

Evidence for Divorce by Jewish Women?

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In order to achieve maximum clarity in the following discussion, I would like to begin by making a distinction between the right to demand a divorce or initiate divorce proceedings, and the right or power to perform the formalities necessary (within the context of a given legal system) to dissolve an existing marriage. For example, in many modern legal systems, divorce proceedings are initiated by the parties to a marriage or by one of them, but the divorce is granted by a court. The situation in Jewish law is substantially different, but the same fundamental distinction applies.

Rabbinic halacha, as is well known, takes it for granted that a Jewish divorce can only be executed by means of a writ of divorce written by or in the name of the husband and given to the wife.¹ The same presumption appears to be reflected in the Bible as well, both in legal and in prophetic texts.² This does not necessarily mean that the husband is free to divorce his wife at his sole discretion, nor that he can never be compelled to grant a divorce—rabbinic sources, in particular, reject both of these assumptions, although this may well reflect post-Biblical developments.³ What seems clear is that, whoever may have taken the initiative in seeking (or imposing⁴) a divorce, the only procedure by which it can be achieved is the transmission to the wife of a document written by or on behalf of the husband. The Jewish perception of divorce as a prerogative of the husband in Second Temple times appears to be supported by Ecclesiasticus 25:26 as well as by several Josephan passages, one of which makes this explicit.⁵ The only known Jewish writ of divorce written in Palestine during this period conforms to this pattern, and shows strong

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¹ For particularly clear statements see *mYev.* 14:1 and *mQid.* 1:1; this presumption is reflected in numerous sources, e.g. *mGit.* passim. Some of these apparently go back to Second Temple times, see for example *ibid.*, 4:2; 8:4, 8-9; 9:10. The writ need not be handed directly by the husband to the wife; it can be transmitted by means of one or more agents, placed in property belonging to her, etc. See *ibid.* 6:1-4, 8:1-2.

² The Bible contains no systematic treatment of divorce, and Deut. 24:1-4, which deals with a special case, might not cover all the possible means of dissolving a marriage. But the same picture emerges from Is. 50:1 and Jer. 3:8. Numerous sources imply that divorce was the husband's prerogative, without specifying the need for writing; see e.g. Jer. 3:1, Mal. 2:16, Ezra 10:3, and the term *gerusha* (expelled one) for a divorcee. See *Entsiklopediya Miqra'it* 2:551-554, and cf. Z. W. Falk, *Hebrew Law in Biblical Times: An Introduction* (1964), pp. 154-157, who posits a previous stage in which no writing was necessary.

³ See for example: *mKet.* 7:1-5, 9-10; *mGit.* 9:10; *m'Ar.* 5:6.

⁴ In some circumstances a court would be expected to intervene and compel a divorce even against the will of both spouses; see for example *tKet.* 7:11.

⁵ *Antiquities* 4.253 and 15.259 (the explicit reference, for which see the next paragraph; and cf. *ibid.* 18.136); *Life* 426.

affinities to the form(s) of this document known from later rabbinic sources.⁶

A number of sources have been taken by various scholars to constitute exceptions to this rule, but none of these is without problems. Probably the strongest evidence for a Jewish community within which there was equality between the sexes with regard to divorce is provided by marriage documents originating in the Jewish colony in Elephantine, Egypt in the fifth century BCE. These documents provide unambiguously for divorce at the initiative of either party, with appropriate financial arrangements; the means of execution of the divorce appear to be a formal declaration and the payment of silver. Assuming this is the correct interpretation of these documents, we seem to be well outside the stream of Biblical and subsequent Jewish tradition, and not only with respect to the respective rights of the husband and wife; this is plausibly explained by the syncretistic nature of the colony at Elephantine.⁷ However, I am not completely sure of this explanation: It may be that these documents were intended only to regulate the financial aspects of divorce (and perhaps to empower the wife to initiate divorce proceedings), and that a written instrument (presumably one written by or on behalf of the husband) would have been required to actually effect the divorce.⁸ Two sources relating to first-century Palestine have been discussed repeatedly, but suffer from obvious weaknesses: (1) Josephus (*Antiquities* 15.259) relates that Herod's sister Salome divorced her husband, but immediately notes that this was contrary to Jewish law; (2) Mark 10:11–12 quotes Jesus as referring to the symmetrical possibilities of a husband divorcing his wife and a wife divorcing her husband; but this is plausibly explained as reflecting Mark's Gentile milieu, and the familiarity of his readership with Roman law, in which husband and wife were on an equal footing with regard to divorce.⁹

