the money for betrothal, or the object worth money, such as a ring, is presented to the object of betrothal herself, the woman, who is the focus of the first *mishnah*, and not to a third party, as is the case with the purchase of a slave and as used to be the case with women.

This first *mishnah* of the chapter, therefore, when it lines up betrothal with all the other salable items and the rules of how they are acquired, makes it look like a purchase. And that is what it used to be. But the difference in the rules for buying women and all other items indicates that acquiring a wife was no longer simply a purchase but a negotiated contract. According to this *mishnah*, marriage occupies a mediate place on the continuum: It is neither a purchase of chattel nor a relationship between equals. It is somewhere in the middle.

The move away from marriage as a purchase is borne out by the *mishnah's* terminology. The term *kinyan* (purchase) in relationship to marriage appears here and in several other places,¹⁵ but it is superseded in most instances by the term *kiddushin*, the name of the tractate, the root of which is K-D-SH, meaning holy or set aside. Marriage is an arrangement in which a man sets aside a woman to be his wife. She does not set him aside to be her husband, for he may marry more than one woman. Despite this imbalance, the standard rabbinic term for betrothal, *kiddushin*, unlike its biblical equivalent, *erusin*,¹⁶ suggests that marriage has now been infused with a sense of sanctification.

Chapters 2 and 3 of Kiddushin deal with standards for the betrothal formula and moneys, as well as stipulations that accompany the betrothal and the need for there to be no misunderstanding or deception on the part of either side as to what he or she is getting in a mate. If there is, the transaction is invalidated. The importance of these rules for our inquiry is that they affect the bride in the same way that they affect the groom, thus providing another indication of the changing nature of betrothal. The fourth and last chapter deals with lineage and the need for a groom to check a bride's background before betrothing her. She need not check his, however.

Consent to the Betrothal

The Tosefta introduces yet another matter that supports the distinction between marriage and purchase.

[If he said,] "Be betrothed to me with this sela [coin, worth 4 zuzim]," and if, when she took it out of his hand, she threw it into the ocean or into a river, she is not betrothed.

"Be betrothed to me with a maneh [100 zuz]," and she said to him, "give it to so-and-so," she is not betrothed. "That so-and-so accept it on my behalf," she is betrothed. . . . (T Kiddushin 2:8)

If he is counting [out the coins] and dropping them into her hand, one by one, she may change her mind until he finishes. (T 2:9)

Implicit in a number of these statements is the notion that a woman's consent is necessary for betrothal. That is, if she flings the betrothal moneys he presents to her into the ocean, she is making a clear statement that she is rejecting him. But if she accepts the tokens of betrothal, she indicates her consent. Similarly, if, when he offers her the betrothal object, she asks him to give it instead to a third party, that again indicates that she is turning him down. But if she asks him to give the object to someone who will accept it for her, then she indicates acceptance of his offer. Finally, if it takes time for him to transfer the full sum of the betrothal money to her, she may retract up until the moment that he hands her the last coin. This statement makes it almost explicit that a woman must consent to the betrothal for it to be valid. Any indication on her part that she refuses his proposal prevents the betrothal from taking effect. Consent, in all of these instances, is indirect.

Elsewhere the Tosefta notes that betrothal takes effect—allows the groom to purchase the bride—only if both of them consent (T Yevamot 2:1).¹⁷ But a woman's consent to be purchased in marriage makes little sense. It seems that the language of purchase, which was an accurate representation of the transaction in the Bible, has become standard terminology for marriage, even as the nature of the marital transaction was undergoing significant change. This supports the point made above that the Mishnah's (1:1) occasional use of the verb K-N-H, to purchase, in describing betrothal, does not necessarily imply that the substance of the transaction tallied with its descriptive term.¹⁸

Direct negotiation with the woman herself is how most of the *mishnahs* and *baraitas* picture the betrothal. If we add to that the requirement that she give her consent, which would not have been the case if her father betrothed her, we see a move in the direction of transforming a betrothal from a purchase into a "social contract." Note, however, that although the Tosefta, Bavli, and Yerushalmi all require that a woman consent to an offer of betrothal, the Mishnah does not. This may be evidence of a more conservative point of view of the redactor of the Mishnah, a stance he espoused in reference to other issues as well.¹⁹

The Bavli brings, in conjunction with its citation of a variation of one of the cited *baraitas* (T 2:8), a number of related amoraic questions, all with the purpose of establishing boundaries for consent. No one suggests that a woman be required to say aloud that she consents to the marriage, as is standard in most secular wedding ceremonies today. Rather, the rabbis discuss different ways in which consent can be demonstrated.

