

Choosing a Legal System in Early Judaism

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Summary

Which system of law was used by ordinary individuals in early Judaism? One might imagine that each family had allegiances to a particular group – Hillelite Sage, Boethian Sadducee, Hellenised Judaism, Qumran sectarianism or suchlike. However, it appears that when a Jew wrote a document such as a marriage contract, he (or his scribe) would use the formulae, language and legal concepts of whichever legal system was best suited to his situation, and when a he had a dispute, he would choose whichever court was most likely to rule in his favour. The same individual might write a marriage contract based on the law of the Sages, and then another based on Graeco-Roman law. Even the Sages, who felt that their legal system was divinely ordained, were willing to accept the validity of competing legal systems. This suggests that ordinary Jews were only loosely affiliated to specific religious groups and had an eclectic approach to legal matters.

Variety of law systems

This study is concerned with 'early Judaism', which will cover the first two centuries of the Christian era. The most diverse, and therefore the most interesting period is before the destruction of Jerusalem, but there is not enough evidence to provide a full picture for this period, so this study also extends into the second century. The complexity of the Jewish world in the first century is now well established, and even after 70 C.E. there was still more than one legal system to which an individual Jew could appeal. The only Jewish group which had any significant legislative authority after this destruction was what came to be called the Rabbis, who were the successors of the Hillelite Sages. However, even this body of legislators had a competing legal system with which they had to co-exist: the Graeco-Roman court system.

A much more diverse situation existed before the destruction of Jerusalem, when a plethora of competing legal systems co-existed. The Qumran community, the Sages, Hellenistic Jews and the Sadducees are groups for which we have a certain amount of literary evidence. Within these groups were many other subgroups. We know about the schools of Hillel and Shammai among the Sages in some detail, but we also know a little about others – the school of Gamaliel,¹ the Perushim and Haverim (which might be identical).² There were also groups which were similar in some ways to the Qumran community, such as Therapeutae, Essenes (which may or may not

¹ See the off-hand reference to this 'House' in bSan.12a

² The analysis of these groups by Rivkin is still one of the best available – see Rivkin, E., *A Hidden Revolution: The Pharisees' Search for the Kingdom Within* (Nashville: Abingdon, 1978) which was based on his "Defining the Pharisees: The Tannaitic Sources", *HUCA*, 40-41, 1969-70, 205-249

be related to the Qumran sect), baptising sects (of which John the Baptist was probably one), ascetic sects and sects based on various messianic figures. Hellenistic Jews are represented in literary terms by Philo and related literature, which suggests a strong movement especially outside Palestine. Related groups may include the Dorshe Hamurot and Dorshe Reshumot³, and perhaps the Hellenistic synagogues mentioned in Acts.⁴ The Sadducees also contained subgroups such as the Boethians.⁵ It is likely that each of these groups and subgroups represented separate legal systems as well as competing theologies.

The Graeco-Roman system of law was also available to early Jews, and this too came in diverse forms. The system had spread throughout the empire, but it had not produced uniformity because it was willing to incorporate and defend local legal customs. The large collection of papyri preserved in Egypt illustrate a legal system which is similar to that found elsewhere, but always with subtle and important difference.⁶ We must assume that local variations existed elsewhere, and especially in areas such as Palestine which already had a complex legal framework.

These different competing systems are very evident in marriage law. Marriage and divorce contracts were the most valuable documents which an individual might own, other than land deeds and some inheritance testaments. A marriage contract recorded the amount of dowry paid by the bride's family at the wedding and, for most Jewish marriages, recorded the *ketuvah* which was the amount which the groom promised to pay to his bride at the end of the marriage, either at his death or on divorce. The divorce certificate recorded the fact that a woman was allowed to remarry without legal claims from her former husband. These documents, and records of legal disputes concerning them, give a valuable insight into how Jewish families used the various legal systems which were available to them.