References to medieval Samaritan and Karaite sources have also been adduced in this connection, but have little to contribute to the discussion. Even if we are willing to grant the plausibility of supposing that these medieval sects

⁶ See P. Benoit, J. T. Milik, R. de Vaux, *Les Grottes de Murabba'at*, Discoveries in the Judean Desert II (1961), pp. 104–109 (no. 19). Some points of contact with the rabbinic writ of divorce are noted in Milik's commentary *ibid.*, pp. 104–106, 108. The earliest full version of the rabbinic writ is that given in the formulary of legal documents by Se'adyah Gaon written in 926; see M. Ben-Sasson, 'Fragments from Saadya's *Sefer Ha-edut Ve Ha-Shetarot*' (Hebrew), *Shenaton Ha-Mishpat Ha-Ivri* 11–12 (1984–86), pp. 223–224.

⁷ See: R. Yaron, *Introduction to the Law of the Aramaic Papyri* (1961), pp. 53–60; cf. B. Porten, *Archives from Elephantine: The Life of an Ancient Jewish Military Colony* (1968), pp. 151–186, 208–210, 261–262; Z. W. Falk, *The Divorce Action by the Wife in Jewish Law* (1973, Hebrew), pp. 17–22.

⁸ At any rate, this is how a closely related clause was understood seven or eight centuries later in the Palestinian Talmud. See especially M. A. Friedman, *Jewish Marriage in Palestine: A Cairo Geniza Study*, Volume I: *The Ketubba Traditions of Eretz Israel* (1980), pp. 316–322 (with references to earlier literature), and cf. the discussions of Falk (esp. 22) and Porten (esp. 261–262) listed in the preceding note. For the possibility of interpreting the Elephantine material in this way see now A. Schremer, 'Papyrus Se'elim 13 and the Question of Divorce Initiated by Women in Ancient Jewish Halakha' (Hebrew), *Zion* 63 (1998), p. 378, n. 4.

⁹ This explanation is strengthened by the parallels in Matthew 5:32 and Luke 16:18. See the responses to B. Broten by E. Schweizer, 'Scheidungsrecht der jüdischen Frau? Weibliche Jünger Jesu?', *Evangelische Theologie* 42 (1982), pp. 294–295; and H. Weder, 'Perspektive der Frauen?', *ibid.* 43 (1983), pp. 175–176.

preserved alternative traditions which enjoyed some currency in late antique Judaism, the Samaritan source in question is completely irrelevant, while the Karaite sources refer at most to the possibility of a woman initiating divorce proceedings, with the actual divorce to be executed by the husband.¹⁰

The discussion of this question has gained momentum in recent years, as a result of the publication of a papyrus written in the area of the Dead Sea in 134 or 135 CE.¹¹ This document has attracted a great deal of attention over the last forty years, but especially since its original publication in 1995 and final publication in 1997, both by Ada Yardeni.¹² The most important subsequent discussion is contained in a recent article by Hannah M. Cotton and Elisha Qimron.¹³ Scholars have been divided on numerous questions with regard to this text, including its genre, reading and interpretation; but the document has attracted attention especially because it refers, according to some of its interpreters, to a bill of divorce given by a wife to her husband.¹⁴ It is this point which I would like to take up once again.

