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Sexual issues in Jewish law

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Chapter V. CONTROLLING PASSIONS - MIXED RESULTS

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CONTROLLING PASSIONS - MIXED RESULTS

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Every religion and society tries to control sexual life and impulses through a variety of ways as this is an area of considerable conflict that has always disturbed familial and communal harmony. Prohibitions, taboos, saintly examples, ritualization, and other methods have and continue to be used. Biblical Judaism met with considerable success in this area; sexual misadventures occurred among the Israelite kings and others, but they did not play a crucial role as in the legends and mythologies of the ancient Near East or those of the Greeks. They did not become the pretext for national wars or revolutions as in the Iliad.

How far is it possible to legislate successfully in the area of passions and jealousy? Where are the boundaries? The Decalogue dealt with sexual ethics with broad sweeping strokes, but other legislation was very detailed. We shall look at three pieces of such legislation that dealt with the passions of love and jealousy in the context of marriage and their development in the rabbinic tradition, essentially the Mishnah, Talmud Bavli, and Talmud Yerushalmi. The first legislation dealt with the very beginning of marriage and failed expectations; the second with what may have been seduction, an affair after engagement, or rape; and the last with jealousy in a marriage. This essay is not interested in dating the biblical material, but rather in following its development in later Judaism. Rabbinic Judaism treated Mosaic legislation as divine. We shall see what was done when the limits of practical efforts were reached.

We shall begin with two pieces of legislation that follow each other; one deals with the night of the marriage, in which the husband expected to find his bride a virgin (Deut. 22:13-21) and the other with the rape of an engaged woman (Deut. 22:21-28). The first piece of legislation was stimulated by a young husband who sought a pretext for dismissing his wife, who no longer pleased him, but its implications

were broader.

The groom made the accusation of lack of virginity; the question was whether it was properly or falsely raised. The bride was not seen as in position to defend herself, so the father undertook this effort.

And the damsel's father shall say to the elders: "I gave my daughter to this man to wife, and he hates her; and, he has laid wanton charges, saying: I did not find the tokens of virginity in your daughter; and yet these are the tokens of my daughter's virginity." And they shall spread the garment before the elders of the city. And the elders of that city shall take the man and flog him. And they shall fine him a hundred shekels of silver, and give them unto the father of the damsel, because he has brought up an evil name upon a virgin of Israel; and she shall be his wife; he may not put her away all his days. But if the charge proves true, the girl is found not to have been a virgin, then the girl shall be brought to the entrance of her father's house, and the men of her town shall stone her to death; for she did a shameful thing in Israel, committing fornication while under her father's authority (Deut. 22:16-19).

The young woman in this case remained a bystander although her life was at stake. The father brought out the sheets to prove the husband's claim false. The text then stated that the groom was flogged and fined and the young wife remained his responsibility for life. The biblical text only considered the simplest, least complicated case in which virginity could easily be proved. There was no further discussion of this matter in the Bible.

The following verses dealt with adultery and demanded the death penalty for the woman and her paramour (Deut. 22:23f.). In

our case the other party, if indeed there was one, remained unknown. Let us also turn to the next cases that form this unit:

In the case of a virgin who is engaged to a man – a man comes upon her in town and lies with her – you shall take the two of them out to the gate of that town and stone them to death: the girl because she did not cry for help in town, and the man because he violated another man's wife. Thus you shall sweep away evil from your midst. But if the man comes upon the engaged girl in open country, and the man lies with her by force, only the man who lay with her shall die, but you shall do nothing to the girl . . .

If a man comes upon a virgin who is not engaged and he seizes her and lies with her, and they are discovered, the man who lay with her shall pay the girl's father fifty shekels of silver, and she shall be his wife. Because he has violated her, he can never have the right to divorce her" (Deut. 22:23-28).

In each of these instances, the woman was left out of the proceedings, and only if the attack occurred in the countryside where cries for help would have been of no avail was the death penalty avoided. A woman not yet engaged and seduced or raped led to a fine and she again remained with this man for life.

The more complicated cases that would arise out of this legislation were discussed by the rabbinic literature first in the Mishnah and the Talmud. The Mishnah divided marriage into *erusin* (*kiddushin*) and *nissuin* as it dealt with these two issues.

