Marriage and Divorce in the Herodian Family:

A Case Study of Diversity in Late Second Temple Judaism

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Dissertation submitted in partial fulfillment of
the requirements for the degree of Doctor
of Philosophy in the Department of
Religion in the Graduate School
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ABSTRACT

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Abstract

Noting the disparities between the stipulations of rabbinic law and the behavior of the Herodian royal family, scholars have traditionally described the family's commitment to Judaism as lackluster. In particular, many examples from the Herodians' marriage and divorce practices have been engaged to support this view. In contrast, I argue that the royal Jews' behavior in general and their marital practices in particular were largely in accord with one of the formulations of Jewish law in circulation in the first centuries B.C.E. and C.E. Indeed, the extant Second Temple writings indicate that Judaism in Roman Palestine was highly diverse. The rabbis, whose views became normative from late antiquity and on, may well have formed only one of the many competing schools of interpretation in Herodian times. Consequently, the family's failure to comply with rabbinic views does not preclude their identification as pious Jews committed to fulfilling the Law. In fact, one can make an argument for the Herodians' piety based on close readings of biblical texts, Josephus' descriptions of the royal family, and even certain readings of rabbinic texts. Other Jewish texts that pre- and postdate Herodian rule, as well as those from the late Second Temple era itself, further support this view. Indeed, situating the Herodians within their proper setting in Roman Palestine suggests that they were committed Jews who formed one subgroup of the many pious Jewish parties that comprised the diverse world of late Second Temple Judaism.

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List of Abbreviations

1. Hebrew Bible/Old Testament

Gen	Genesis
Exod	Exodus
Lev	Leviticus
Deut	Deuteronomy
Judg	Judges
1-2 Kgs	1-2 Kings
1-2 Chr	1-2 Chronicles
Neh	Nehemiah
Eccl	Ecclesiastes
Isa	Isaiah
Jer	Jeremiah
Ezek	Ezekiel
Hos	Hosea
Zech	Zechariah
Mal	Malachi

2. New Testament

Matt	Matthew
Rom	Romans
1-2 Cor	1-2 Corinthians
Eph	Ephesians
Phil	Philippians
Col	Colossians
1-2 Thess	1-2 Thessalonians

3. Apocrypha and Septuagint

1-2 Macc	1-2 Maccabees
Sir	Sirach/Ecclesiasticus
Tob	Tobit
Wis	Wisdom of Solomon

4. Old Testament Pseudepigrapha

Aristob.	*Aristobulus*
Jos. Asen.	*Joseph and Aseneth*
Jub.	*Jubilees*

Let. Aris.	*Letter of Aristeas*
Ps-Philo	*Liber antiquitatum biblicarum (Pseudo-Philo)*
Ps-Phoc	*Pseudo-Phocylides*

5. Dead Sea Scrolls and Related Texts

Q	*Qumran*
Hev	*Nahal Hever*
Mur	*Murabba'at*
P.	*Papyrus*
XHev/Se	*Nahal Hever/Seyalim*
Yadin	*Yadin*

6. Philo

Abraham	*On the Life of Abraham*
Confusion	*On the Confusion of Tongues*
Contempl. Life	*On the Contemplative Life*
Decal.	*On the Decalogue*
Embassy	*On the Embassy to Gaius*
Flaccus	*Against Flaccus*
Giants	*On Giants*
Good Person	*That Every Good Person is Free*
Hypoth.	*Hypothetica*
Joseph	*On the Life of Joseph*
Migration	*On the Migration of Abraham*
Planting	*On Planting*
QG	*Questions and Answers on Genesis*
Sobriety	*On Sobriety*
Spec. Laws	*On the Special Laws*
Unchangeable	*That God is Unchangeable*
Worse	*That the Worse Attacks the Better*

7. Josephus

Ant.	*Jewish Antiquities*
War	*Jewish War*
Ag. Ap.	*Against Apion*
Life	*The Life*

8. Mishnah, Talmud, and Related Literature

‘Abod. Zar.	*‘Abodah Zarah*
’Abot	*’Abot*
B. Mes.	*Baba Mesi‘a*
Bek.	*Bekorot*
Ber.	*Berakot*
‘Ed.	*Eduyyot*
Git.	*Gittin*
Ketub.	*Ketubbot*
Meg.	*Megillah*
Ned.	*Nedarim*
Pe’ah	*Pe’ah*
Qidd.	*Qiddushin*
Sabb.	*Sabbat*
Sanh.	*Sanhedrin*
Yebam.	*Yebamot*

9. Other Rabbinic Works

’Abot R. Nat.	*’Abot de Rabbi Nathan*
Mek.	*Mekilta*

10. Legal Codes

Digest	*The Digest*
CJ p. 161	*Corpus Judaium*
Cod. Just.	*The Justianian Code*
Hitt.	*The Hittite Laws*
Hamm.	*The Laws of Hammurabi*
MAL	*Middle Assyrian Laws*

11. Secondary Sources: Journals, Major Reference Works, and Series

ABD	Anchor Bible Dictionary
ABRL	Anchor Bible Reference Library
AGJU	Arbeiten zur Geschichte des antiken Judentums und des Urchristentums
AGRL	Aspects of Greek and Roman Life
AJSR	Association for Jewish Studies Review
AOAT	Alter Orient und Altes Testament
ANET	Ancient Near East Texts Relating to the Old Testament. Edited by J.B. Pritchard. 3d ed. Princeton 1969.
APOT	The Apocyrpha and Pseudepigrapha of the Old Testament.

Edited by R. H. Charles. 2 vols. Oxford 1913.

BASP	Bulletin of the American Socity of Papyrologists
Bib	Biblica
BJS	Brown Judaic studies
BRLJ	Brill Reference Library of Judaism
BRS	The Biblical Resource Series
BTB	Biblical Theology Bulletin
CBQ	Catholic Biblical Quarterly
CJAS	Christianity and Judaism in Antiquity Series
CSCT	Columbia Studies in the Classical Tradition
DLHS	Daily Life Through History Series
DJD	Documents From the Judean Desert
EncJud	Encyclopedia Judaica
EVTh	Evangelische Theologie
HCS	Hellenistic Culture and Society
HO	Handbuch der Orientalistik
HTR	Harvard Theological Review
HUCA	Hebrew Union College Annual
JJS	Journal of Jewish Studies
JLA	Jewish Law Annual
JQR	Jewish Quarterly Review
JRS	Journal of Roman Studies
JSJ	Journal for the Study of Judaism
JSJSup	Journal Study of Judaism Supplement Series
JSOTSup	Journal for the Study of the Old Testament Supplement Series
JSPSup	Journal for the Study of the Pseudepigrapha Supplement Series
Jud	Judaism
NIBC	New Interpreters Bible Commentary
NDEIC	New Documents Illustrating Early Christianity
OEAE	Oxford Encyclopedia of Ancient Egypt
REJ	Revue des études juives
RevExp	Review Expositor
SAKIN	Studien zu antiken Kulturkontaketn und ihrem Nachleben
SASLJS	Samuel and Althea Stroum Lectures in Jewish Studies
ScrJud	Scripta Judaica
SNTS	Society for New Testament Studies
SJ	Studia Judaica
SPNT	Studies on Personalities of the New Testament
StPB	Studia post-biblica
ThSt	Theologische Studiën
TSAJ	Texte und Studien zum antiken Judentum

VTSup	Vetus Testamentum Supplement Series
WAW	Writings from the Ancient World
WIS	Women in Scripture Edited by Carol Meyers, Carol, Toni Craven and Ross S. Kraemer. Grand Rapids. Eerdmans, 2000.

1. The Problem and History of Scholarship

Writings that have survived from antiquity detail Jewish views of proper marriage and divorce protocol and describe the actual marital choices of members the Herodian family. The biblical passages that hint at marriage and divorce practices, along with Philo's and Josephus' views on marital law; and later descriptions in the New Testament and the rabbinic corpus, often do not correspond closely with Roman-era sources describing the domestic histories of the Herodians.[1] Indeed, in many cases there appears to be sharp disagreement between Josephus' and the rabbis' views of marriage, and the choices of the royal family in particular. These disparities in turn, reveal information about the authority of the Bible and the emerging rabbinic tradition in the late Second Temple era, and provide clues as to how the various members of the Herodian family understood their dual identities as Jews and Romans.

1.1 History of Scholarship: The Herodian Family and Judaism

Historians have long found Herod the Great and his family to be irresistible subjects.[2] This interest in the Herodians is partly due to the fact that the family was comprised of influential and colorful personalities who had the good fortune, from a

[1] While no biblical legal passages define proper marriage and divorce practices in their entirety, aspects of marital law are periodically revealed. For example, Exod 21:2-11 hints at marital laws related to slaves; Lev 21:7-15 lists factors which would disqualify a woman from marrying into the priestly line; and Leviticus 22:12-13 establishes the status of a priest's daughter while married to a layman and notes how her status changes as a result of becoming a divorcee or widow. Deut 22:13-19 outlines laws that protect wives who are falsely accused of not being virgins upon marriage; 24:1-4 relates restrictions on a man's ability to remarry a former wife; and 25:5-10 details the rationale for levirate marriage and the protocol for refusing such a marriage.