The document in question is not a divorce document, but a renunciation of claims written in the aftermath of a divorce.¹⁵ The background to the writing of this document is mentioned in a subordinate clause; the question is whether or not the wording of this clause implies that the divorce was granted by the

¹⁰ See B. Brooten, 'Konnten Frauen im alten Judentum die Scheidung betreiben?', *Evangelische Theologie* 42 (1982), pp. 70–71. It is not completely clear to me whether Brooten means to say that according to these traditions women could actually divorce their husbands, or only that they could initiate divorce proceedings; cf. the paraphrase of her arguments by Cotton and Qimron (n. 13 below, p. 116). The Samaritan text referred to describes a case in which a couple parted by mutual consent, and specifies that the divorce was executed by means of a writ given by the husband to the wife, as specified in Deut. 24:1. Brooten relies on S. Szysman in his review of L. Nemoy's *Karaite Anthology* (1952) (*Vetus Testamentum* 5 (1955), p. 334) to assert that Karaite law recognizes a wife's right to divorce her husband. Szysman gives no reference for this assertion; he presumably intended to refer to the passage from Anan's *Book of Commandments* translated by Nemoy on p. 19, which may imply that the wife could demand that her husband divorce her, but certainly leaves the actual divorce in the husband's hands. The same picture emerges from later Karaite sources; see e.g. Judah Hadassi, *Eshkol ha-Kofer* (1836), alphabet no. 336, and Elijah Bashyazi, *Adderet Eliyahu* (1530–31), Seder Nashim, ch. (12–)13.

¹¹ The exact provenance is not completely clear; see H. M. Cotton and A. Yardeni, *Aramaic, Hebrew and Greek Documentary Texts from Nahal Hever and Other Sites with an Appendix Containing Alleged Qumran Texts* (The Seiyāl Collection 2), Discoveries in the Judaean Desert XXVII (1997), pp. 1–6.

¹² A. Yardeni, *Nahal Se'elim Documents* (1995, Hebrew), pp. 55–60; Yardeni and Cotton, *op. cit.*, pp. 65–70. See also A. Yardeni and J. C. Greenfield, 'A Receipt for a Ketubba', in *The Jews in the Hellenistic-Roman World, Studies in Memory of Menachem Stern*, eds. Y. Gafni, A. Oppenheimer and D. Schwartz (1996), pp. 197–208 (Hebrew).

¹³ 'X Hev/Se ar 13 of 134 or 135 C.E.: A Wife's Renunciation of Claims', *JJS* 49 (1998), pp. 108–118. Other relevant publications are listed *ibid.*, notes 2–4, 8; to these should now be added: A. Schremer (n. 8 above); *idem*, 'Divorce in Papyrus Se'elim 13 Once Again: A Response to Tal Ilan', *Harvard Theological Review* 91 (1998), pp. 193–202; T. Ilan, 'The Provocative Approach Once Again: A Response to Adiel Schremer', *ibid.*, pp. 203–204.

¹⁴ See Cotton and Qimron, especially pp. 115–116; the sources listed *ibid.*, p. 108, notes 2–4, 8; and Ilan, *op. cit.*

¹⁵ See Cotton and Qimron, especially pp. 108, 112–114; as they note, this corresponds to the 'waiver of claims' adopted in Yardeni's final publication (albeit with an interrogation mark and an alternative suggestion), and is a more precise description than 'receipt for a ketubba' as in Yardeni's preliminary publication and her joint publication with Greenfield (see n. 12, above).

wife, Shlamzion, to her husband Eleazar. Cotton and Qimron have improved considerably on earlier translations of the document, in particular by realizing that final *ile* is repeatedly written with a *he*.¹⁶ The clause in question reads די הוית בעלה מן קדמת דגן דנין הוא לך מנה גט שבקין ותרכין where the pronominal endings of בעלה and מנה should be understood, following Cotton and Qimron, as first-person endings. Their translation of the clause in question reads as follows: ‘who previously were my husband and who had (have) a deed of abandoning and expulsion from me’, and their conclusion is that ‘This reading of the document leaves no doubt that it was Shlamzion, the wife, who gave her husband, Eleazar son of Hananiah, a writ of divorce . . .’.¹⁷