We shall begin with the first case in which the lack of virginity, if indeed this was so, was at stake. The Mishnah dealt with this differently. First of all it had to be clear that no contact between the two individuals had or could have occurred. Furthermore, the charge

had to be brought in a timely fashion – as also described in Deuteronomy, though not necessarily after the first night. According to R. Meir within thirty days (B. Ket. 3b, 11b, B. Yeb. 111b). The Mishnah changed the penalty. If adultery had occurred between the *erusin* and *nisuin*, then divorce was mandatory (B. Ket. 9a, J. Ket. 25a), and proof of two witnesses was required (B. Ket. 9b). If there were two witnesses to her adultery and this had occurred after *erusin*, she was to be stoned, but if sexual relations had occurred before *erusin*, then her *ketubah* was reduced to a *maneh* (11b). This meant that there was lack of virginity, but no adultery had occurred, so the death penalty could not be invoked. It then turned the matter in a different direction, in which the husband no longer wished to rid himself of his wife. If the suspicion could not be proved but the presumption was high, then divorce became optional, but the husband could overlook this, remain married, and simply write a new *ketubah* with a *mohar* of one hundred *zuzim* instead of the customary two hundred. If the girl claimed that she was injured by a piece of wood and stated this fact before her marriage, then no claim of lack of virginity could be filed. Otherwise it was considered a deception, as were a variety of physical defects and other matters that had not been disclosed by the bride or her father (Tos. Ket. 7, 8; B. Ket. 72b., 75a, 77a). Under those circumstances, R. Meir insisted that she receive her full *ketubah*, whereas the *hahamim* reduced her *ketubah* to 100 *zuzim* (B. Ket. 11b).¹ Later Maimonides asked another question, which may have been posed earlier: Why, in the biblical presentation, was the dissatisfied husband not content with a simple divorce; after all, according to Bet Hillel, he could demand it even if he did not like her cooking. The answer was that he wanted his money back (the *ketubah*), not only a divorce.

In the Mishnah, we then have numerous complications added that turn what had been an argument between a dissatisfied groom and his father-in-law into a court case with potential witnesses, different stages of engagement, etc. In other words, first of all, a much longer

and difficult legal encounter. Secondly, the entire matter became much more difficult and therefore expensive. The possibility that such a suit would be brought was diminished.

When we proceed with this discussion to the Talmud Bavli, we see that the *hahamim* allowed the evidence of the sheets but did not consider this sufficient and demanded further proof from witnesses or a statement from the bride (or her family) that the signs of virginity may have been lacking as she had been injured by a piece of wood, but nevertheless she was a virgin. R. Eliezer b. Jacob, however, insisted that the biblical verses be followed and that the parents of the bride preserve the sheet from the bridal night, which was sufficient evidence to settle the matter and to clear the bride. The burden of proof fell on the groom who had to bring solid evidence through witnesses. The proviso was also made that if he influenced such witnesses, hired them, or in any other way induced them to testify falsely, he was punished through a fine of double the usual amount paid out in a *ketubah* for a virgin (*Mekhiltah*. Deut. 22.29; B. Ket. 10a; 29b; 30b; J. Ket. 27d). In other words, it took the entire matter to be less about virginity and more about money and so made the effort more expensive.

Doubt, uncertainty, a sense of betrayal or cupidity, whatever the reason, the groom's fine was stipulated as double the normal *mohar* (normally 50 *shekel* in the Bible and 200 *zuzim* in the Talmud) stipulated in the *ketubah*. These discussions considered virginity lost before and after *erusin* as did the Mishnah, something that the biblical statement did not take into account, but the Talmud went one step further and stated that the loss of virginity has to take place in the period between her being in the state of a *katanah* (3-12) and *na-ara* (12-12 ½), and after that she became a *bogeret* (adult woman) – in other words in that six-month interval. According to the talmudic discussion, a young woman who lost her virginity while a *katanah*, however this occurred, and who was not yet formally engaged could not be punished (Lev. 22.15). As the period between her state as a

ketana and a *na-ara* was only six months and as a formal engagement (*erusin*) was usually for a year, the entire matter was complicated further. This meant that the loss of virginity had to occur in this short period, and that was almost impossible to prove.

The introduction of these complications made the likelihood of an accusation by the groom doubtful. The gossip raised by the groom's accusation and the concomitant trouble to the bride's family was avoided. The entire matter of bringing sheets to court was eliminated. The rabbinic courts had quietly moved beyond the biblical method of dealing with the issue of jealousy, unmet expectations, or suspicions well or ill founded. The courts through redefinitions had decided that this issue was beyond their scope except for some potential economic overtones, so it treated the lack of signs of virginity as one defect along with others that may not have been announced but could be settled financially despite the biblical legislation.