[2] Tamar Landau, "Power and Pity: The Image of Herod in Josephus' *Bellum Judaicum*," in *Josephus and Jewish History in Flavian Rome and Beyond* (JSJSup 104; ed. Joseph Sievers and Gaia Lembi; Leiden: Brill, 2005), 159-181, esp., 159, and 162-163. Henceforth, Herod the Great is referred to as Herod in this study. Other individuals named Herod are identified by their additional distinguishing names and titles, i.e. Herod Antipas or Herod of Chalis.

historian's perspective, to have been chronicled in the writings of the first-century historian Josephus.[3] While most studies of the royal family focus on the political history of Herodian rule, a significant number touch on the topic under discussion here: the Herodians' relationship to Judaism.

A number of theories have developed in the secondary literature to explain the royal family's connection to Judaism. For example, many scholars consider the Herodian family's behavior irrelevant to the history of Jewish law, contending that their practices were beyond the pale of the Judaism of their day.[4] Although most scholars agree that the Herodians did not behave according to Jewish norms, they part ways in their explanations of why this is so. While some scholars offer arguments based on Jewish law, others turn to the Herodians' involvement with Hellenistic culture to account for their lack of compliance with Jewish ideals.

The simplest explanation of the Herodians' behavior comes from an argument based on Jewish law. Lawrence Schiffman, for example, deems the Herodians to be gentiles.[5] In opposition to the majority view, Schiffman argues that the matrilineal principle for determining Jewish identity had already been adopted by the first century

[3] On Herod's popularity as a subject of historical studies, see Nikos Kokkinos, *The Herodian Dynasty: Origins, Role in Society and Eclipse* (JSPSup 30; Sheffield, England: Sheffield Academic Press, 1998), 23 and Tamar Landau, *Out-Heroding Herod*: *Josephus, Rhetoric, and the Herod Narratives* (AGJU 63; Leiden: Brill, 1996), 21.

[4] Daniel R. Schwartz, *Agrippa I, The Last King of Judaea* (TSAJ 23; Tübingen: Mohr [Siebeck], 2000), 134; Mordechai Rabello, "Divorce of the Jews in the Roman Empire," *JLA* 4 (1981): 93; and Kenneth C. Hanson, "The Herodians and Mediterranean Kinship: Marriage and Divorce," *BTB* 19 (1989): 142-151, esp. 150.

[5] Lawrence H. Schiffman, *From Text to Tradition: A History of Second Temple and Rabbinic Judaism* (Hoboken, N.J.: Ktav, 1991), 144 and *Who was a Jew?: Rabbinic and Halakhic Perspectives on the Jewish Christian Schism* (Hoboken, N.J.: Ktav, 1985), 12-14. Few of Schiffman's contemporaries accept his view of the Herodians' identity. Among earlier studies of the Herodians, however, the view that they were gentiles was popular. For example, see *Fritz*-Otto Busch, *The Five Herods* (trans. E. W. Dickes; London: Robert Hale, 1958), 17 and William J. Gross, *Herod the Great* (Baltimore: Helicon, 1962), 107.

B.C.E.[6] Disregarding Herod's father's Jewish identity, Schiffman identifies Herod and his siblings as gentiles since their mother was an Arab (Josephus, *Ant.* 14.121, 403).[7]

Another scholar who denies that the Herodians were Jews on the basis of Jewish law is Joseph Baumgarten.[8] Unlike Schiffman, Baumgarten accepts the standard view that patrilineal descent continued to define Jewish identity in the Second Temple era. Thus, Baumgarten's denial of the Herodians' Jewish identity does not derive from the fact that Herod's mother was an Arab.[9] Rather, he denies their Jewishness based on a series of technicalities in Jewish law concerning pre-conversion motives and post-conversion behavior.

First, Baumgarten stresses that late Second Temple Jewish law demanded purity of intention for a true conversion.[10] Since the Herodians did not come to Judaism on their own, but were forcibly converted upon the Hasmonean conquest of Idumea, Baumgarten argues that it is reasonable to question the efficacy of their conversion.[11] Second, Baumgarten contends that the Herodians should not be considered Jews since they failed to uphold Jewish practices post-conversion. Lacking any standard conversion protocol in the Second Temple period, claims of Jewishness were evaluated by

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[6] See Schiffman (*Text to Tradition,* 144) versus the majority view that the patrilineal principle continued to determine Jewish identity in the first century C.E. as argued in the seminal paper on the topic by Shaye Cohen (Shaye J. D. Cohen, "The Origins of the Matrilineal Principle in Rabbinic Law," *AJSR* 10 [1985]: 19-53). The evidence from Josephus does not support Schiffman's argument that the matrilineal principle was universally accepted by the late Second Temple period. For example, Josephus criticized Herod for his failure to uphold Jewish practices even though his mother was an Arab. Shaye Cohen, on the contrary, identifies the late Second Temple period as a time of transition from patrilineal descent to matrilineal descent. Cohen's thesis helps explain why the Herodians pursue marriages with both men and women from prominent families.

[7] Schiffman, *Text to Tradition,* 140 and 144.

[8] Joseph M. Baumgarten, "Exclusions from the Temple: Proselytes and Agrippa I," *JJS* 33 (1982): 215-225, esp. 219-225 and D. Schwartz, *Agrippa I,* 219-222.

[9] Baumgarten, "Exclusions," 221.

[10] *Ibid.*, 222 and 224.

[11] *Ibid.*, 122.

examining behavior.[12] Thus, unlike in later times when a declaration of intent to follow Jewish practices upon conversion was considered sufficient for lawful conversion, in the Second Temple period a convert's commitment to Judaism was subject to on-going scrutiny.[13] If a convert failed to continue to adhere to Jewish norms, the conversion could be nullified *ex-post facto* in accordance with what would become a minority position in later rabbinic law.[14] Given the above, Baumgarten argues that the impure motivations behind the Herodians' conversion, combined with their impiety post-conversion, constitute sufficient grounds to nullify the Herodians' membership in the Jewish people, that is to say, the Herodians were lapsed converts.[15]

While some scholars turn to biblical and rabbinic law to disqualify the Herodians as Jews, a more popular way to explain why the royal family's behavior did not accord with Jewish norms is to turn to their involvement in Hellenism, or the adoption of Greek speech, manner, and customs.[16] Indeed, most scholars argue that although the Herodians were technically Jews, they were not pious Jews. Instead, they argue that Hellenism not

[12] For example, Baumgarten cites the example of Achior from the book of Judith whose ongoing connection to Judaism is noted, namely, he "was joined to the House of Israel, remaining so to this very day" (Judith 14:10) versus Polemo, King of Cilicia, who converted to marry the Herodian princess, Berenice (Baumgarten, "Exclusions," 222-223). Josephus notes that when Berenice deserted her husband, Polemo "was relieved simultaneously of his marriage and of further adherence to the Jewish way of life" (Josephus, *Ant.* 20.146 [Feldman, LCL]). Baumgarten, "Exclusions," 222.
[13] *Ibid.*, 222-224.
[14] *Ibid.*, 222-224.
[15] *Ibid.*, 224 and D. Schwartz, *Agrippa I*, 220, esp. 223-224. Baumgarten's evaluation of the Herodians' Jewishness is largely based on later rabbinic guidelines. There are no certain late Second Temple references that seek to strip the Herodians of their Jewish identity.
[16] No one definition of the term "Hellenism" dominates in the scholarly literature. For example, see Mark Chancey's review of the use of the term in scholarly writings and his own views on the topic. Mark A. Chancey, *Greco-Roman Culture and the Galilee of Jesus* (SNTS 134; Cambridge, United Kingdom: Cambridge University Press, 2005) and Lee Levine, *Judaism and Hellenism in Antiquity: Conflict or Confluence?* (Seattle: University of Washington Press, 1998), 16-17.

Judaism was the decisive factor in determining their behavior, a dichotomy that we will return to since this study views it as a false one.[17]

The description of the Herodian family in Emil Schürer's classic history of the Second Temple era from 1885, *The History of the Jewish People in the Time of Jesus Christ (175 B.C.-A.D. 135)*, relies almost exclusively on a close reading of Josephus' writings.[18] Schürer, one of the sharpest critics of the Herodians, views their connection to Judaism as "very superficial"; adopting one of Josephus' remarks, he contends that Herod "prided himself on being closer to the Hellenes than to the Jews" (Josephus, *Ant.* 19.329).[19] Similarly, he explains the veneer of Jewish observance that characterized Herodian rule in a way that stresses that they were far more invested in promoting Hellenism than they were in maintaining Jewish observances.[20] Indeed, he contends that the few Jewish practices that the Herodians did observe should be seen as conciliatory gestures intended to secure the goodwill of the royal family's far more pious Jewish subjects.[21]

An important recent study that shares Schürer's negative view of the Herodian family's connection to Judaism is Nikos Kokkinos' 1998 book, *The Herodian Dynasty: Origins, Role in Society and Eclipse*. Like Schürer, Kokkinos argues that the Herodian family's loyalties were to Hellenism, not Judaism.[22] Utilizing classical sources in addition to Josephus' writings, Kokkinos examines Herod's Idumean background closely.

