THE BABYLONIAN TALMUD'S TREATMENT OF LEVIRATE MARRIAGE

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In an earlier piece on levirate marriage and halitzah in the Mishnah, I concluded that

Mishnah Yebamot expands on the laws of levirate marriage found in the Bible and, at the same time, restricts the scope of levirate marriage. At first glance, these two trends seem contradictory, and most scholars focus on one or the other when discussing levirate marriage. In fact, I would argue, the two tendencies reflect a consistent and coherent approach on the part of the rabbis. The central concern in Mishnah Yebamot is determining whether a levirate bond exists between a widow and her brother-in-law and resolving that bond, either through levirate marriage or halitzah.1

In this article, I consider Babli Yebamot's treatment of levirate marriage and halitzah. Does the Babli exhibit a preference for levirate marriage or halitzah, or does it consider both equally valid responses to the levirate bond? If the Babli exhibits a preference for one response over the other, is that preference absolute? Are there situations in which levirate marriage is the preferred outcome and others in which halitzah is recommended? Can we determine why the sages favor levirate marriage or halitzah? To what extent does the Babli follow the course set by the Mishnah and to what extent does it set a new course?

Following up on another focus of my earlier research, I also consider attitudes toward levirate marriage. What motivates individual men or women to enter into levirate marriage or to eschew it in favor of halitzah? Is the Babli aware of a reluctance on the part of men or women to enter into levirate marriage and, if so, how does it respond to such reluctance? Do the Babli's rules and cases respond equally to the concerns of men and women, to the claims of the deceased or the desires of the living?

The answers to these last questions will help us understand how levirate marriage evolved as an institution within Judaism. Most cul-

tures that practice levirate marriage view it as an obligation upon the widow and brother of a childless man. The desires of the widow and the levir are irrelevant; they are expected to enter into a levirate union for the sake of preserving the name of the deceased. Women were forbidden to marry outside their late husbands’ families; in some cases a marriage outside the family was accepted but the children of the marriage were legally those of the woman’s first husband. While levirate marriage might be said to be an imposition on both men and women, some argue that the burden falls disproportionately on women. The changes we see in the rules governing levirate marriage may reflect the sages’ awareness of the burdens it placed on both widows and levs and their desire to alleviate those burdens.

While many scholars who have written on levirate marriage are interested in determining whether levirate marriage was actually practiced in the Tannaitic and/or Amoraic periods, there is no consensus on this question. Samuel Belkin argues that levirate marriage was performed in the rabbinic period, while Tal Ilan believes that levirate marriage was replaced by halitzah in the tannatic period. Both Belkin and Ilan cite rabbinic texts, including the Babli, to support their arguments. Reuben Ahroni offers a more nuanced analysis, arguing that, in the talmudic and post-talmudic periods, some rabbis “continued to cling to the levirate duty and view it as far preferable to halitzah.”

Focusing on the Babli’s reaction to levirate marriage and halitzah, some of the texts from the Babli that I discuss here recount or mention incidents of levirate marriage or halitzah that are said to have taken place, whether with or without rabbinic supervision and approval. Despite the claims of these texts, I do not believe that, on their basis alone, we can determine the frequency of levirate marriage.

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2 A.R. Radcliffe-Brown and Daryll Forde, *African Systems of Kinship and Marriage* (London:1967). The obligatory nature of levirate marriage is stressed again and again in this work. The deceased is entitled to children—in some cases even if he has surviving children—and the obligation to provide them falls upon his wife and his closest male kin.

3 Max Gluckman, “Kinship and Marriage among the Lozi of Northern Rhodesia and the Zulu of Natal,” in Radcliffe-Brown and Forde, p. 183.


7 Ahroni, p. 72.