The matter was moved along further through lengthy discussions of the *mohar*. (The *Tanaim* considered the *mohar* biblical while the Talmud discussed whether the *mohar* was biblical or rabbinic – B. Ket. 10a, 110b; J. Ket. 36b; also Epstein p. 61ff.). The discussions concluded that this sum was to be provided for a virgin in addition to anything else and incorporated into the *ketubah*.

Eventually matters went further, virginity was assumed² and was not to be questioned, so, for example the rabbinic legislation did not pursue the matter of virginity in Judea, although it was well known that Judeans, both male and female, were casual in their sexual life. The question was not asked (B. Ket. 10b, 12a; Tos. Ket. 1, 4; J. Ket. 25c), and the traditional *mohar* was stipulated in Judea as elsewhere unless there was specific proof that it should not be done. The authorities could have set the *mohar* as half the normal amount, i.e., 100 rather than the later normal 200 *shekel*. This has remained standard Orthodox practice, and all *ketubot* in a first marriage among contemporary Orthodox Jews state that the bride is a virgin, even if

the couple had already lived together for some time. The biblical law may have been well intentioned but was messy and difficult to enforce. Furthermore, it created communal antagonisms rather than promoting harmony. The talmudic tradition and later responsa on this matter remained out of the bed-chamber at that critical moment or made legal proof very difficult. The folk custom of showing the sheets from the wedding night remained as for example in Italy, but definitive proof of lack of virginity involved other details which made it hard.³ This way of handling matters also provided greater protection for the young bride although that was never mentioned as a concern. For the rabbis this was an issue of boundaries beyond which it was not suitable for the court to venture. Neither social, communal, nor religious values would be served. The experiment in dealing with the passions and jealousy of the young groom was quietly abandoned.

SUSPECTED ADULTERY

Now let us look at another issue of passion, the case of a married couple and a jealous and suspicious husband. He suspected her of using what may have been ordinary meetings with another man for illicit sexual intercourse and therefore adultery. He was suspicious but had no proof. Scripture sought to solve the problem through the ordeal of the *sotah* - in other words the matter was left to divine judgment and it was the only instance in the biblical texts:

If any man's wife go aside and act unfaithfully against him, and a man lie with her carnally, and it be hid from the eyes of her husband, she being defiled secretly, and there be no witness against her, she not be taken in the act; and the spirit of jealousy come upon him, and he be jealous of his wife, and she be defiled; or if the spirit of jealousy come upon him, and he be jealous of his wife, and she be not defiled; then

shall the man bring his wife unto the priest and shall bring her offering for her, the tenth part of an ephah of barley meal; he shall pour no oil upon it, nor put frankincense thereon; for it is a meal-offering of memorial, bringing iniquity to remembrance. And the priest shall bring her near and set her before the Lord. And the priest shall take holy water in an earthen vessel; and of the dust that is on the floor of the tabernacle the priest shall take, and put it into the water, And the priest shall set the woman before the Lord and let the hair of the woman's head go loose and put the meal-offering of memorial in her hands, which is the meal-offering of jealousy; and the priest shall have in his hand the water of bitterness that causeth the curse. And the priest shall cause her to swear, and shall say unto the woman: If no man have lain with thee, and if thou hast not gone aside to uncleanness, being under thy husband, be thou free from this water of bitterness that causeth the curse; but if thou hast gone aside, being under thy husband, and if thou be defiled, and some man have lain with thee besides thy husband – then the priest shall cause the woman to swear with the oath of cursing, and the priest shall say unto the woman – the Lord make thee a curse and an oath among thy people, when the Lord doth make thy thigh to fall away, and thy belly to swell; and this water that causeth the curse shall go into thy bowels, and make thy belly to swell, and thy thigh to fall away; and the woman shall say: Amen, Amen. And the priest shall write these curses in a scroll, and he shall blot them out into the water of bitterness. And he shall make the woman drink the water of bitterness that causeth the curse; and the

water that causeth the curse shall enter into her and become bitter. And the priest shall take the meal-offering of jealousy out of the woman's hand and shall wave the meal-offering before the Lord, and bring it unto the altar. And the priest shall take a handful of the meal-offering as the memorial-part thereof, and make it smoke upon the altar, and afterward shall make the woman drink the water. And when he hath made her drink the water, then it shall come to pass, if she be defiled, and have acted unfaithfully against her husband, that the water that causeth the curse shall enter into her and become bitter, and her belly shall swell and her thigh shall fall away; and the woman shall be a curse among her people. And if the woman be not defiled, but be cleared; then she shall be cleared, and shall conceive seed. This is the law of jealousy, when a wife, being under her husband goeth aside, and is defiled; or when the spirit of jealousy cometh upon a man, and he be jealous over his wife; then shall he set the woman before the Lord, and the priest shall execute upon her all this law. And the man shall be clear from iniquity, and that woman shall bear her iniquity (Nu. 5.11-31).