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[17] Two other relatively recent studies that agree with this view of the Herodians are Rabello, "Divorce of Jews," 93 and Fredrick J. Murphy, *Early Judaism: The Exile to the Time of Jesus* (Peabody, Mass.: Hendrickson, 2002), 249.
[18] Emil Schürer, *The History of the Jewish People in the Time of Jesus Christ (175 B.C.-A.D. 135)* (rev. and ed. Geza Vermes, Fergus Millar, and Matthew Black; trans. Peter Christie and Sophia Taylor; 2 vols.; 2nd ed.; Edinburgh: T&T Clark, 2000), 43.
[19] *Ibid.*, 311-312.
[20] *Ibid.*, 311-314, esp., 313
[21] *Ibid.*, 312-314.
[22] Kokkinos, *Herodian Dynasty*, 342.

He discovers facts about Herod's origins heretofore unknown, or at least not stressed in the literature, namely that the strong Hellenistic impulses exhibited by the Herodians were a natural consequence of their origins in a territory particularly receptive to Hellenism.[23] In fact, Kokkinos considers Idumea, the birthplace of the family's patriarch, to have been the most Hellenistic-leaning of all the provinces in Roman Palestine.[24] Consequently, he does not view the Herodians' involvement in Hellenistic culture as part of a larger attempt to appease Rome, as many scholars suggest.[25] Rather, he argues, the Hellenistic leanings of the Herodians emerged out of the royal family's own personal motives and circumstances. Kokkinos' negative view of the Herodian family's Jewishness is an outgrowth of the fact that he equates Judaism with the writings of the rabbis. However, as we shall see in our study of the diversity of Judaism in the late Second Temple period, rabbinic literature is not the best lens through which to view the Jewish identity of the Herodians.

In contrast to Schürer and Kokkinos, most contemporary scholars offer more positive appraisals of the Herodians' commitment to Judaism. These other scholars adopt a middle position that although the royal family was heavily influenced by Hellenism and did not always behave in accord with established Jewish norms, the family exhibited strong Jewish loyalties and proclivities.

Abraham Schalit's monumental study of Herod from 1969, *König Herodes: der Mann und sein Werk*, is the earliest study that adopts this more complex understanding of

[23] *Ibid.*, 342-349.
[24] *Ibid.*, 342-362, esp. 350-352.
[25] *Ibid.*, 126.

the Herodians' relationship to Jewish law and Hellenistic culture.[26] Although recognizing Herod's passion for the Hellenistic world, Schalit argues that his Jewish loyalty was uncontestable. Schalit also stresses that Herod's sullied reputation as a Jew relates to his fundamental inability to understand the Pharisees and *vice versa*, rather than an actual disregard for Judaism.[27] Indeed, although Herod modeled himself after Augustus, who encouraged Hellenization for the sake of unifying the diverse peoples of his empire, Schalit emphasizes that Herod was first concerned with maintaining strong ties to Judaism since he saw himself as the king of the Jews.

Peter Richardson's 1996 study, *Herod: King of the Jews and Friend of the Romans*, follows and strengthens the approach adopted in Schalit's study of Herod. Richardson argues that Herod could live as a loyal Roman and yet be a pious Jew simultaneously.[28] Indeed, Herod was both the king of Jews and the friend of Romans.[29] This does not mean that Richardson believes that Herod's behavior was always in accord with Jewish law, nor does it follow that he acted like a model Roman. On the contrary, Herod regularly strayed from accepted Jewish norms in his ongoing campaign to nurture the goodwill of the Romans, at the same time as he automatically precluded himself from full acceptance in the highest levels of Roman society by maintaining his connection to Judaism. Richardson's unwillingness to view Herod as an abstraction and his efforts to understand Herod as an individual who defies simple classification result in a more

[26] Abraham Schalit, *König Herodes: der Mann und sein Werk* (SJ 4; trans. from Hebrew Jehoschua Amir; Berlin: de Gruyter, 1969).
[27] *Ibid.*, 658-660, esp. 660.
[28] Peter Richardson, *Herod: King of the Jews and Friend of the Romans* (SPNT; Columbia, S.C.: University of South Carolina Press, 1996), xii-xiv, 195.
[29] *Ibid.*, 314.

human portrait of Herod; this nuanced depiction of Herod is perhaps the greatest strength of Richardson's work.[30]

Other scholars who view the Herodians as having positive relationships to both Judaism and Hellenism explain the basis of those relationships differently than do Schalit and Richardson. For example, Eric Meyers argues that one should understand the Herodians' commitments to these two facets of their identity through the policy of geographic separation that they employed in governing their territories.[31] That is, they did things in the more Hellenistic areas that they dared not do in the Jewish areas and *vice versa*.[32] For example, they sponsored the building of a *gymnasion* and at least one pagan temple in the gentile areas that they ruled.[33] In the Jewish areas, by contrast, they were careful not to offend traditional prohibitions against the creation of images in their building projects and coinage.[34]

Because a complete unification of all aspects of Judaism and Hellenism was not possible, the Herodians employed a strategy that allowed them to nurture their interests in both Judaism and Hellenism, while minimizing the offenses to customs and culture that their diverse subject populations would experience.

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[30] Many scholarly studies of Herod and his family portray Herod's piety, or lack thereof, in absolute terms. For example, see Michael Avi-Yonah, ed., *The Herodian Period* (vol. 7 of *The World History of the Jewish People;* New Brunswick, N.J.: Rutgers University Press, 1975).
[31] Eric M. Meyers, "Jewish Culture in Greco-Roman Palestine," in *Cultures of the Jews: A New History* (ed. David Biale; New York: Schocken, 2002), 148.
[32] *Ibid.*, 148.
[33] *Ibid.*, 148.
[34] *Ibid.*, 148.

1.2 History of Scholarship: Jewish Marriage and Divorce

The topics of Jewish marriage and divorce in antiquity have proven to be even more popular subjects for scholarly inquiry than the widely studied Herodian family. Indeed, the secondary literature is rich in diverse studies of biblical conceptions of marriage and divorce. In particular, the teachings of Jesus and Paul on marriage and divorce have been given intense scrutiny.[35] In one sense, the attention garnered by this particular topic is understandable. Among other reasons, Jesus' views on divorce probably receive so much attention because there is disagreement between the Gospels about Jesus' position on divorce, and his views on divorce were somewhat unusual for his time and place.[36] In addition, one cannot discount the enduring importance of defining proper marriage and divorce procedures for committed Jews in motivating some of the interest in these topics. What prompts the majority of studies of Jewish marital practices in antiquity, however, is the desire of Christians to better their understanding of the Church's view on these important subjects.

The Church's attempt to tie together New Testament teachings and contemporary Christian practice meets one of its biggest challenges in the issue of divorce. For many

[35] For a discussion of the vast secondary literature on the topic of marital teachings in the New Testament see Raymond F. Collins, "Divorce in the New Testament," *Bib* 75 (1994): 590-593. Other significant studies that deal with the subject include, William A. Heth, "Divorce and Remarriage," in *Applying the Scriptures: Papers From ICBI Summit III* (ed. Kenneth Kantzer; Grand Rapids: Academie Books, 1987), 219-239; David Instone-Brewer, *Divorce and Remarriage in the Bible* (Grand Rapids: Eerdmans, 2002); John J. Kilgallen, "To What Are the Matthean Exception Texts (5,32) and (19,9) an Exception?" *Bib* 61 (1980): 102-105; Evald Lovestam, "Divorce and Remarriage in the New Testament," *JLA* 4 (1981): 47-65; and Larry O. Yarbrough, "Paul, Marriage, and Divorce," in *Paul in the Greco-Roman World: A Handbook* (ed. J. Paul Sampley; Harrisburg, Pa.: Trinity, 2003), 404-428. While Second Temple Jewish divorce practices are less frequently the primary subject of academic studies, "traditional" Jewish approaches to the topics are invariably discussed in works on the New Testament passages on marriage and divorce. In particular, biblical texts referring to divorce, primarily Deuteronomy 24:1-4, have merited extensive study in the secondary literature since biblical law is understood to lay at the foundation of the marital practices advocated by the rabbis and taught by Jesus and Paul in the New Testament writings.

[36] Raymond E. Brown, *An Introduction to the New Testament* (ABRL; New York: Doubleday, 1997), 140-141.

Christians concerned with the authority of the Bible, divorce is not easily reconciled with their beliefs. For example, Jesus' statement that all remarriage is adulterous, Paul's restrictive position on divorce, and the Matthean exception clause, which states that the only legitimate divorces are those precipitated by infidelity, create conflicts for Christians attempting to live their lives in concert with biblical teachings (Matt 5:32; 19:9; Mark 10:11-12; Luke 16:18; Rom 7:1-3; 1 Cor 7:10-16, 39-40).