I have recently collected all the published Greek, Latin and Aramaic marriage and divorce papyri from the 4th century B.C.E. to the 4th century C.E., as well as many ancillary legal documents.⁷ These had never previously been listed in one place, even in their individual language groups, let alone published together. They provide an invaluable insight into the variety of legal systems and yet also the similarities which grew up between these separate systems. A large number of these papyri record Jewish marriages, and one of the surprising findings is the variety of legal systems which are employed by Jews. However, it is also significant that they borrowed elements from different legal systems and this helped to gradually blur the differences between them. I have

³ These little-known groups, which may be two names for the same group, are likely to date from before 70 C.E. because were discussed by early 2nd century Rabbis and the exegesis of Yohanan b.Zakkai is compared with theirs. For a summary of secondary literature see my 1992 *Techniques and Assumptions in Jewish Exegesis Before 70 CE*. (Mohr & Siebeck, Tübingen, Vol.30 of *Texte und Studien zum Antiken Judentum*). pp. 181-83. The rabbinic texts have been collected in Lauterbach, J.Z., "Ancient Jewish Allegorists in Talmud and Midrash", *JQR NS*, 1, 1910-11, 291-333, 503-531.

⁴ Acts 6.1, 9; 9.29.

⁵ The Boethians are sometimes simply called Sadducees in later parallels (e.g. tYad.2.20 cf bBB.115b-166a), and their link to an individual Boethius is probably not historical. However, it is likely that they were theologically separate from at least some of the Sadducees (cf. ARNa.5).

⁶ Many examples of local Egyptian variation in Graeco-Roman law have been collected in Taubenschlag, Raphael, *The law of Greco-Roman Egypt in the light of the papyri, 332 B.C. -640 A.D.* 2nd ed. (Warszawa: Panstwowe Wydawnictwo Naukowe, 1955)

⁷ Published as a web site at <http://www.tyndale.cam.ac.uk/Brewer/MarriagePapyri/>

analysed some of the similarities and differences in two papers which complement the valuable work which Cotton and others have already done in this area.⁸

Different Law courts

Cotton has pointed out that the language of a marriage contract normally reflects the legal system which is employed in it.⁹ The two main legal systems available to Jews after 70 C.E. (for which period we have the most evidence) were the Graeco-Roman courts and the Rabbinic courts. In general, if a Jew wanted to depend on Graeco-Roman law, they wrote the legal document in Greek, and if they wanted to depend on rabbinic courts, they wrote in Aramaic. This seems like an obvious point, because it would be easier for a court to deal with documents which used language which was familiar to them. However, this did not mean that a court refused to acknowledge legal documents which had emanated from another system. Rabbinic courts were willing to recognise rulings which had been produced by gentile courts and vice versa, though there was a certain reluctance on both sides.

One good example of this type of limited co-operation is a case of a man who was being divorced by his wife. According to the rabbinic law of the first century this was perfectly normal, so long as the divorce certificate was written out by the husband or his scribe.¹⁰ Sometimes the husband was naturally reluctant to write it out, and the court had to use persuasion before he would 'agree' to do so. This persuasion could include the use of beatings and even rulings against him by a Gentile court, so long as the man could be said, at the end of the process, to have made the decision himself. This preserved the legal fiction that only men could enact a divorce.¹¹

By the early second century, the Jews had become much more influenced by Graeco-Roman law, and we have an example of a divorce certificate which was written by a scribe at the instruction of the wife.¹² Even though this certificate is in Aramaic and employs formulae which were

⁸ "1 Corinthians 7 in the light of the Graeco-Roman Marriage and Divorce Papyri" and "1 Corinthians 7 in the light of the Jewish Greek and Aramaic Marriage and Divorce Papyri" (both in *Tyndale Bulletin*, forthcoming). For previous work see especially Lewis, Naphtali; Yadin, Yigael; Greenfield, Jonas C., eds., *The Documents from the Bar Kokhba period in the Cave of Letters: Greek papyri* (Jerusalem: Israel Exploration Society: Hebrew University of Jerusalem: Shrine of the Book, 1989); Cotton, Hannah M., "A Cancelled Marriage Contract from the Judaean Desert (XHev/Se Gr.2)" (*J Roman Studies* 84, 1994, 64-86); Cotton, Hannah M. and Yardeni, Ada, *Aramaic, Hebrew and Greek documentary texts from Nahal Hever and other sites: with an appendix containing alleged Qumran texts*, Discoveries in the Judaean Desert; 27 (Oxford, Clarendon, 1997)