Ancient Judaism knew of no other ritual akin to this. The closest were statements that difficult issues of judgment would be brought to the *urim* and *tumim* for adjudication. (Ex. 28:13 - 30; 1 Sam. 14:41 or the *ephod* (Josh. 9:14; Ju. 1:1, 20:18; 1 Sam. 10:22, etc.). The detailed biblical account indicated that this trial by ordeal was carried out. More detail was added by an entire tractate of the Mishnah and in both the Bavli and Jerushalmi. The ritual seems to have been practiced as long as the Temple stood. We should note that the biblical account showed some concern for the woman.

The nature of the punishment, essentially a false pregnancy, indicated that this ritual was not primarily about adultery but about paternity, as the belly of a barren women or one past menopause was not going to swell. The rabbinic material turned to this issue in a limited way.

The mishnaic account and the talmudic discussions occurred after the destruction of the Temple in Jerusalem, which made the discussion of the ritual academic. (B. San. 37b; B. Ket 30a; B. San. 41a stated that it had already ceased 40 years earlier.) The Bavli and to a lesser extent the Jerushalmi proceeded to discuss it even though it was no longer possible to carry it out, as the Temple had been destroyed. The discussions expressed concern over (1) the complications of the ritual; (2) the purpose of the ritual as the Jewish people was now widely scattered and it no longer served as a public warning to women; (3) the inaccessibility of the ritual, even if the Temple was restored, as the population was so widely scattered.

Unspoken considerations also played a role in these discussions: (1) The rabbis sought to eliminate the predominant role of the priesthood. This powerful ritual was an obstacle as long as the Temple stood and the latter only theoretically; (2) the theological consideration of the rabbinic opposition to divine interference in daily human affairs; (3) The theological consideration of "merit" (in this case of the woman) which counterbalanced human failings and made a satisfactory outcome impossible or doubtful. As this was involved, how would anyone be able to decide whether the waters were ineffective because of her innocence or her accumulated merit. In other words, the ritual neither cleared the woman's name nor satisfied the husband. Let us see how the rabbinic literature treated this significant biblical ritual.

MISHNAH

The ritual of the *sotah* was sufficiently important in the late Temple period for an important convert to Judaism, Hellene, the

Queen Mother of Adiabne, a significant border kingdom, to commission golden tablets for the use of the *sotah* (M. Yoma 3:10). They were on display and so large that the light reflected from them was said to let people know that it was time to recite the *shema*.⁴

The Mishnah dealt with the ritual of the *sotah* as everything else through straightforward statements with few alternative opinions or discussions like the later Talmuds. It sought to bring a clear description of the ritual as remembered with some major changes from the biblical description. At least one authority, Ben Azzai, stated that women had to be taught Torah so that they would understand the *sotah* ritual. This led to a discussion with R. Eliezer, who rejected this notion and stated that teaching a woman Torah provided sexual satisfaction, and his son Hyrcanus went even further by stating "let the teachings of the Torah be burned, but let them not be handed over to women" (J. Sotah 3:4). The debate over this made another step even more necessary, i.e., the stipulation that an appropriate and direct warning forbidding the wife to have any contact with a specific man, made before two witnesses, was necessary (M. Sotah 1:1,2). Furthermore, it was then necessary to have witnesses to the encounter. It was not clear from the text whether these were the same people as those before whom the prohibition was given. For these witnesses to the encounter, bondsmen or women, in other words, household employees, were included. The testimony of relatives was also accepted, but not if it involved a denial of her *ketubah* as this had implications of financial self-interest. The text decided that disputed witnesses could testify, and even a single witness to a possible sexual encounter was considered sufficient (M. Sotah 6:1, 2). The Mishnah moved the entire procedure into a court setting and out of the realm of personal, perhaps momentary, jealousy. This had several results: It caused the husband to reflect on his actions; it prepared a case against the woman with a greater likelihood that she would confess, and finally it was a safeguard against using the *sotah* ritual lightly and thus misusing the name of God – an important consideration for the

authorities of the Mishnah.

The limits placed upon those who could undergo the ritual reflected another set of concerns. Sterile, aged, and barren women could not be accused (M. Sotah 4:3). As the outcome of the ritual was a sign of a false pregnancy; a woman in one of these categories could brazen it out, and the ritual and the name of God would be profaned, so the authorities wished to avoid this. The husband of such a woman, on the other hand, could also be jealous and would now have no recourse. The authorities of the Mishnah made no effort to deal with that situation. This restriction along with the previous one narrowed the possibility that the ritual would be used.