The literature on marriage and divorce, prompted by the treatment of marital practices in the New Testament, is vast but not comprehensive or definitive. Generally, the commentaries on marriage and divorce motivated by the Church's concerns do an admirable job relating the New Testament materials to the texts of the early Church. Some scholars are skillful in their treatment of the background material in the Hebrew Bible, while others provide detailed comparisons of the New Testament's views on marriage and divorce with the norms of Roman society. Few discussions of this topic, however, turn to the corpus that is most similar in provenance to the New Testament materials, namely, the Jewish texts contemporaneous with the writings of the New Testament.

One recent monograph that does examine both canonical and extra-canonical Jewish texts to clarify the New Testament's position on divorce is David Instone-Brewer's *Divorce and Remarriage in the Bible.* Relying on biblical, rabbinic, and Second Temple personal histories, Instone-Brewer argues that knowing the background knowledge a typical New Testament reader would have brought to the table is key to understanding the text's views on divorce.[37] Indeed, he argues that Jews would have "mentally inserted" the Matthean exception clause, which permits divorce if (sexual)

[37] Instone-Brewer, *Divorce and Remarriage,* 135-136.

indecency is involved, into any discussion of the grounds for divorce whether the phrase occurred in the text or not.[38] He also maintains that the absence of the Matthean exception clause in Mark and Luke, for example, is a reflection of the rabbinic tendency towards abbreviation, not of a disagreement with the insertion that would later be recorded in Matthew.[39]

While Instone-Brewer's work has much to recommend it, his tendency to conflate all the information he has about divorce in antiquity into a single statement on Jewish practice, namely that the Church's position on divorce derives from a misreading of the biblical evidence and that Jesus permitted divorce under certain circumstances, is problematic.[40] Because Instone-Brewer's aim is to change the Baptist church's policies towards divorce, his tendency towards conflation is understandable; in doing so, however, he obfuscates much of what makes this period such a fascinating chapter in Jewish history—namely, its diversity. Nonetheless, Instone-Brewer's book is excellent on many levels and is an important study because of its use of extra-canonical Jewish sources on marriage and divorce.

Studies of marriage and divorce practices that were or would become canonical have been produced by scholars in the field of Jewish Studies as well. Like their New Testament colleagues, most of these scholars are interested mainly in the history of the development of theoretical concepts in Jewish law. For example, Louis Epstein's volume from 1927, *The Jewish Marriage Contract: a Study in the Status of the Woman in Jewish Law,* is a book-length study of the marriage contract, a document that largely details the

[38] *Ibid.,* 135. The Matthew exception clause as it is recorded in 19:9 reads: "And I say to you: whoever divorces (ἀπολύση) his wife, *except for unchastity* (μὴ ἐπὶ πορνείᾳ), and marries another, commits adultery."
[39] Instone-Brewer, *Divorce and Remarriage,* 161-167.
[40] *Ibid.,* ix-xi, 310-314.

settlement due the wife in the event of divorce.[41] In a more recent monograph, *Women and Divorce*, Shlomo Riskin reviews the history of Jewish divorce law as it is described in the rabbinic writings.[42] More specifically, Riskin's work is a guided review of the history of Jewish law aimed at creating changes in contemporary Jewish divorce practices. Thus, Riskin attempts to read ancient, medieval, and Renaissance divorce precedents in such a way as to alleviate the compromised position that women have held in traditional Jewish divorce proceedings from antiquity onward.

Because both Epstein and Riskin's works are largely reviews of the history of authoritative law, or *halakhah*, as opposed to the history of how Jews actually married and divorced, they do not discuss many of the documents that are most important for this study: personal legal documents and narratives of actual marriage and divorce cases from antiquity that exhibit forms that did not survive to modern times as *halakhically* acceptable. For example, the marriage and divorce practices of the Herodian family, which are often aberrant by later Jewish standards, rarely find their way into studies concerned with the history of *halakhah*.[43] While the vast majority of secondary literature on Jewish marriage and divorce focuses on canonical texts, a number of well received recent studies dialogue with the non-canonical texts discussed in this study. Two, in particular, have been singled out for discussion here.

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[41] Louis Epstein, *The Jewish Marriage Contract: A Study of the Rabbinic Sources* (New York: Jewish Theological Seminary of America, 1927).
[42] Shlomo Riskin, *Women and Jewish Divorce* (Hoboken, N.J.: Ktav, 1989).
[43] The case of Salome and Costobarus' divorce is the notable exception to the rule that studies concerned with the history of Jewish marital law do not refer to marriages and divorces that are aberrant from the later *halakhic* standpoint. The divorce initiated by Salome is widely cited in the literature as "proof" that Jewish divorce protocol in the Roman era limited the active role in divorce to the husband and required that the divorcing husband send his wife a divorce deed even though neither criterion is fulfilled in Salome's divorce. Josephus' comments about the divorce, which suggest that Salome's actions were contrary to Jewish norms are evaluated below in chapter 8.

Michael Satlow's monograph, *Jewish Marriage in Antiquity*, is a recent and well-regarded discussion of ancient Jewish marriage.[44] Satlow's primary source is rabbinic literature, although he does turn to non-canonical works, such as the pseudepigraphal writings, the histories of Josephus, and papyri collections to help elucidate the rabbis' views of marriage. Throughout his study, Satlow attempts to describe the reality of Jewish marriage, both in and of itself and in contrast with its ideal as described in the various texts that the Jews of antiquity held to be authoritative. Another important distinction that Satlow makes concerns the disparity between the ideals of marriage current in the Babylonian community and those of the land of Israel.[45]

Satlow argues that there was no one ideal of Jewish marriage in antiquity, but rather a number of different ideas about marriage that were held by various Jewish groups.[46] Satlow also concludes that there was a great disparity between theory and practice when it came to marriage. Instead of reading the prescriptions for marriage recorded in Jewish legal texts as accurately describing marriage, he stresses that Jews in antiquity no more lived up to the lofty ideals of marriage than do Jews of today.[47] Satlow states his most controversial conclusion as follows: "There is nothing essentially Jewish about 'Jewish' marriage in antiquity."[48] He goes on to explain that "there was no 'essence' of Jewish marriage, no single quality that must have been present for a

[44] Michael Satlow, *Jewish Marriage in Antiquity* (Princeton, Princeton University Press, 2001).
[45] *Ibid.*, 11-21.
[46] *Ibid*., xvi.
[47] *Ibid.*, 104.
[48] *Ibid*., xvi. Also, see Ross S. Kraemer, "Typical and Atypical Jewish Family Dynamics: The Cases of Babatha and Berenice," in *Early Christian Families in Context* (eds. Dave Balch and Carolyn Osiek; Grand Rapids: Eerdmans, 2003), 130-156. Similarly, Susan Marks, in her study of Jewish marriage, argues that Jewish marriage rituals were not distinct from gentile ones until the rise of the rabbis (Susan Marks, "Jewish Weddings in the Greco-Roman Period: A Reconsideration of Received Ritual" [PhD diss., University of Pennsylvania, 2003], 261-265).

marriage to be termed Jewish."[49] Satlow's caveat to this statement is that Jews in antiquity did attempt to mark their marriages as Jewish, but they found their own unique ways to do so and did not rely on any universally recognized practice to mark their Jewish identity.

Satlow understands Jews to have been part and parcel of the larger society, which explains why their practices mirrored those of their gentile neighbors. This approach has become the standard model for understanding Jewish history. Susan Marks describes the new model succinctly.

> Post-modern models emphasize discourse and the two-sided coemergence of practices, seeing change and adaptation as mutual, and recognizing the difficulty and arbitrariness of establishing a one-directional influence.[50]

This newer model stands in stark contrast to the earlier standard, which understood Jewish civilization to be unique and largely free of commonalities with the historical trends of other civilizations. Although Satlow's argument about the "ordinariness" of Jewish behavior is compelling, his position is controversial because he uses a major lifecycle event—marriage—to make his point. It is commonly assumed, especially by proponents of the older model, that most Jews would have exhibited marked differences from their gentile peers in formalized rituals such as marriage.[51] Satlow's monograph may have an unspoken subtext: if the Jews did not even resort to marriage practices that

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[49] Satlow, *Jewish Marriage*, xvi.
[50] Marks, *Jewish Weddings*, 18.
[51] Boaz Cohen, *Jewish and Roman Law* (New York: Jewish Theological Seminary of America, 1966), 156-157 and Victor Hamilton, "Marriage," *ABD* 4:559-572, 559. Eric Meyers, in agreement with Satlow, assumes a less apologetic position than Cohen. Meyers, along with others, finds the burial practices of Jews in Roman Palestine to exhibit strong Greco-Roman influences, as gentile forms of art and architecture were adopted for this final lifecycle event even among those Jews he assumes would have displayed the most conservative Jewish impulses, namely the leading rabbis. Consequently, Meyers argues that adopting certain foreign cultural practices did not necessarily preclude a strong attachment to Judaism. See E. Meyers, "Jewish Culture," 161 and 174.

were substantially different from their non-Jewish neighbors, then how can we expect the Jews to have been unique in other matters?[52]

Adiel Schremer provides yet another view of Jewish marriage. He uses biblical texts sparingly and rabbinic texts intensely, as well as materials from Qumran, early Christian literature, the apocrypha and the Judean desert papyri, to write a social history of Jewish marriage during the late Second Temple era.[53] He finds differences over time in the ideals of marriage, as well as differences based on cultural settings. For example, over time the ideal of marriage changed from a procreative unit to a relationship for emotional fulfillment. Moreover, Schremer notes that the ideal of marriage in the Babylonian-based Jewish community differed substantially from that promoted in the Jewish community of the land of Israel.[54]

While studies of marriage in the Bible and extra-biblical sources have been popular, studies of extant divorce texts have not earned the same level of attention.[55] In fact, the only non-canonical Jewish divorce text that has won extensive treatment in the secondary literature is the papyrus popularly identified as a divorce document, or *get*, from Nahal Hever in the Judean Desert (P. XHev/Se 13).[56] The proper interpretation of the papyrus, discovered among other finds from the Bar Kokhba era in caves near Qumran, has preoccupied many scholars. The controversy surrounding the document in

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[52] Kramer agrees that Jewish families were not different from early Christian families (Kramer, "Typical and Atypical," 155-156). Marks argues that Jewish weddings were not different from gentile ones until the rabbis of the Talmud instituted changes to the ritual effectively creating distinctions between Jewish and gentile wedding practices (Marks, "Jewish Weddings," viii).