⁹ Cotton, "A Cancelled Marriage Contract", esp. p.84

¹⁰ See my "Jewish women divorcing their husbands in early Judaism: the background to papyrus Se'elim 13", *HTR*, 92, 1999, 349-57

¹¹ It is not certain how such divorces were carried out in practice. A couple of undatable texts in Mishnah are the only clues: mGit.9.8 "A writ of divorce imposed by a court - in the case of an Israelite court, it is valid, and in the case of a Gentile court it is invalid. In the case of gentiles, [if] they beat him and say to him, 'Do what the Israelites tell you to do' - it is valid."; mArak.5.6 "And so do you rule in the case of writs of divorce for women: They compel him until he says, 'I will it'. See also bKet.77ab though it is not certain that these Amoraic commentators knew what was early practice was.

¹² Papyrus Sè'elim 13 has been the matter of much dispute. Orthodox scholars prevented its publication for many years, and then proposed emendations to suggest it was written by a man. See Tal Ilan, "Notes and Observations on a Newly Published Divorce Bill from the Judean Desert" (*HTR* 89 (1996) 195-202; Adriel Schremer, "Divorce in Papyrus Sè'elim 13 Once Again: A reply to Tal Ilan" (*HTR* 91 (1998) 193-

commonly found in Jewish divorce certificates, it appears to assume the Graeco-Roman right of a wife to a no-fault divorce, which was restricted only to men in Hillelite law and was not allowed at all in Shammaite law. If her husband disputed the divorce, by objecting to her right to remarry, she would have to find a court to enforce this document. She evidently believed that she could find either a Graeco-Roman court which would recognise the validity of her Aramaic divorce certificate or a Rabbinic court who would recognise her rights under Graeco-Roman law. The former was probably less difficult to find, though the latter was easier and cheaper for an individual Jew to use, which may explain why she wrote the certificate in Aramaic.

Graeco-Roman courts were familiar with the problems of competing legal systems. One major papyrus records the lengthy dispute between a woman and her father who each employed a different legal system. Her father had enforced a divorce on her using Egyptian law. In Egyptian law a father retained authority over his daughter after marriage, so that he could enact a divorce between his daughter and son-in-law if he wished. The daughter took the matter to the local Roman governor and argued that this right was not available to a father in Roman law. She cited many examples of previous cases, which illustrates the way in which Roman law and Egyptian law co-existed and competed within a single Graeco-Roman legal system. Reading between the lines, the daughter was expecting the Roman official to be very reluctant to over-rule the decision of an Egyptian court.¹³

Interactions between legal systems

Rabbinic traditions are full of compromises due to different legal systems. Most of these compromises consist of pragmatic solutions to differences within rabbinic groups themselves, but there is also some recognition of other legal systems. There were severe differences in the marriage laws of competing Jewish groups, which amount to separate systems of *halakah*. The Qumran community extended the degrees of unmarriageability to include a niece as well as a nephew¹⁴ and they denied the lawfulness of polygamous marriages.¹⁵ They therefore called some of the marriages of the Sages 'illegitimate' (*zenut*). However, this condemnation of a minority of marriages suggests that they recognised the validity of most of the Sages' marriage contracts. The Hillelites and Shammaites had a large number of differences, which included matters of marriage contract and cleanliness (which was very important for determining a wife's activities in the

202). For a full discussion see my "Jewish Women Divorcing their Husbands in Early Judaism: The Background to Papyrus Sè'elim 13" (*HTR* 92, 1999, 349-57)

¹³ The Petition of Dionysia, *P.Oxy.* II.237. 186 C.E. from Oxyrhynchus, edited and translated in Grenfell, Bernard P., Hunt, Arthur S. et al., eds., *The Oxyrhynchus papyri* (London: Egypt Exploration Fund, 1898-) II 141-179.