The Mishnah also specified that the husband could not have relations with his wife while she was under suspicion (M. Sotah 1:2, 5 – with some areas of uncertainty). This might not have been difficult during periods when polygamy was widespread, but that was not the case in mishnaic times. It further restricted the use of the ritual, however, as the woman now had to be appropriately watched until the ritual could be carried out. As it involved travel to Jerusalem, a considerable period of time was likely to elapse between the accusation and the ordeal, especially if the couple resided in the Diaspora. To enforce this sexual restraint two or three individuals guarded the woman during a journey to Jerusalem. If the husband had intercourse with his wife, then the ritual was not performed.

The presiding priest was given the duty of counseling the woman before further steps were initiated. This consisted of trying to get her to admit her guilt or to state that she had acted under the influence of “wine, playful conduct, childishness or evil neighbors.” The Mishnah was less concerned with the woman and more with the misuse of the name of God. It should not be blotted out because of some minor folly (M. Sotah 1:4). If intercourse took place before her marriage to her current husband, the curse of the ordeal did not apply.

If she admitted an innocent contact with another man, but not adultery, she was shamed and had to return her *ketubah*. Otherwise

the ordeal began. During this period any contact with her husband or her male friend was prohibited (M. Sotah 5:1). The Talmud in its discussion assumed that preliminary hearings were held before a court of 3, possibly later expanded to 23. The ordeal could be performed only after a hearing before a court of 70. These intervening steps meant that the accusation had to be serious and that every effort had been made to delay the proceedings and permit a reconciliation. They actually meant that the steps to the ritual were so difficult that it could never be carried out.

While all these considerations narrowed the potential range of the ordeal, it was broadened through the statement that the court could undertake the mandated warnings if her husband was imprisoned or mentally ill (M. Sotah 4:5). This seems to have been intended to guard public morality in the case of flagrant provocation as the purpose of the ordeal was a warning to wives.

The discussion in the Mishnah and the Jerushalmi also dealt with mitigating circumstances (J. Sotah 1:3): If she was unclean for her husband – unable to have sexual relations with him because he was a priest and she had been violated; if her husband was impotent, the court would try to appease her; if she removed herself from all Jews or could not stand intercourse, the effort was made to find a way with her husband, but failing that, she could remove herself (M. Ned 11:12).

The authorities of the Mishnah dealt with the effect of the ritual, which, in their eyes, did not need to be immediate. Any illness or other problem faced by the wife later in life could therefore be attributed to the ritual and she would never be seen as cleared. Some scholars, however, limited this period of possible effect of the ritual, to three years. R. Simeon responded that thoughts along these lines made the ordeal ineffective for both parties – for the satisfaction of the husband there was no immediate punishment, and for the wife there was no ability to clear her name.

Some other discussions also made the ritual more difficult.

For example there was a discussion about which sections of the ritual could be spoken in the vernacular and which had to be recited in Hebrew. In what language need she respond (M. Sotah 7:2)?⁵

The most serious consideration, discussed at greater length in the two Talmuds, was the consideration of the merit of the woman. Could merit accumulated for *mitzvot* earlier in her life halt the effect of the ritual? We shall turn to this in greater length in the following pages.

As the rabbis were loath to state that the ritual had become useless, they stated that morality had so declined that it was no longer possible to carry it out, a response also provided for every disaster in Jewish history. It would also have been necessary later to ask who are legitimate priests or ordained individuals to sit on a court of 70. In any case, by the time the Mishnah was edited the Temple had been destroyed and its rebuilding had become more than questionable, so the entire matter was academic.

The two Talmuds continued the discussion as did Maimonides. Let us briefly look at the two Talmuds and their discussion. As we look at the details further, we should note that the two Talmudim dealt with this question in parallel, but also in their usual distinctive manner. The Jerushalmi is more interested in the details of the ritual whereas the Bavli asked questions that went somewhat further and sought out the underlying reasons for this ordeal and for the various questions involved. We will begin with the Jerushalmi as it was closer to the scene of the ordeal that was carried out in the temple in Jerusalem.

TALMUD JERUSHALMI

The Jerushalmi sought to differentiate between jealousy of the moment, be it light-hearted or serious, and well-founded suspicions that R. Joshua in the name of R. Eliezer insisted must be discussed with the wife. In other words, a more serious effort at reconciliation

was introduced. The husband could change his mind and retract his expression of jealousy, but once the ordeal had begun, it could not be halted; after all, its purpose was to set an example to other women. If that did not work, an effort was made to induce a confession by tiring her out.