[53] Adiel Schremer, *Male and Female He Created Them: Jewish Marriage in the Late Second Temple, Mishnah, and Talmud Periods* (in Hebrew; Jerusalem: Zalman Shazar Center, 2003).

[54] *Ibid.*, 127-142, 339-340.

[55] Other studies of Jewish marriage and divorce have been published. Since most are intended for use as handbooks by rabbis in the trenches and are not scholarly reviews of the history of Jewish marriage and divorce, they are not useful for the specialized review of the subject undertaken here.

[56] The official translation of the document refers to the deed as a waiver of claims; see Hannah M. Cotton and Ada Yardeni, *Aramaic, Hebrew and Greek Documentary Texts from Nahal Hever and Other Sites with an Appendix Containing Alleged Qumran Tests: The Seiyal Collection II* (Oxford: Clarendon, 1997), 65-70.

question, which boils down to a disagreement over the proper translation of a few particles, has been detailed in a number of recent articles about Jews in antiquity in general and Jewish marital life in particular.[57] Moreover, a rancorous battle over the proper identification of the papyrus itself has taken place in the *Harvard Theological Review*.[58]

Both of the camps actively debating the "divorce document" turn to the same evidence to support their respective sides, although the claims that they make from the evidence differ greatly. While one side, led by Adiel Schremer, sees the canonical and extra-canonical Jewish texts as bolstering their position for a conservative, proto-rabbinic reading of the "divorce" document, the opposing side, championed by Tal Ilan, views the same evidence as supporting what she refers to as a "provocative" reading of the text, as the single extant text witnessing to the legal permissibility of divorce initiated by Jewish women.[59] The articles on the Nahal Hever papyrus are well researched and deftly argued. However, since all of these studies are limited in scope, there is no sense of the larger context of Jewish marriage and divorce in which a document like this could have emerged. In spite of this problem, the articles on this papyrus are critical for our study because combined with the books of Instone-Brewer, Satlow, and Schremer, they comprise a large percentage of the secondary literature relevant to this study.

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[57] Robert Brody, "Evidence for Divorce by Jewish Women?" *JJS* 50 (1999): 230-234; Tal Ilan, "Notes and Observations on a Newly Published Divorce Bill from the Judaean Desert," *HTR* 89 (1996): 195-202; Tal Ilan, "The Provocative Approach One Again: A Response to Adiel Schremer," *HTR* 91 (1998): 203-204; David Instone-Brewer, "Jewish Women Divorcing Their Husbands in Early Judaism: The Background to Papyrus Se'elim 13," *HTR* 92 (1999): 349-57; and Adiel Schremer, "Divorce in Papyrus Se'elim 13: Once Again a Response to Tal Ilan," *HTR* 91 (1998): 193-202.

[58] Ilan, "Notes and Observations"; Ilan, "Provocative Approach"; and Schremer, "Response to Tal Ilan."

[59] Schremer argues for the conservative interpretation, whereas Ilan suggests a more "provocative" reading (Schremer, "Divorce in Papyrus Se'elim 13" vs. Ilan, "Notes and Observations" and "Provocative Approach").

1.3 History of Scholarship: Herodian Marital Practices

The topics of the Herodian family's relationship to Judaism and Jewish marital practices have each merited much independent attention in the secondary literature. A gap exists in the scholarly record concerning the union of these two topics, namely, the study of the particular marriage and divorce practices of the Herodians. Only three studies on the marital practices of the Herodians have appeared, in contrast to dozens of studies about the political history of the Herodian kingdom as well as innumerable treatments of Jewish marital practices in the Bible and rabbinic literature.[60]

Tal Ilan's study, "Intermarriage in the Herodian Family as a Paradigm for Intermarriage in Second Temple Judaism," uses the issue of identity as a springboard for a larger study of the frequency and social acceptability of intermarriage among Jews in antiquity.[61] Ilan compares evidence for the Herodian family's marital choices in Josephus with that implied or explicitly stated in other ancient Jewish sources, both canonical and non-canonical. She concludes that the royal family's practice of intermarriage must have been within the bounds of acceptable Jewish behavior in their era, given the frequency with which the family entered into these types of marriages.[62]

Another article that is centered on the Herodian family's domestic lives, Mireille Hadas-Lebel's study, "Les mariages mixtes dans la famille d'Hérode et la halakha prétalmudique sur la patrilinéarité," complements Ilan's study. While Ilan is interested in how issues of identity might play a role in selecting one's spouse, Hadas-Lebel is most

[60] Kokkinos, *Herodian Dynasty*, 26.
[61] Tal Ilan, "Intermarriage in the Herodian Family as a Paradigm for Intermarriage in Second Temple Judaism" (paper presented at the annual meeting of the Society for Biblical Literature, 2002), 1-15.
[62] *Ibid.*, 8-15, esp. 11, 15.

concerned with the legal aspects of Herodian intermarriage.[63] She argues that Jewish norms in the late Second Temple period allowed Jewish males to marry gentile women but forbade Jewish women from marrying gentile males.[64] In other words, she agrees with Shaye Cohen that the patrilineal principle continued to determine Jewish identity in Herodian times.[65] Furthermore, Hadas-Lebel thinks that Josephus' appraisal of the Herodians' marital practices should be seen as representative of how first century Jews would have viewed the royal Jews' marriages and divorce, since she finds Josephus to be uniquely well placed to offer standard views of their marital practices.[66]

Kenneth C. Hanson, the scholar who has invested the most energy into the topic of Herodian marital practices, turns to the social sciences to better understand them. In a three-part study, he examines topics such as economics, marital choices, and genealogy and descent. He concludes that the single most important factor in understanding the domestic histories of the Herodians is the concept of kinship.[67] One of the three segments of Hanson's study, "The Herodians and Mediterranean Kinship: Part II: Marriage and Divorce," is important for the present investigation because it is the only study that considers all of the family's marriages and divorces.

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[63] Ilan, "Intermarriage," 1-15 and Mireille Hadas-Lebel, "Les mariages mixtes dans la famille d'Hérode et la halakha prétalmudique sur la patrilinéarité," *REJ* 152 (1993): 397-404.
[64] *Ibid.*, 401-403 and Ilan, "Intermarriage," 10-11 and 15.
[65] Hadas-Lebel, "Les mariages," 403.
[66] *Ibid.*, 397-398.
[67] In his three-part series of articles on the Herodians and the concept of kinship published in the *Biblical Theology Bulletin*, Hanson argues that the particular expression of kinship unique to Mediterranean societies both present and past explains the marital choices made by the Herodians; see Kenneth C. Hanson, "The Herodians and Mediterranean Kinship: Part I: Genealogy and Descent," *BTB* 19 (1989): 75-84; "Marriage and Divorce."; and "The Herodians and Mediterranean Kinship: Part III: Economics," *BTB* 20 (1990): 10-21). Although Hanson has made the most compelling argument for kinship as the central organizing principle of the Herodian family's marital choices, a number of other academics have likewise stressed the importance of kinship to family life in antiquity. See Bruce J. Malina, *Windows on the World of Jesus: Time Travel to Ancient Judea* (Louisville: Westminster John Knox, 1993), 1; John J. Pilch and Bruce J. Malina, *Biblical Social Values and Their Meaning: A Handbook* (Peabody, Mass.: Hendrickson, 1993), 70-71; and Richardson, *King of the Jews*, 38.