It is here that I beg to differ. I would accept the translation given, but interpret the meaning of this clause differently: Shlamzion is not asserting that she had divorced Eleazar, but that he had been divorced from her. In other words, I suggest that מנה ‘from me’ should be understood not as modifying הוא with the meaning ‘(given) by me’, but as modifying שבקין ותרכין with the meaning ‘(divorcing you) from me’. The clause under discussion would then be equivalent to ‘who previously were my husband and subsequently were divorced from me by a deed of abandoning and expulsion’. True, the order of the Aramaic words favours *prima facie* the interpretation of Cotton and Qimron; literally, the text quotes Shlamzion as saying to Eleazar ‘you had from me a deed of abandoning and expulsion’, rather than ‘you had a deed of abandoning and expulsion from me’, and one is inclined at first glance to understand ‘you had from me’ as ‘I gave you’. But I think this reading is by no means necessary, and that the somewhat awkward phrasing can be explained by observing that the language of the document echoes that of the standard Jewish writ of divorce, as known both from literary and from documentary sources. The clause we have been discussing is extremely close to two of the central sections of the standard writ of divorce, די הוית אנתתי מן קדמת דגא . . . ודן דיהוי ליכי מנאי ספר תרוכין וגט שבוקין were my wife . . . and this shall be for you from me a writ of abandonment and a document of expulsion’.¹⁸ I would suggest that the scribe who wrote this document modeled the wording of this clause on the familiar language of the writ of divorce, with the bare minimum of revision necessitated by the fact that in this document, as opposed to the writ of divorce, the wife is represented as addressing her husband: the feminine form for ‘were’ is replaced by the masculine, ‘wife’ is replaced by ‘husband’, and the feminine form ליכי is replaced by the masculine לך. Furthermore, the imperfect ‘this shall be’ is replaced by the perfect ‘had’, since the document in question does not effect the divorce, but reflects its consequences. The order of the words, however,

¹⁶ *Ibid.*, pp. 110–112. I would also agree with their rejection of previous attempts to interpret the document so as to make it refer to divorce by the husband: *ibid.*, pp. 109–111, 116.

¹⁷ *Ibid.*, p. 115.

¹⁸ For comparisons with *mGit.* 9:3 (which quotes only the second clause) and the divorce document from Murabba’at, see Cotton and Qimron, p. 115. Compare also the nearly identical texts given in the formularies of the Geonim Se’adyah and Hayya: Ben-Sasson (n. 6 above), p. 223, l. 26 and p. 224, ll. 2–3; S. Assaf (ed.), *The Book of Sheṭaroth (Formulary) of R. Hai Gaon* (Supplement to Tarbiz I, 3), (1930, Hebrew), p. 18, ll. 12, 16–17.

was left unchanged, even though this results in a shift in the meaning of the word 'from me': in the divorce document the husband states that he is giving the writ to his wife, but in a renunciation of claims the emphasis is simply on the fact that a divorce has taken place, and not on identifying the author and the recipient of the divorce document.

I am not claiming that the interpretation of X Hev/Se ar 13 which I have proposed is the only possible one—in fact, if we were to consider this document in isolation from its cultural context, the reading proposed by Cotton and Qimron would be preferable. However, it seems to me that the preponderance of evidence for the execution of Jewish divorce documents exclusively in the husband's name tips the scales in favour of the reading offered here. I would argue as a matter of methodological principle that when, as in the present case, the prevailing conception rests on a substantial number and variety of clear-cut sources, a convincing revisionist approach would have to be based on a less ambiguous foundation.¹⁹

¹⁹ I cannot agree with Ilan (n. 13 above, p. 204) that in deciding to what degree our interpretation of a particular text is to be influenced by our familiarity with other sources, we must choose between an 'apologetic' approach and a 'provocative' one; perhaps 'integrationist' versus 'isolationist' would be a better formulation.