When the authorities dealt with the matter of witnesses, they added to this complication by demanding that the husband express his suspicion seriously before two witnesses, not on separate occasions, and that these same two witnesses needed then to have seen the woman visit a suspected paramour. The court sought such proof so that it did not deal with weak cases, but it also made the entire matter more difficult. There were discussions whether conversations or visits without sexual relations were sufficient cause for an accusation and the subsequent ordeal. Part of the debate centered around the question whether such visits permitted sufficient time for sexual relations, and for some even the briefest period was considered so (J. Sotah. 1:2). The accused was prohibited from sexual relations with her husband and also potential marriage with her paramour (M. and J. Sotah 1:2).

In contrast to the Mishnah, the court went down two roads simultaneously; they asked her not only to admit her guilt if the matter in question occurred during a light-hearted moment or through too much drinking, but they also asked her to stand her ground if she felt that she was innocent, so that the waters would have their effect of proving her innocent (J. Sotah 1:4). They also told her biblical tales of women who had problems to encourage her. If at this time she confessed, her *ketubah* was forfeited and she was given a divorce.

Interestingly, R. Meir focused on the nature of the husband who made the accusation. He divided them into three types: those who accused readily, those who locked up their wives because of their suspicious nature, and those who ignored slight indiscretions (J. Sotah 1:7).

If she did not confess, the priests humiliated her by tearing off some of her garments, revealing her breast and then read the curse.

Then the Jerushalmi, like the Bavli, debated the various technicalities that also limited the ordeal. The actual curse had to be written for this specific woman and could not be prepared in advance, just as a divorce document or a document emancipating a slave (J. Sotah. 2:2). There is also a good bit of technical discussion about the nature of the scroll, its text, mistakes in the text, written from memory, and so forth.

Exceptions to the ordeal were discussed, so if the woman had once undergone the ordeal, it could not later be repeated. There was some doubt whether a proselyte or a freed slave girl would face the ordeal. The husband could not accuse for anything that may have occurred before marriage or after a divorce (when he later took her back as his wife) (J. Sotah 2:5). The Bavli expanded this with details that made it more protective of women (B. Sotah 18b f.).

There was strong belief that the water of the ordeal accurately tested the woman's behavior, but also that merit might suspend the effect for one year or more (J. Sotah 3:3). If the woman survived the ordeal, however, and was innocent, R. Judah b. Petera in the name of Eleazar b. Matya indicated that she would be blessed – no longer be barren, have an easy birth, produce males not females, pretty not ugly children, fair, not dark, tall, not short, twins rather than a single baby. In other words, the path of her later life meant more than surviving the ordeal cleared her (J. Sotah 3:4).

The Yerushalmi also dealt with the question of a negative outcome to the ordeal - what happened if merit suspended or canceled the effect? The Mishnah indicated that this led to an inconclusive outcome. R. Hunah stated that as long as the specific effects of the ordeal did not strike the woman, even if she suffered other ailments, the marriage continued as before and sexual relations were permitted. The husband should not think that merit alone suspended the curse (J. Sotah 3:5).

In the discussion of categories that did not undergo the ordeal, such as barren women or those past menopause, as the waters

would have no effect, R. Jose ben R. Bun stated that the husband should divorce her if he was suspicious. While R. Josiah quoting Zeira stated that a husband could forgive his wife in this instance just as one could forgive a rebellious son and a rebellious elder (J. Sotah 4:1, 2).

R. Yohanan emphasized the need of the husband to warn his wife and not to go merely on suspicion and hearsay (J. Sotah 6:1). Both male or female witnesses were acceptable, and a single witness could lead to her being declared unclean, but not to deprive her of her *ketubah* (J. Sotah 6:4). The confusion of witnesses contradicting each other discussed in the Mishnah was not clarified by the Yerushalmi discussion, either. R. Josiah emphasized that the woman was addressed in any language that she understood, not necessarily Hebrew (J. Sotah 6:4). The text also dealt with details of the ritual, the meal offering, as well as a good deal of other material as often in talmudic discussions.