Other than Hanson's article, no other study of the royal family reviews a majority, or even a representative sample, of the Herodians' marriages and divorces. Instead, the other studies tend to focus on a few of the best known cases related in Josephus' histories. It is striking that scholars have shied away from writing comprehensive histories of the marital practices of the Herodians, since Josephus has much to say on the subject. The absence of such histories is all the more notable given that the study of both family life in general and lifecycle events in particular have attracted a good deal of attention in recent years, as scholars have realized the importance of private family life to fully understanding the culture of ancient peoples.[68] A possible explanation for this conspicuous absence in the secondary literature is that some scholars may understand the subjects of Jewish marital practices in antiquity and the marital histories of the Herodian family to be mutually exclusive areas of inquiry, a distinction to which we will return. Consequently, these scholars would not find problematic the dearth of secondary studies about the intersection of the Herodians' domestic history with the norms of Jewish marriage and divorce law.[69]

Although studies devoted exclusively to the marital histories of the Herodian family are rare, most discussions of the larger topic of Jewish marriage and divorce

[68] Examples of the recent well-received monographs dealing with family life and lifecycle events include: Léonie J. Archer, *Her Price is Beyond Rubies: The Jewish Woman in Greco-Roman Palestine* (JSOTSup 60; Sheffield, England: Sheffield Academic Press, 1990); David L. Balch and Carolyn Osiek, *Early Christian Families: An Interdisciplinary Dialogue* (Grand Rapids: Eerdmans, 2003)**;** Mordecai A. Friedman, *Jewish Marriage in Palestine: A Cairo Geniza Study* (Jerusalem: Daf-Chen, 1980); Kenneth C. Hanson and Douglas E. Oakman, *Palestine in the Time of Jesus: Social Structures and Social Conflicts* (Minneapolis: Fortress, 1998); Mendell Lewittes, *Jewish Marriage: Rabbinic Law, Legend, and Custom* (Northvale, N.J.: Aronson, 1994); Bruce J. Malina, *The New Testament World: Insights from Cultural Anthropology* (Louisville: Westminster, 2001); Susan Marks, "Jewish Weddings"; Leo G. Perdue, Joseph Blenkinsopp, John J. Collins, and Carol Meyers, *Families in Ancient Israel* (Louisville: Westminster, 1997); and Pilch and Malina, *Biblical Social Values.*

[69] Many scholars understand the Herodians to have been Jews but do not think that they chose to marry and divorce by Jewish norms. See, for example, Schwartz, *Agrippa I*, 134 and Rabello, "Divorce of the Jews," 9.

practices in antiquity mention at least one of the examples provided by Josephus. The most frequently cited case is Josephus' description of the highly atypical divorce—even by Herodian standards—of Salome and Costobarus (Josephus, *Ant.* 15.259-260).[70] The particulars of this case are that the wife, Salome, initiated divorce by sending her husband, Costobarus, a divorce document. Josephus does not only describe Salome's divorce, he tells us what he personally thinks of it as well. Josephus comments that Salome's actions were not in accord with Jewish law, which by his understanding, restricts the right to initiate divorce to men (Josephus, *Ant.* 15.259-260). Scholars repeatedly single out Salome's divorce to illustrate the rule that Jewish women could not initiate divorce in the late Second Temple era.[71] Because it is widely accepted that only men could initiate divorce according to Jewish law, most scholars have not found it necessary to critically engage Josephus' description of Salome's divorce; instead, her divorce is dismissed as Roman in orientation.[72] Similarly, few discussions of Salome's divorce consider the possibility that women might have had the ability to initiate divorce in the Herodian era despite other contexts where the most literal reading of Josephus' writings suggests that female initiation did occur. While studies of Jewish marriage and divorce in antiquity that cite Josephus nearly all discuss Salome and Costobarus' divorce, they do so to the exclusion of the vast majority of marriages and divorces recorded in Josephus' writings, which are scarcely mentioned in the secondary literature at all.

[70] Brody, "Evidence for Divorce," 231 and Ilan, "Notes and Observations," 196.
[71] Brody, "Evidence for Divorce," 230-231 and Schremer, "A Reply," 193.
[72] Brody, "Evidence for Divorce," 230; Instone-Brewer, "Jewish Women Divorcing," 349; Schremer, "A Reply," 193; Ilan, "Notes and Observations," 195; and Stewart Perowne, *The Life and Times of Herod the Great* (Glousctershire: Sutton, 2003), 87.

1.4 Uniqueness of the Present Study

This study is believed to be the first comprehensive discussion of Herodian marriage and divorce. A few previous studies of the Herodian family's marital practices do exist; but with only one exception these earlier studies of the Jewish royals discuss only one facet of the Herodian family's marital practices, for example, intermarriage. Moreover, all of the earlier discussions of the Herodian's domestic lives are brief and, as a result, do not dedicate much attention to situating the Herodian marriages and divorces within their larger context of Roman, Hellenistic, and Jewish culture. Consequently, these studies sometimes misrepresent the Herodians' choices.

This study's interpretation of Salome's divorce of Costobarus is unique. On the one hand, most discussions of Jewish divorce in antiquity do not find it necessary to seriously engage Salome's self-initiated divorce, because scholars view the divorce as an example of the Hellenistically-inclined Herodians appealing to a Roman practice.[73] On the other hand, Ilan and Bernadette Brooten argue that divorce initiated by women was a licit Jewish practice.[74] The reading of Salome's divorce forwarded in this study bridges the gap between of these two extremes. That is, I argue that Salome's divorce was inspired by gentile legal practices, yet the complicity of Jewish legalists made woman-initiated divorces, like her own, a *de facto* Jewish practice. Similar to what Shaye Cohen found in his work on the origins of the matrilineal principle, this study finds that over time the co-mingling of Jewish and gentile legal concepts allowed divorce initiated by

[73] Bernard Jackson, "Introduction" *JLA* 4 (1981): 5 and D. Schwartz, *Agrippa I*, 134..
[74] Ilan, "Notes and Observations" and "Provocative Approach" and Bernadette Brooten, "Zur Debatte über das Scheidungsrecht der jüdischen Frau," EVTh 43 (1983) 466-478 and "Konnten die Frauen im alten Judentum sich von ihren Männern scheiden? Überlegungen zu Mk 10,11—12 und 1 Kor 7,10—11," EVTh 42 (1982): 65-80.

women to become a licit Jewish alternative even though this practice is prohibited according to a popular interpretation of the Torah.[75]

This study also stands in opposition to the standard appraisal of Herodias' marriage to her first husband's half-brother, Herod Antipas (Josephus, *Ant.* 18.109-115).[76] Josephus interprets Herodias' second marriage as forbidden by biblical laws proscribing incestuous unions, and subsequent studies have accepted this view. This study, by contrast, raises the possibility that Josephus' critique might only reflect the strict legal interpretations advanced by his own peer group. Consequently, many of Josephus' contemporaries may not have agreed with his appraisal of the union.

Also, this study finds the Herodians to be law-abiding Jews to a great extent—or at least their public actions were scripted so that others would view them as such.[77] While a number of early twentieth-century scholars were unwilling to label the Herodians as Jews, contemporary scholars almost universally identify them as such.[78] Scholars are, however, careful to point out that while the Herodians were Jews, they were not pious Jews—often finding support for their stance in the Herodians' marital practices.[79] For example, Rabello expresses the standard view of the Herodians' marital practices in the following statement: "Josephus stresses that her [Herodias'] attitude was contrary to Jewish law: here, as in other cases connected with Herod and his family, one is not dealing with Jewish, but rather with Hellenistic and Roman customs, given the marked

[75] S. Cohen, "Origins," 37, 42-46, 49, and 52-53.
[76] Citations from Josephus refer to Herod Antipas as Herod the tetrarch.
[77] D. Schwartz, *Agrippa I*, 134.
[78] Contrast Gross, *Herod the Great*, 107 and Busch, *The Five Herods*, 17 to Ilan, "Intermarriage," 1-15 and Shaye J.D. Cohen, *The Beginnings of Jewishness: Boundaries, Varieties, Uncertainties* (HCS 31; Berkeley: University of California Press, 1999), 13-24.
[79] Aryeh Kasher, and Eliezer Witztum, *King Herod: A Persecuted Persecutor: A Case Study in Psychohistory and Psychobiography* (SJ 36; Berlin: de Gruyter, 2007), 23.

assimilation of this family."[80] The Herodians in general and Herod in particular did not always do what was right and just, and none would defend the behavior of the Herodians from the standpoint of morality. This study will argue, however, that their public behavior, including their marriage and divorce practices as they are interpreted in this study, appears to have been largely informed by Jewish teachings as the Herodian family understood them. Indeed, the Herodians were serious Jews who both knew the law and actively sought to uphold it. In particular, even though the Herodians did not uphold the extra-biblical teachings advanced by various late Second Temple Jewish sects, they did uphold biblical law.

1.5 Methodology

The present study attempts to better understand the diversity of Judaism in the late Second Temple era and the relationship of this diversity to the theoretical ideals expressed in authoritative Jewish texts. The extant written corpus is limited, which in turn restricts our ability to fully understand the diversity within Judaism as well as the dissonance between authoritative traditions and the actual daily practices of Jews in Roman Palestine. We can, however, isolate and submit to rigorous scrutiny one of the legal subjects that appears in multiple sources, in an effort to understand what Jewish life would have looked like in the late Second Temple period. Our interpretative lens is the marriage and divorce practices of the Herodian family. Through the study of actual marital practices in the ancient world, we seek not only to understand how marriage and divorce were practiced and conceptualized by the royal Jews in Roman Palestine more

[80] Rabello, "Divorce of Jews," 9.

broadly but also to consider how understanding marital practices can shed light on many other aspects of ancient Jewish life. In particular, the relationship of legal codes to actual daily practice and the complex relationship between Jewish and Roman law are of great interest.