¹⁴ CD 5:6-11. The Law said that an aunt and nephew should not marry (Lev.18.13), but it did not say that an uncle and a niece should not marry. The Damascus Document said that this law should have equal application to male and female. The same conclusion, though without stating this principle, is found at 11QTemple 66:16-17.

¹⁵ CD 4:20-5:6; 11QT 57:15-19. Some early scholars interpreted these texts to forbid remarriage before the death of a former wife, but since the discovery of other fragments concerning divorce, it has become evident that these texts refer to polygamy. See my "Nomological Exegesis in Qumran 'Divorce' Texts", *Revue de Qumran*, 18, 1998, 561-579 and more recently Adriel Schremer "Qumran Polemic on Marital Law: CD 4:20-5.11 and its social background" in Baumgarten et al *The Damascus Document A Centennial of Discovery* (Leiden: Brill, 2000) 147-160.

home). However, they agreed to recognise each other's marriages, and even marry each other's daughters.¹⁶

One curious tradition about Hillel even suggests that he was willing to recognise the validity of non-orthodox stipulations within an Egyptian marriage contract. When there was a dispute in an Alexandrian family, he asked to see the marriage contract and made a ruling on the basis of it.¹⁷ The historicity of such traditions is always difficult to establish, but the surprisingly non-sectarian nature of this event suggests that it is not a construct of a later generation, who would be loath to taint their honoured predecessor with the suspicion that he did not always follow 'Rabbinic' halakha.

Influences by other legal systems

These interactions between different legal systems shows that these groups were aware of each other. Gradually one sees them adopting the best aspects of each other's procedures and laws. There was no formal means by which this would happen. The Roman authorities did not impose marriage laws on the Jews, and they were happy to incorporate or work alongside established legal practices. However, the various local systems became remarkably similar to each other and to the Graeco-Roman system to which they were all exposed. They gradually absorbed different practices and wording from each other.

The most significant example of absorbing foreign legal principles into Jewish law was the practice of receiving a dowry from the bride's family. This became universally established in Judaism, even though there was little or no support for it in Scripture. The laws of the Sages stipulated a payment by the groom (200 denarii for a virgin and 100 for a divorcee or widow¹⁸) but said nothing about a dowry from the bride's family. Nevertheless, this Greek custom became universally accepted in Jewish circles, and was written into their marriage contracts. The bulk of a Greek marriage contract is a list of the goods and money which made up this dowry and Jewish contracts also made this same emphasis. This new dowry became more important than the biblical one, because the dowry from the groom was only theoretical, in that it was only payable on his death or divorce, but the dowry from the bride's family was literally "received from her by hand".¹⁹ Although this payment was unknown in OT law, Bickerman showed that the LXX changed some texts to support it,²⁰ so a bridal dowry had already become normal Jewish practice

¹⁶ "Although the School of Shammai differed from the School of Hillel in regard to associate wives, sisters, a woman whose marriage is in doubt, an old bill of divorce, one who marries a woman with something worth a *peruth*, and a man who divorces his wife but she spends the night with him at the same inn, nevertheless the Shammaites did not refrain from marrying women from Hillelite families, nor the Hillelites women from Shammaite families." (tYev.1:10 cf. yYev.1:6 3b; yQid.1:1 58d; bYev 14b; mEd.4:8; mYeb.4:1). A later tradition criticised disciples of the two schools who did not recognise each others rulings: bSot.47b = bSanh.88b "When the disciples of Shammai and Hillel multiplied, who had not sufficiently served [discipleship], dissension increased in Israel and the Torah was made like two Torahs."

¹⁷ tKet.4.9; yYeb.15.3; yKet.4.8; bBM.104a

¹⁸ mKet.1:2

¹⁹ A quotation from the Jewish marriage contract *P.Yadin.18 = P.Babatha.18*, in Greek, from Petra in 128 C.E., edited and translated in *The Documents from the Bar Kokhba period*.