--A man was selling strings of [glass] beads. A woman came by and said to him, "Give me one strand." He said to her, "If I give it to you, will you marry me?" She said, "Give, give." Said R. Hama: A statement like "give, give" has no legal validity.

--A man was drinking beer in a store. A woman came in and said to him, "Give me a drink." He said, "If I do so, will you marry me?" She said, "Give me a drink." Said R. Hama, a statement like "give me a drink" has no legal validity.

--A man was throwing [down] dates from a palm tree. A woman came by and said, "Throw me [down] two dates." He said to her, "If I do so, will you marry me?" She said, "Throw, throw." Said R. Zevid: A statement like "throw, throw" has no legal validity. (BT Kiddushin 9a)

In each of these cases the question that the rabbi must address is whether the woman's response to the man's proposal constitutes consent. In all three the decision is that it does not. She wanted what she wanted, but it was not marriage. The three stories give the impression that this exchange between him and her is innocent banter. We see a woman who is flirting with a man in the public domain—a market, a store, or a palm tree somewhere—and in response to his rather flippant betrothal offer, simply reiterates what she said in the first place. She is playing a game with him, as is he with her. She initiates the conversation in what appears to be a mildly provocative manner, he intensifies it with a betrothal offer, and she dodges the question in response. This is about as contemporary as a Talmudic anecdote can get. The rabbi in each case understands that this is not a proposal of marriage followed by an acceptance.

All those decisions taken together, most of which rule that the woman's response does not indicate consent, show that the Bavli sees betrothal as something that he offers to her, but to which she, either explicitly or implicitly, must give consent.²⁰ These rulings narrow the definition of consent, clearly benefiting women. If she were thought to be consenting when she was not, she would need a *get* from, or be forced to live with, a man she did not want. I think that the requirement of consent puts to rest the concept of marriage as a purchase.

Women's Initiation of Betrothal

Another development favoring women is the discussion of their initiation of and participation in the betrothal ceremony by giving the betrothal gift. To the extent that she plays a role in the betrothal process, she is functioning more as partner to her husband and less as subordinate. In this instance we will see change and development within the Talmudic period itself.

The Tosefta restricts a woman from participating in any way in the betrothal ceremony.

How does a man betroth a woman with money? If he gives her money, or something worth money, and he says to her, "Behold you are betrothed to me" . . . , she is betrothed. But if she gives him money or something worth money and says, "Behold I am betrothed to you," . . . , she is not betrothed. (T Kiddushin 1:1)

It is interesting that the Tosefta felt it necessary to raise the possibility of a woman's initiating the betrothal procedure. By way of comparison, when discussing divorce, no one suggests that a woman write a bill of divorce for a man. It is, therefore, tempting to conclude that a woman betrothing a man was thinkable in the ancient, rabbinic world. I say this because the Bavli, in its commentary on this very *baraita*, explores this possibility (5b). At first, it rules out women's participation, deciding that if a man issued the betrothal statement but a woman gave the betrothal gift, that there is "doubtful betrothal": She is not his wife, but even so she may not become betrothed to someone else until this man writes her a bill of divorce. This implies that her participation may have had legal standing. A little later in the discussion, Rava, a prominent Amora, presents several unusual cases of betrothal with the participation of a third party. He brings his sequence to a climactic conclusion by asking about women who propose to men and actively participate in the betrothal proceedings.

--Rava said:

1. [If a woman says to a man,] give 100 zuz to so-and-so, and I will become betrothed to you, she is betrothed [if he does so]. . . .

2. [If a man says to a woman,] here is 100 zuz and be betrothed to so-and-so, she is betrothed [if she accepts it]. . . .

