LEVIRATE MARRIAGE AND HALITZAH IN
THE MISHNAH

Dvora E. Weisberg
(University of Pittsburgh)

Most of the material in Mishnah Yebamot focuses on the circumstances in which levirate marriage should or should not—or may or may not—be performed. The sages of the Mishnah often restrict levirate marriage, detailing instances in which levirate marriage is forbidden. While there are rulings that promote levirate marriage, overall, the Mishnah’s presentation suggests that such marriages were less likely to occur than one might suppose from reading Deut. 25:5-10.

Do the restrictions found in Mishnah Yebamot constitute an attempt on the part of the rabbis to limit levirate marriage? Some scholars argue that the rabbis, using biblical exegesis to justify their restrictions, intentionally limit levirate marriage. Others note that the rabbis of the Mishnah make levirate marriage more like other marriage, in effect “normalizing” and thereby supporting levirate marriage.

In this paper, I seek to clarify the Mishnah’s attitude toward levirate marriage and toward halitzah, the rite through which a woman is released from the obligations of levirate marriage. I acknowledge that the sages both restrict and promote levirate marriage, and I attempt to correlate the two trends. In addition, I consider the role of levirate marriage in other cultures and use this information to better understand levirate marriage in the Mishnah.

1 Some of the ideas in this article were presented at the annual meeting of the Association for Jewish Studies in December 1996. I am grateful to my colleagues who attended that session for their feedback as well as to Drs. Richard Kalmin and David Kraemer for their suggestions and to Dr. Leonard Plotnicov for directing my attention to literature on levirate marriage in other cultures.


3 Although levirate marriage is found in many other cultures, information on levirate or alternative strategies of obtaining an heir outside of ancient Israel are rarely discussed in the literature on levirate marriage in Judaism. Reuben Ahroni (“The Levirate and Human Rights,” in Nahum Rakover, ed., Jewish Law and Current Legal Problems [Jerusalem, 1984], pp. 67-76) insists that “the custom [of levirate marriage] as was operative in Israel in all its variations stands in sharp distinction to that
Over the past thirty years, a number of scholars have considered the Mishnah's treatment of levirate marriage and halitzah, mostly focusing on the Mishnah's promotion or restriction of levirate marriage. While they have offered explanations for one or the other of these tendencies, there has been little attempt to explain the coexistence of these attitudes. Even those who note both tendencies do not offer a comprehensive reading of Mishnah Yebamot, a reading that explains the rabbis' overall attitude toward levirate marriage and shows how that attitude is reflected in the Mishnah's rulings. Here I argue that the sages' rulings on levirate marriage, both those that appear to promote levirate marriage and those that restrict it, can be seen as a holistic and consistent approach to this societal institution.

After a brief discussion of levirate marriage, its social function, and its relation to marriage systems in general, I discuss levirate marriage in the Hebrew Bible. I then analyze and discuss the Mishnah's distinctive rules and, finally, offer a thesis as to why the Mishnah treats levirate marriage and halitzah as it does. I conclude that its rules differ from the Bible's because the sages of the Mishnah regard levirate marriage and halitzah differently than do the authors of Deut. 25 and Gen. 38. This change in attitude may reflect the exegetical concerns of the rabbis but probably also reflects their social attitudes toward marriage, heirship, and sexuality. In particular, the rules of Mishnah Yebamot demonstrate the Mishnah's concern with delineating boundaries and resolving uncertainties in status, in this case the status of a levirate widow.

---

of other societies and cultures both in purpose and motivation.” In “Leviratc and Agnate Marriage in Rabbinic and Cognate Literature,” in JQR 60 (April 1970), pp. 275-329, Samuel Belkin notes that levirate marriage existed in other Near Eastern cultures but does not consider cultures not contemporary with ancient Israel. He does mention the Greek preference for adoption when considering the apparent absence of levirate marriage among the Jews of Alexandria. In Challed or Person: The Status of Women in the Mishnah (New York, 1988), Judith Romney Wegner offers some explanation for both types of rulings. But levirate marriage is not the focus of her work, and it is therefore not surprising that she does not try to explain the overarching goals of the sages. In A History of the Mishnalic Law of Women (Leiden, 1980), Jacob Neusner describes Mishnah Yebamot as a tractate that deals with “Heavenly intervention into the formulation and dissolution of marriage: the affect of death upon the marital bond, and the dissolution, through death, of that bond” (p. ix). Even accepting Neusner's approach, it remains necessary to ask why the sages ruled as they did in specific cases.