BABYLONIAN TALMUD

The rabbis were, of course, aware of the fact that the rite had ceased with the destruction of the Temple, so they had to ask whether punishment for this act of adultery, when proved, still prevailed. They stated that God would bring about execution, in this case as in others, though a method akin to one of the four mandated by the Bible and provided the details (B. Sotah 8b). This, of course, meant that any fatal accident would be ascribed to divine punishment for what may have happened or only been a figment of a jealous husband's imagination. The cloud of the accusation would continue throughout the woman's life. One later rabbi provided the usual explanation as morality had declined, it was no longer feasible, and had nothing to do with the destruction of the Temple, although that was also due to the decline of morality.

The Bavli began with simple a question that placed the possible misdeed in a different light – why *Sotah* after the tractate *Nazir* – because it was probably wine that caused the woman's

behavior; in this way it tried to soften the allegation and, undoubtedly more important, avoid the misuse of the name of God (B. Sotah 21a; 32b). On the other hand it expressed the opinion that men and women got what they deserved and that we were dealing with an evil man and an evil woman. The Bavli in these opening pages clarified the basis for a case, i.e., was the husband's jealousy sufficient or were witnesses necessary and a warning necessary (B. Sotah 2a). As jealousy is a sin, was it permissible in this case and why? The view of women (and men) was more negative than previously expressed with the rather full discussion of what happened when a woman and a man were isolated for even a short period. It expressed the opinion that a woman would inevitably be seduced in such a situation and minimized the time during which the two needed to be alone - just enough to mix a cup of wine, to circle a small palm tree, or get undressed. There was little faith that a serious effort at seduction would fail. Of course, this was equally a reflection on the nature of men who would inevitably make the effort to seduce, although they did not realize this (B. Sotah 3a-4b).

The scholars broadened the decision of the Mishnah that the court could bring an accusation for those who were deaf, retarded, or imprisoned and included someone who had gone on a long journey in this effort to guard public morality (B. Sotah 17a).

More than in the Yerushalmi, the discussion of the nature of the evidence dealt with the psychological effect of jealousy on the husband as well as the communal pressure on the woman after an accusation has been made (B. Sotah 2b, 3a).⁶

The discussion of the Bavli continued its low opinion of both men and women in this sexual situation, so if the accused woman had to be brought to Jerusalem from a distance, it insisted that three sages, not two as demanded by the Mishnah, accompany her and ensure that there was no sexual contact between the woman and her husband (B. Sotah 7a, 25a). This, of course, increased the difficulty and expense of proceeding with such a case.

The significance of witnesses was stressed at the beginning of the tractate along with another matter. If the woman came from a distance and the witnesses against her were not present, the waters would not be effective. A bit later there was a long discussion of the woman's merit causing the waters to be ineffective (B. Sotah 6a). Although these matters were discussed again later in the tractate, this showed doubts about the ritual from the beginning.

The text provided numerous homiletic discussions of various biblical characters, their failures and jealousies. The emphasis was on how good behavior was rewarded and evil punished through a life time with numerous asides (B. Sotah 9b-14a). This homiletic effort indicated that persuasion rather than legal or ritual means was considered to be the answer.

There were, of course, as in the Mishnah, detailed discussions about the nature of the sacrifice and the manner in which the rite was carried out, matters that are not our concern in this paper (B. Sotah 15b ff.)

The entire issue of the woman's merit, already treated by the Mishnah, led to lengthy discussion on the nature of the merit, whether for an obligatory *mitzvah* or commandment or for something that went beyond what was required. This then led to a detailed discussion of the merit of studying Torah and when would such merit be effective. As this was not obligatory upon women, most authorities felt that they would not receive merit. Rabina put it differently and suggested that merit was achieved through their support for husbands and sons who studied Torah (B. Sotah 21a). Similar discussions of the place of women followed with a slightly higher opinion of those who were pious than found in the Mishnah (Sotah 22a).

Many possible problems, which did or might arise, were discussed throughout the tractate as well as some other limitations, such as physical contact with a man, but without sex, lesbian contact, sexual relations with animals – even when warned by the husband in the prescribed manner. These discussions expanded the range of the

ordeal in contrast to so much else that contracted it (B. Sotah 26b, 27a).

An interesting discussion indicated that in the case of adultery, not only would the woman's belly and thigh fall away, but also that of her lover (B. Sotah 28a), which for the first time brought some punishment immediately on her lover. He was, of course, also to be liable for the death penalty, but that came later in the sequence of events.

There was concern about the effectiveness of the waters, which should not be questioned, so potential problems were discussed. If the husband cohabited with her during this period, they were not effective. If the court was dealing with one known as an adulterous woman, the waters were ineffective but could be given. If she drank and cleared herself, however, and then witnesses came – the witnesses not the waters were believed. Yet, if the witnesses remained overseas and merely sent statements, they did not suspend the water (B. Sotah 6a). In other words, differences of opinion continued and ultimately the facts rather than the water of the ritual was decisive.