²⁰ E.g., Gen. 34.12; Ex. 22.15f. He also points out a first century saying in Mishnah that a groom would not marry till the bride's family paid a dowry – see Bickerman, E. J., "Two Legal Interpretations of the Septuagint" in *Studies in Jewish and Christian history*, *Arbeiten zur Geschichte des antiken Judentums und des Urchristentums*; Bd. 9, pt. 1-3 (Leiden: E. J. Brill, 1976-1986), vol. I. 201-224, especially pp. 209-11

by the 2nd century BCE. By the Byzantine period it is sometimes impossible to decide whether a Greek contract is of Jewish or Gentile origin, and even Hebrew contracts contained many Hellenistic elements.²¹

The legislators no doubt believed that such changes were due to their influence, but it is much more likely that they followed the trend set by general practice. A marriage certificate followed certain norms, but it could also include anything which both parties agreed to. This included ethical stipulations such as “it shall not be lawful for [the husband] to keep a concubine or boy, nor to have children by another woman”²² or financial details such as “[the husband] shall conduct all the agricultural work of each year on [the field donated by the bride's father]”.²³ The scribe wrote in accordance with his client's instructions, so that customs such as the bride's dowry, which were not set down in law, became fixed by fashion rather than by legislation.

Choosing a legal system

An individual had considerable freedom when they were choosing which legal system to employ. Scribes were available for hire and would write whatever their client wished, so long as it was legal within the system for which they were writing. It is likely that different scribes specialised in specific legal systems, but there was nothing to prevent the same scribe from writing an Aramaic contract and a Greek contract. There was certainly nothing to restrain his Jewish client from using two completely different systems of law, even for the same function. The most striking example of this is the two marriage contracts which were drawn by Judah b. Eleazar. The first contract was written in Aramaic for his own marriage to Babatha.²⁴ About four years later he had another contract written for his daughter's marriage, but this time in Greek.²⁵

The reasons why Judah chose these different forms of marriage certificate were probably pragmatic. The Aramaic contract was needed for his own marriage because it was polygamous. He already had a wife, so the widow Babatha would be his second wife. Polygamy was not allowed in Graeco-Roman marriage law, but was normal in the law of the Sages,²⁶ so he wanted a contract which employed the normal language and legal formulae of the court of the Sages. The Greek contract was presumably written so that his daughter could approach a Graeco-Roman court if she had any dispute with her husband. It contains the untypical affirmation that it

²¹ Sirat, who edited the Hebrew ketubah from Antinoopolis 417 C.E., appended a long list of Greek terms which are found in Hebrew characters in this document. See Sirat, Colette, Cauderlier, P., Dukan, M., Friedman, C., eds., *La Ketouba de Cologne: un contrat de mariage juif à Antinoopolis*, Papyrologica Coloniensia; 12 (Opladen: Westdeutscher Verlag, 1986), p.71f

²² An example from *P.Tebt.I.104*, a Greek marriage contract from 92 B.C.E. Tebtunis, edited and translated in Hunt, A.S., Edgar, C.C., eds., *Select papyri*, The Loeb classical library; no. 266, 282, 360 (Cambridge, Mass: Harvard University Press; London: Heinemann, 1959-70) I 5-9

²³ An example from *P.Ryl.154*, a Greek marriage contract from 66 C.E. Bacchias, Egypt, edited and translated in Hunt, *Select papyri*, I 12-17

²⁴ *P.Yadin 10* in 122-25 C.E. edited and translated in Yadin, Yigael, Greenfield, Jonas C., and Yardeni, Ada, “Babatha's Ketubba” (IEJ 44 (1994) 75-101.

²⁵ *P.Yadin 18* in 128 C.E. edited and translated in *The Documents from the Bar Kokhba period*.

²⁶ For a recent summary of the primary and secondary literature on this, see my “Jesus' Old Testament Basis for Monogamy”, in *The Old Testament in the New Testament: Essays in Honour of J.L. North* ed. Steve Moyise, JNTS Supp 189 (Sheffield Ac Press, 2000)

was written “in accordance with Greek law” (eOl hnikw|nomw).²⁷ Immediately after this affirmation, the contract included a typically Jewish stipulation that the groom has to guarantee his bride's financial support with a pledge of all his property. In normal Greek contracts, the groom merely promised to support his bride “in accordance with his means”.²⁸ It appears, therefore, that Judah chose typically Jewish stipulations for his daughter's contract, but made it look as much as possible like a Greek contract so that she could more easily enforce it through the powerful Graeco-Roman courts.