The time period under discussion in this study will be referred to alternately as the era of the late Second Temple and the period of Roman Palestine. Admittedly, neither of these terms precisely describes the events and texts under discussion in this study. For example, events beginning as early as 55 B.C.E., some eight years prior to the Roman conquest of Judaea, and as late as 79 C.E., nine years after the Second Temple was destroyed, are treated in this study. Moreover, the rabbinic texts were not recorded until 220 C.E., even longer since the Temple stood.[81] Nonetheless, because the majority of events discussed in this study took place in the late Second Temple days of Roman Palestine, and because the texts and historical events that transpired prior to or later than the identified time period are of interest only inasmuch as they relate to the study's more narrow historical focus, the terms identified above are used to describe our time period. Fortunately, the sources of this study are easier to define than the time period that they describe; nonetheless, the sources themselves are not without their complications.

Recovering the daily life of ancient Jewish communities is difficult. The corpus of writings preserved from antiquity is not only comparatively modest, but its scope is uneven. Contemporary scholars know many of the communities that flourished and played important roles in the past only by name, while a number of apparently insular

[81] For some of the complications of using rabbinic texts to study the Herodian period see Ed P. Sanders, *Judaism: Practice and Belief: 63 B.C.E. – 66 C.E.* (Valley Forge, Pa.: Trinity, 1992), 10-11 and Chapter Two: The Sources.

settlements are seemingly over-represented in the literature.[82] Archaeology, which often sheds light on the stories that the extant documents tell, offers some help in recovering the way of life of Jews in antiquity. However, because many of the sites where Jewish communities existed in antiquity remain populated until this day, large-scale excavations are impossible in many instances.

That said, the arid climates of Egypt and the Dead Sea have preserved a number of documents from the ancient world, such as the personal archives of members of the Jewish communities of Elephantine and the Judean Desert; and the Church is responsible for preserving the writings of Josephus and Philo as well as the New Testament. Given that the Herodian family is the primary focus of this study, the histories of Josephus are the centerpiece of this discussion, since they provide the only extant, comprehensive history of the royals. Nonetheless, the writings of Philo and the New Testament are also important, since they reveal aspects of marriage and divorce known respectively to an intellectual leader of the Alexandrian Jewish community and the viewpoints of various persons affiliated with the Jesus movement. The Dead Sea Scrolls, another important collection of texts from the late Second Temple period, also preserve a smattering of teachings on marriage and divorce that were presumably in practice among the Qumran covenanters.[83] Greco-Roman law codes and gentile critiques of Jews and Judaism will likewise figure into our discussion, as they will help situate the Herodian family's actions

[82] For example, the influence of the writings and material remains from the insular Jewish outposts established at Masada and Qumran in the Roman era is likely disproportionate to the importance of these two groups to the late Second Temple Jewish world as a whole. For the same viewpoint on Philo see, John G. Barclay, *Jews in the Mediterranean Diaspora: From Alexander to Trajan (323 BCE to 117 CE)* (Berkeley: University of California Press, 1996), 159.

[83] Joseph Fitzmyer, "Divorce among First-Century Palestinian Jews," in *Eretz-Israel: Archaeological, Historical and Geographical Studies: The H.L. Ginsberg Volume* (vol. 14; ed. Menahem Haran; Jerusalem: Israel Exploration Society, 1978): 103-110 and Aharon Shemesh, "4Q271.3: A Key to Sectarian Matrimonial Law," *JJS* 2 (1998): 244-263.

within their proper context. Lastly, texts preserved by the Jewish community, such as the Bible and early rabbinic writings, will be consulted inasmuch as they help elucidate what Josephus has to say about the Herodians. Even though one cannot read biblical and rabbinic writings and assume that they offer an accurate description of ancient Jewish life, when read critically, comparatively, and with caution, these works offer some of our best insights into the Second Temple Jewish world.

Lest one think that the number and variety of texts at our disposal necessarily constitute a complete portrait of Jewish marital practices in antiquity, it is at this point imperative to introduce an important caveat to our study. The history of the Jews of antiquity is largely the history of the elites. Attempts at writing any kind of social history of the ancient world are fraught with difficulties. Only the elites were literate (and even then only a small minority), and only the elites left behind written documents.[84] Ordinary people of modest means probably could not afford written documents and likely had little need for these texts, since they lacked sufficient wealth and property to need protection from legal wrangling.[85] Although references to the poor appear occasionally in the texts, ordinary people are rarely featured in the extant documents.[86]

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[84] See Catherine Hezser, *Jewish Literacy in Roman Palestine* (TSAJ 81; Tubingen: Mohr [Siebeck], 2003), 35, 112, 125, 496-499, and 502.

[85] Hanson and Oakman, *Palestine*, 76; and Marks, "Jewish Weddings," 50-56, 86. Another factor that might help explain the paucity of marriage and divorce documents is unwritten marriages. Some references in rabbinic literature suggest that unwritten marriages, common in both Egypt and throughout the Roman Empire, were entered into by Jews as well. In *m. Ketuboth* 2:1 the rabbis describe a woman who cites communal memory of her wedding procession as evidence of her marriage. The text in question reads: **"**If a woman was left a widow or was divorced and said [to the heirs or to the husband], 'I was married as a virgin', and [the husband] said, "No, but I married thee when thou wast already a widow', if there are witnesses that she went forth [to the marriage] in a litter and with her hair unbound, her *Ketubah* shall be 200 *denars*" (Danby). Since she does not present a marriage document as evidence of her marital status, it seems clear that she did not process one. The text does not say whether the woman originally had a document that had been lost or stolen, so it is unclear if her marriage was contracted with a writ or not (Marks, *Jewish Weddings*, 54). Similarly, the Elephantine papyri and the Judean Desert documents suggest that many Jewish marriages began as unwritten ones, as does the fact that Roman marriage did not require a

The texts concerning the history of marriage and divorce in antiquity also share this bias. Indeed, the documents largely refer to the elite. While, like the rich, the poor certainly married and even sometimes divorced, fewer traces of these marriages remain. The lower classes may have had their own protocol for settling the financial and other logistical issues that marriage and divorce presented, but we lack access to these traditions.[87] Indeed, the writings of Josephus are disproportionately concerned with the ways of the elite. Josephus, a wealthy Jewish priest from a prominent family in the environs of Jerusalem, briefly describes his own marital history before turning to the turbulent marital lives of the royals of the Herodian lines. Like most ancient historians, he is largely indifferent towards ordinary people or, as he often refers to them, "the masses."[88] In fact, Josephus rarely names or even mentions ordinary figures in his works. Immune to the agenda of modern social historians, he never takes the time to relate the domestic histories of non-elite Jews. Although the papyri from the Judean Desert do not include writings concerned with the royal house, the players in the documents from the collection are far from representative of the average Jew.[89] In fact, scholars have long

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document. See Edward Bleiberg, *Jewish Life in Ancient Egypt: A Family Archive From the Nile Valley* (Brooklyn: Brooklyn Museum of Art, 2002), 26; XHev/Se 65; and Marks, *Jewish Weddings,* 54-55.

[86] Scholars generally agree that the intended audience of the Mishnah appears to be landowning males living in agrarian communities. For example, the detailed agricultural laws of *Zera'im* assume that the reader makes decisions about what and how to plant crops. The poor do not voice their own opinions; rather the elite preservers of the text imagine the poor and their plight. *Zera'im* landowners are forbidden to harvest the corners of their fields so that the poor can make use of the foodstuffs left behind (*m. Peah* 1:2-8:9). Similarly, the tithing system is developed with an eye towards the needs of the poor (*ibid.*). See Hanson, "Genealogy and Descent," 76. Also, John J. Collins, *Between Athens and Jerusalem: Jewish Identity in the Hellenistic Diaspora* (Grand Rapids: Eerdmans, 2000), 24.

[87] Minimally, little is known about the marital customs of the poor since archaeologists have yet to uncover much material evidence related to marriage and divorce among non-elite Jews in antiquity (Kramer, "Typical and Atypical," 149-150).

[88] Sanders, *Practice and Belief*, 48.

[89] One of the documents from the Judean Desert may have a royal connection. Julia Crispina, mentioned in the Bar Kokhba documents in the context of her role as a guardian for nephews of Babatha's second husband, has been tentatively identified by at least one scholar as the granddaughter of the Herodian queen, Berenice. See Tal Ilan, *Integrating Women into Second Temple History* (TSAJ 76; Tübingen: Mohr [Siebeck], 1999), 217-233.

assumed that the Jews who appear in the Judean Desert papyri were wealthy, because the sums of money and assets detailed in the documents are so significant.[90] Our study of Jewish divorce is, therefore, not necessarily a comprehensive one and may represent only the experiences of an exclusive few.