3. [If a woman says to a man,] give 100 zuz to so-and-so and I will become betrothed to him, she is betrothed [if he does so and the designated husband accepts it]. . . . (BT Kiddushin 6b-7a)

In two out of these three cases a woman initiated the betrothal ceremony and requested that a sum of money be given either by the groom to a third

party or by a third party to the groom. We assume, in all of these instances, that the groom then recited the betrothal formula to her.²¹ Betrothals like these, in which either the woman does not receive betrothal money or the man does not give it, or both, are valid, says Rava. Weaving these cases together, he then asks:

4. [If a woman says,] here is 100 zuz and I will become betrothed to you, what is the law?

--Said Mar Zutra in the name of R. Pappa: She is betrothed.

--Said R. Ashi to Mar Zutra: If so . . .

--He responded: . . . We are dealing here with a man of means. With the pleasure she receives from his accepting the betrothal gift from her, she consents to the betrothal [that is, he gives her pleasure worth a penny and in this way the betrothal, although initiated by her, has been performed by him: He recites the betrothal formula and gives her a betrothal gift—pleasure worth a penny].

Rava has constructed a remarkable set of cases. After establishing several legal principles in cases involving three people—the bride, the groom, and a third party—he collapses the three-person scenario into a two-person one, and asks what the law is in a case in which she makes the betrothal presentation to him. The answer flows logically from his previous statements: The betrothal is valid. Furthermore, he seems to have constructed his previous three statements for the express reason of arriving at the fourth—which goes beyond the first three—the initiation of betrothal and the presentation of betrothal moneys by a woman to a man. Given the skill with which Rava drafted the first three cases, Mar Zutra's immediate response is unsurprising: In such a case, the betrothal is valid. But, in the following generation, R. Ashi voices an objection based on a technicality and Mar Zutra finds it necessary to restrict his position: A woman may initiate betrothal proceedings and make the betrothal gift only when the man in whom she is interested is a man of means, whose acceptance of her offer will give her pleasure worth a penny, which can then be considered the man's betrothal gift to her.

We thus see that the extent of women's involvement in initiating and performing the betrothal ceremony expanded over time. First raised and rejected by the Tosefta, it becomes permissible, within limits, in the later amoraic period. Notice that the amoraic case is not just the offering of a betrothal gift by a woman to a man, but the initiation by her of a particular match. Did this reflect social realities of women proposing betrothal to men? That could very well be so, because we find several instances in tannaitic literature in which women choose husbands.²² Note, also, the changing model of marriage. Although we began with women being married off

by their fathers and then moved on to women needing to consent to the betrothal offer, we have now reached the opposite end of the continuum, women themselves initiating the betrothal and actively participating in it.

Conclusions

This selection of passages dealing with marriage shows us that there were, over time, significant changes in how it was contracted. The father recedes as a key player and the woman, who will be taken in marriage by the man, approaches center stage, becomes the focus of attention. Her consent is required; she may even initiate the betrothal discussions and present the groom with the betrothal moneys. Most important, the bride-price of virgins, which used to be paid in advance, was turned into a lien on the husband's real assets and deferred to the time of dissolution of the marriage by death or divorce. That, probably more than any of the other changes, transformed marriage from a purchase of "chattel" into a negotiated relationship between a woman who is subordinate and a man who is dominant. Note that it is only she whose rights have to be guaranteed in a *ketubah*.

This study is not intended to cover all aspects of marriage as presented in the Talmud. Instead, I have attempted to show, through selection of topics within the general category of marriage, that this institution was undergoing extensive, and perhaps radical, change in the rabbinic period. Although we cannot say that the change approximated treating women equally with men (which is probably the goal of much legislation within Jewish circles today, particularly in the area of marital law), the inescapable conclusion is that the general thrust of rabbinic legislation regarding marriage still seems to have intended to confer, or at least had the effect of conferring, more rights and benefits on women and on men at the same time. This is not a circumstance in which the more they give the woman, the more they deny the man, but rather one in which the more she gains, the more he gains.

Notes

1. Judith Wegner (*Chattel or Person?* [New York: Oxford University Press, 1988], 19) maintains that women are treated as chattel with respect to any matter affecting a man's proprietary interest in their sexuality or reproductive abilities and as person with respect to all others. However, the details do not tally with this theory. For example, in sexual areas she was not chattel, since she had conjugal rights (see Chapter 2); in civil areas she was not equal, because as long as she was married to him she had no right to dispose of any of her property (M Ketubot 8:1).