Choosing a court

An individual could choose the court to which he wanted to present his case. The different legal systems operated alongside each other, and generally respected documents drawn up by each other. We have seen above that the Sages respected the documents and rulings of Gentile courts, though perhaps somewhat grudgingly. We have also seen a Roman official being asked to adjudicate on the ruling of an Egyptian court. There is not, so far as I know, any example of a court rejecting a case on the grounds that a document was drawn up within another legal system, although it is likely that a court would be prejudiced against a plaintiff who presented a document which was foreign to their own system.

An individual could even choose which legislators he wanted to hear his case, though this freedom was somewhat limited in the Graeco-Roman system. The Graeco-Roman court required a high-ranking citizen to present the case, and the decision was likely to be decided as much by the rank of this citizen as by the strength of the case being presented. If the individual had a patron to represent him, he could get his case heard, but otherwise he had to persuade some other high-ranking citizen to take on his case. Every citizen also had the right to petition the Governor or even the Emperor and ask him to make a personal judgement in his favour or to refer to the matter to a court. The papyri contain many examples of such petitions, for example a wife complaining that her husband has left her without returning her dowry,²⁹ or a husband complaining that his wife left him and took some of his property.³⁰ Petitioning the Governor was not an easy task, because the petition had to be delivered personally, usually while the Governor was moving through the street. Petitioning the Emperor was almost impossible, though many succeeded. The crowds which lined his path where ever he moved throughout the Empire were full of people holding out petitions for him to accept and pass on to a secretary.³¹

The Jewish courts of the Sages were, in some senses, more democratic. Each side in a dispute could choose one legislator and those two would choose a third, then these three would constitute

²⁷ This phrase is not normally found in Greek contracts, but is probably based on the common Aramaic/Hebrew formula 'in accordance with the law of Moses, which is found in almost all Jewish marriage contracts, including very early ones such as Tobit 6:12; 7:13; DJD.II.20 = P.Mur.20 of 117 C.E.; P.Yadin.10 of 126 C.E.; and even the Edomite Ostrakon of 176 B.C.E. (Eshel, Esther, and Kloner, Amos, “An Aramaic Ostrakon of an Edomite Marriage Contract from Maresha, Dated 176 b.c.e.”, *Israel Expl.J.*46, 1996, 1-22)

²⁸ See the discussion in my “...Jewish Greek and Aramaic Marriage and Divorce Papyri”.

²⁹ *P.Oxy.*II.281, Oxyrhynchus 20-50 C.E.

³⁰ *P.Oxy.*II.282 Oxyrhynchus 30-35 C.E.

³¹ These graphic insights are thanks to Prof Edwin Judge, in a personal communication.

the court which heard their case.³² If there was only one litigant, he could choose all three. These courts normally heard cases concerning property (which included marriage) though they had the authority to deal with anything which did not involve capital punishment.³³ Each side would presumably choose a Sage who was likely to agree with them. The choice would usually be either a Hillelite or Shammaite, or perhaps other types of Sage about which we have less information. Some of the ground-breaking cases would prompt a more generalised discussion after the event, or during a recess. These discussions would prompt a general conclusion developed from this case-law, which might then be summarised and codified as one of the disputes which are preserved in Mishnah. From these summaries we can infer the types of cases which were brought to these courts.

If a man or woman wanted a divorce, they would call together a court which was sympathetic to them. A man who wanted to divorce his wife without any specific grounds would present his case to a Hillelite court which allowed the use of the 'Any Matter' divorce. This type of divorce was based on the Hillelite interpretation of *ervat davar* ('a matter of indecency') in Deut.24.1. They interpreted 'indecency' as one ground for divorce (i.e. 'adultery') and 'a matter' as another (i.e. 'any matter').³⁴ The Shammaites rejected this exegetical innovation though, unlike Jesus, they appear to have recognised the validity of these Hillelite divorces.³⁵ Strictly speaking, the man did not have to use a court, though this might prevent a wife contesting the divorce at a later date. If a wife wanted a court to force her husband to divorce her because he was neglecting to maintain her, she could enrol either Hillelite or Shammaite sages, because they both recognised neglect as a ground for divorce on the basis of Ex.21.10f.³⁶ However, she would be wise to have her case heard before Shammaites because Hillelites would probably look more favourably on the man in the case of a dispute. The Hillelites encouraged the principle that only men could make decisions with regard to divorce.³⁷