Practical considerations continued, so as the ordeal ceased with the destruction of the Temple, Haninah of Sura cautioned husbands not to warn their wives before two witnesses to refrain from association with a specific male. Thus he would forbid himself forever to his wife as she could no longer remove the suspicion (Sotah 2b).

The talmudic scholars happily gave up on this experiment. Their reasons were simple: (1) It depended on divine intervention in judicial affairs to which they were opposed. (2) It was not a workable solution to a difficult problem. (3) As the woman's merit could play a role, the ordeal provided no solution. In place of this questionable approach, the rabbis emphasized reconciliation, and if that did not work, easy divorce.

LATER JEWISH LAW

Although Maimonides dealt with the *sotah* and its ritual as with everything else connected with the Temple and other matters that could no longer be practiced, he dutifully presented all the details of the ritual, but did not comment on the underlying problem that it raised (*Yad Hil. Sotah*). He was concerned about the shame and gossip which accompanied the family both with this and also in questions about virginity. He discussed this at length (*Yad, Hil. Naraiah 2 and 3*). The remaining codifiers omitted any discussion of the ritual of the *Sotah* as not applicable to life in the Diaspora because the Temple had been destroyed. Neither Maimonides nor the later codifiers dealt with the primary issue of the young bride accused of lack of virginity as that had already been disposed of by the Mishnah and Talmud. In the earlier matter of the young bride's virginity and the seduction or rape of an engaged young woman, ways had been found to nullify the law.

All this is obvious and clear, but they also did not attempt any other way of dealing with the problem of jealousy – adultery yes, but the gray area in which there is no clear proof, no.

CONCLUSION

In each of these instances we have biblical experiments in controlling passions and an attempt to go beyond the hortatory into daily life. In each instance the Mishnah and the later two Talmuds moved the matter through the courts and applied the standards expected there along with some others. They did not nullify the biblical laws, as that was not possible for them. Instead, they modified the laws to meet their standards. With the matter of virginity, that succeeded in nullification, as the restrictions made the accusation virtually impossible.

With all the objections quietly raised or loudly proclaimed to

the ritual of the *sotah*, it should not astonish us that the courts did not seek to replace the ordeal by any other procedure. Yet the problem of jealousy whether well or ill founded remained, but the court felt that it was not the proper place for a resolution. It was left to persuasion rather than the courts.

We, therefore, have a biblical attempt to legislate in this difficult area of human emotions and to solve the issues in the gray areas. The primary other effort was the last of the final statement of the Decalogue, which dealt with "coveting"; here, however, the statement was not followed by any specific legislation and so brought no problems for the courts. We do not know how the efforts covered by this paper were executed in the biblical period, but the detailed accounts in the Mishnah and the two Talmuds indicate that an attempt to carry out the scriptural obligations were made and ways of circumventing them discovered. In the later periods these efforts ceased. We may see these discussions as idealistic attempts to solve human problems. Rabbinic Judaism, faced with the realities of making the legislation work, eventually gave up the mandatory route for hortatory efforts. The latter continued as witnessed through countless sermons and commentaries through the millenia.

Notes

1. Louis M. Epstein, *The Jewish Marriage Contract - A Study of the Status of the Woman in Jewish Law* (New York: Jewish Theological Seminary, 1927), p. 216.
2. Epstein, Op. Cit., pp 71ff.
3. A full discussion of this including the role of women examiners may be found in Roni Weinstein's *Marriage Rituals Italian Style: A Historical Anthropological Perspective on Early Modern Italian Jews* (Leiden: Brill, 2004), pp 400 ff. He also mentioned the custom, attested in the ninth century, of the groom not signing the *ketubah* until he had varified the bride's virginity; something clearly at odds with the *halakhah*. He stated that this custom continued in Greece until the seneenth century

4. She also gave a pair of candelabrum that stood above the doors of the sanctuary and her son, King Monobazus, donated gold handles for the bowls used on Yom Kippur.
5. The sections following M. Sotah 7.2 dealt with other matters unrelated to the main matter connected with the Sotah.
6. The much later comments by Rashi and the Tosfos reminded the reader that the jealous husband's suspicions were more than adequate grounds for divorce according to Bet Hillel, who felt that any grounds could be used for a divorce. Therefore the ordeal was not necessary unless one followed Bet Shammai, who considered only adultery as grounds for divorce. A simple divorce would, of course, have simplified matters for everyone and also cast no aspersions on the parentage of any children.