2. Jacob Neusner, *Judaism: The Evidence of the Mishnah* (Chicago: University of Chicago Press, 1982), 191.

3. Susan Treggiari, *Roman Marriage* (Oxford: Oxford University Press, 1991), 323ff.

4. Chapter 4 of M Kiddushin deals extensively with investigating a prospective wife's lineage.

5. There are a number of references to the fact that women wore *kipot* (skull-caps) on their heads in the Talmudic period, not necessarily identical to the *kipot* that Jewish men wear today. See also M Zavim 4:1; T BK 11:5.

6. Or by the rapist.

7. The verb *samchu* implies that they did not literally derive the *ketubah* from the verse but found that the verse supports their legislative enactment.

8. The text says "write," but other texts make it clear that "write" also means "give." See Chapter 8. Note, however, that if all he had to do was promise payment (write), and not actually pay (give), then it would not have been difficult for men to marry. Or if the reference is to a *ketubah* without guarantees, as suggested by Rashi (s.v. *hayu kotevin*), it would be hard to understand why that was ever acceptable to women. Such a *ketubah* would have been a meaningless piece of paper if, during the course of the marriage and prior to divorce, he alienated his property and used up his money.

9. T Ketubot 12:1; PT 8:11; Kerubot 32b, c.

10. See my book *Development of the Talmudic Sugya*, 146–157. The early commentators on the Talmud solve all of these difficulties but in ways that seem more forced.

11. BT BB 160b.

12. Treggiari (*Roman Marriage*, 440) makes similar comments about Roman husbands who uttered the divorce formula in the heat of the moment and then regretted it.

13. The standard *ketubah* in use today requires that the groom stipulate an amount to be added to the basic 200 or 100 zuz.

14. M Ketubot 2:9. The rabbis interpret the "zonah" of Lev. 21:7 as a woman who had sex with a man forbidden to her.

15. See, for instance, M Ketubot 1:6 and 7:7, where reference is made to a mistaken purchase (*mekah ta'ut*). See also the *baraita* in BT Ta'anit 31a in which women use the term purchase about themselves when talking to men about marriage. See also T Yevamot 2:1, cited in the next section.

16. *Erusin* and *kiddushin* are synonyms. Each refers to the first stage of marriage, called in English "betrothal." This state can only be dissolved by divorce.

17. The Hebrew text reads: *הקדושי אינו קניין באשה ולא מדינת שניהם* . . .

18. See Tal Ilan (*Jewish Women in Greco-Roman Palestine* [Tübingen: J.C.B. Mohr, 1995], 88–89). David Weiss Halivni writes that the root K-N-H "is ill-suited for normal use in connection with regular marriage because of its predominant connotation of purchase" ("The Use of קנה in Connection with Marriage," *Harvard Theological Review* 1964, 244–248). He is referring to biblical usage, as well as rabbinic. I find his view problematic because the use of K-N-H in conjunction with marriage is only one reason, among many others, such as the use of the root L-K-H (to purchase) to describe marriage (see note 15, this chapter), that leads to the conclusion that marriage in ancient Israel was a purchase, albeit of a special kind (see the preceding section). See Y. N. Epstein, *Mevo'ot Lesifrut Hatannaim* (Jerusalem: Magnes Press, 1957), 52–53, who writes that a woman used to be bought, just like a slave.

19. See Chapter 8, "Disposition of a Mother's Estate." See also Chapter 5, "The World of Divorce According to R. Meir."

20. The anonymous voice of the text upholds the requirement of consent in a lengthy discussion of related matters in BT Kiddushin 44a and also BT Yevamot 19b. The Yerushalmi (Yevamot 5:4; 7a) cites a *baraita* in which Rebbe says that betrothal can only be effected with consent.

21. Rashi understands this to be so, that the groom recites the formula. It is also possible to construct a case in which an explicit betrothal declaration is not necessary. See BT Kiddushin 6a.

22. See Ilan (*Jewish Women*, 80ff). See, for example, BT Ketubot 22a.