When a divorce was contested, the legislators chosen by each party would depend on what outcome they wanted. If either the husband or wife contested a divorce on the grounds that they had slept together after the wife had received the divorce certificate but before she left, they would both want different judges. The person who wanted the divorce to continue (perhaps a

³² mSanh.1:1 "Property cases are [decided] by three [judges]. This litigant chooses one, and that litigant chooses one, and then the two of them choose one more - the words of R Meir. And the sages say The two judges choose one more."

³³ mSanh.1:4 "Cases involving the death penalty are judged before twenty-three [judges]..."

³⁴ The bare debate is found in mGit.9:10 though the Sifré preserves the exegetical arguments as well: "The School of Shammai says: A man should not divorce his wife except if he found indecency in her, since it says: *For he found in her an indecent matter* [Deut.24:1]. And the School of Hillel said: Even if she spoiled his dish, since it says: *[Any] matter*. (Sifré Deut.269, ed. Finkelstein 288)

³⁵ Jesus rejected the validity of 'any matter' divorces, so that remarriage following such divorces were literally adultery. For more details see my forthcoming book *Divorce and Remarriage in the Bible: the social and literary context*, which can be viewed at www.Instone-Brewer.com.

³⁶ There are no records of disputes among the rabbis about any of these grounds for divorce based on Exod.21:10f, except in matters of detail. The Houses of Hillel and Shammai disputed about the length of time by which emotional neglect could be defined (mKet.5.6f), and later rabbis disputed the exact amount which constituted neglect (mKet.5.5, 8f), but the principles appear to have been universally accepted from a very early date.

³⁷ This later became enshrined in the principle: "The man who divorces his wife is not equivalent to a woman who receives a divorce, for a woman goes forth willingly or unwillingly, but a man puts his wife away only willingly." (mYeb.14:1)

wife who was looking forward to financial freedom) would ask for a Shammaite, while the other would ask for a Hillelite. The Shammaites defined the moment of divorce as the writing out of the divorce certificate, but Hillelites said that divorce was not complete till every stage of a divorce was complete – i.e. writing the certificate, delivering the certificate, sending away the wife and fulfilling any obligations which were named in the certificate.³⁸

Occasionally this degree of freedom was misused and created confusion, so that it had to be restricted by a decree which would be respected by all the Sages. For example, in the early first century a man could write out a divorce certificate and send it to his wife, then change his mind and convene a Hillelite court to annul it. This was acceptable if they were both in the same town, but if the husband was away from home in another town, his wife might not hear that the divorce had been annulled before she remarried. Gamaliel the Elder decreed that this was no longer acceptable. His reasoning was not based on Scripture or even on halakhic arguments, but was simply presented as a pragmatic ruling “for the sake of the world”.³⁹ Ultimately this type of freedom to choose legal systems and even choose judges could do more harm than good, and it occasionally had to be restrained.

Conclusions

Jews in the first and second centuries had a variety of legal systems to choose from, and the power to make a relatively free choice. They could choose to write legal documents in Aramaic or Greek, or to present their case before Graeco-Roman or Jewish courts. Within the Jewish community there were many competing legal systems and even within a single system such as that of the Sages there were different schools of judges whom one could request to hear a case. Most Jews did not align themselves with a single legal system, but employed whichever one was likely to favour their cause. This meant that courts had to deal with documents drawn up by competing legal systems, and individuals became familiar with a variety of legal customs. This often resulted in one system adopting the legal customs and language of competing systems, and a gradual harmonisation of legal documents such as marriage contracts.

³⁸ mGit.8:4, 8, 9

³⁹ mGit.4.2