On the one hand, we cannot derive much about the lives of ordinary Jews from our sources, which are so heavily skewed towards the wealthy and socially prominent.[91] This is all the more true in relationship to texts discussing the Herodians, since the royal family's level of wealth and influence made them unique even among their elite Jewish contemporaries.[92] Moreover, their status as Roman citizens, the implications of which will be returned to in our discussion of the family's practice of divorce, made the Herodians stand out from most Judean Jews (Josephus, *War* 1.193-194).[93] On the other hand, like common Jews, the Herodians' actions were informed by Jewish traditions and laws, which in theory should not have differed whether a Jew was wealthy or poor, famous or unknown, citizen or alien.[94] A further hint that the Herodians' behavior may not have differed much from that of non-royal Jews comes from the marriage and divorce papyri and narratives from antiquity. One repeatedly notes that the extant texts concerning marital practices display marked similarities to the Herodians' marital practices as they are described in Josephus' writings. Thus, while one should only

[90] Adam Porter, "Babatha's Family and Historical Reconstruction of the Jewish Community of Arabia" (paper presented at the annual meeting of the SBL/AAR, Denver, November, 2001), 4-5, 7 and Naphtali Lewis, Yigael Yadin, and Jonas C. Greenfield, *The Documents from the Bar Kokhba Period in the Cave of Letters* (DJD; Jerusalem: Israel Exploration Society, 1989), 76-77.
[91] Porter, "Babatha's Family," 7.
[92] Hanson, "Genealogy and Descent," 76 and Ilan, "Intermarriage," 11-15, esp. 15.
[93] Hanson, "Genealogy and Descent," 76 and Schürer, *History of the Jewish People*, 1:316-317. According to Josephus, Julius Caesar conferred citizenship upon Herod's father, Antipater (Josephus, *War* 1.193-194). Antipater's citizenship would be inherited, in turn, by his descendants (Schürer, *History of the Jewish People*, 1:316-317).
[94] Sanders, *Practice and Belief*, 47-49.

extrapolate with caution from the behavior of the royal Jews to that of ordinary Jews, one can make an argument that the practices of the Herodians probably did not differ greatly from the behavior of their less wealthy and powerful Jewish contemporaries, except in social significance.

We must also consider how to relate the various extant texts from antiquity to one another. At times, this study will compare the extant documents and note points of contact. This study, however, will refrain from conflating the ideas preserved in the various texts in order to arrive at a singular statement of what Jews in Roman Palestine did or thought about marriage and divorce. Just because texts exhibit one or more points of contact does not mean that they necessarily share the same worldview. Even those documents that espouse the same view on a given issue did not necessarily arrive at this place through the same process. In other words, we will not assume that anything that is true for one set of documents is necessarily true for another. This approach acknowledges the possibility of a great deal of confluence between the documents, yet it does not obfuscate the fact that they can shed light on different values and practices.

A final reason to avoid conflating the various ancient texts describing marital practices relates to the nature of the sources themselves. The extant documents that are the sources for this study were written in different genres and languages, and come from different time periods and places. Thus, a straightforward comparison of the documents would be problematic from a methodological standpoint. For example, comparing a legal text such as a divorce document to a narrative account of a marriage in antiquity would present any number of problems. The degree to which legal texts reflect actual practice varies. Sometimes legal decisions and enactments are more progressive than the societies

they are intended for, since their objective is to change practice. At other times, law codes are more conservative than actual practice since laws are not always withdrawn when social norms have effectively changed practice. Narratives, on the other hand, are more likely to reflect actual practice on some level. Thus, the sharp differences that one might encounter in comparing a legal text to a narrative text might not reflect reality.

An equally pressing concern is that we will fail to identify all the marriages and divorces that appear in our selection of texts. One might well ask if we will know a "Jewish" marriage or divorce when we see one? Most of the scholarship on Jewish marriage and divorce identifies these unions and dissolutions as Jewish inasmuch as they correspond to late antique and in many cases, medieval norms.[95] For example, in accordance with one particular reading of biblical and rabbinic law, divorces are considered Jewish when they clearly have the husband as the active participant and the wife as the passive one, and include the exchange of a separation document. One must ask: Is it prudent to dismiss all divorces that do not have these elements as non-Jewish practices? Indeed, we will encounter a number of cases in our first- and second-century Jewish texts which do not conform to these strict parameters at all. For example, what is the status of a woman who leaves her husband and marries another, despite the fact that there is no mention of a formal divorce from her first husband? Is the act of a woman leaving her husband sufficient to establish divorce? Whatever criterion we use to define divorce, it is certain that utilizing later normative rabbinic protocol to describe earlier practice is untenable.

[95] Chapter Two: The Sources discusses this issue more thoroughly.

1.6 Conclusion

Having reviewed the history of scholarship, defined the parameters of our study, and articulated the methodology to be employed, it is time to turn to the texts themselves to hear what they have to say about the Herodian family's marital practices and the larger question of the lived experiences of Jews in antiquity. Along the way we hope to contribute to the history of research, first by helping to further the understanding of Jewish marriage and divorce in antiquity, and then by better defining the relationship of the Herodian family and its subjects to Roman law and Jewish custom in the diverse world of Roman Palestine.

2. The Sources

The primary sources for this study are the texts that have survived from the first through third centuries C.E. that mention the Herodian family or discuss Jewish conceptions of proper marriage and divorce procedures. The study also turns to ancillary sources that discuss and describe the larger history of Jewish marriage practices. These sources, some from as early as the fifth century B.C.E. and others as late as the early medieval period, are critical to this study inasmuch as they help contextualize the Herodians' marital choices. While the primary texts from diverse cultural contexts are certainly important resources, their great disparities in provenance complicate their usage. Given this problem, it is helpful at this point to review the ideological tendencies, dating, and authorship for the primary sources cited most frequently in this study: the Hebrew Bible, the Elephantine papyri, the writings of Philo and Josephus, the New Testament, the Judean Desert papyri, rabbinic literature, Roman law, and the Cairo Geniza documents.

2.1 Hebrew Bible[1]

Both narrative and legal texts from the Hebrew Bible contain information about marriage and divorce. Narratives such as the story of Rebecca's betrothal to Isaac and Jacob's marriages to the sisters Leah and Rachel provide hints about biblical-era marriage customs and laws (Gen 24:1-67; 29:9-30). For example, these stories reveal that it may have been important to establish a woman's consent to marry, that a marriage fee was paid to the bride's family, and that an older sibling was probably expected to be married

[1] For the purposes of this study, all translations from the Hebrew Bible are from the New Revised Standard Version. Hebrew language texts are from the *Biblia Hebraica Stuttgartensia* (Karl Elliger and Wilhelm Rudolph, eds., *Biblia Hebraica Stuttgartensia* (Stuttgart: Deutsche Bibelgesellschaft, 1997).

before a younger one (Gen 24:57-58; 29:18-30). Biblical legal texts provide information about marriage and divorce practices that supplement what one can learn from biblical narratives. For example, Leviticus preserves a number of laws relating to restrictions placed on the marriage partners of priests (Lev 21:7, 13-15). Other biblical texts describe a woman's legal status in the time between betrothal and marriage and after divorce as well (Lev 22:12-13; Deut 24:1-4).

The importance of the Hebrew Bible as a source for our study of the Herodians is unquestionable. Indeed, both the authority and distribution of the biblical texts in the late Second Temple period are well established. While the exact date of the canonization of Hebrew Scripture is elusive, few would disagree that the authority of the five books of the Torah was established centuries before the entry of the Herodian family on the historical scene.[2] Moreover, Josephus' works, the Theodotos inscription and the New Testament all testify that Torah reading was an established practice in first-century synagogues on the Sabbath, holidays, and market days, ensuring that many Jews had a general understanding of the Torah's contents (Josephus, *Ag. Ap.* 2.175; Mark 1.21-22; Luke 4:16-22; Acts 13:14-15; 15:21; 18:4).[3] Philo makes this point explicit, noting that Moses required that all Jews attain expert knowledge of the laws. Consequently, "he [Moses] required them to assemble in the same place on these seventh days, and…hear

[2] Sid Leiman outlines the points of scholarly consensus about the stages and dating of the canonization of the books of Torah. See Sid Z. Leiman, *The Canonization of Hebrew Scripture: The Talmudic and Midrashic Evidence* (New Haven: Connecticut Academy of Arts and Science, 1991), 16-17.
[3] Lee Levine, *The Ancient Synagogue: The First One Thousand Years* (New Haven: Yale University Press, 2000), 137-138.

the laws read so that none should be ignorant of them" (Philo, *Hypoth.* 7.11-12 [Colson, LCL]).[4]

Even though the authority and distribution of the Torah throughout Roman Palestine is certain, it does not necessarily follow that there are no caveats for the use of this source to define Jewish practice in the late Second Temple period. On the contrary, the use of the Bible as a guide to first-century practices is notoriously complex. First, the biblical legal texts are incomplete in that they provide no guidance about a number of common scenarios. Second, a thorough reading of the biblical texts is not sufficient to inform us fully about Jewish practice in Roman Palestine. Indeed, it is not entirely clear what a biblical law meant during the biblical era, not to mention in Second Temple days.[5] Third, because of the major role that interpretation played in the actualization of biblical law, we cannot presume to understand how Jews would have implemented a given law even if the biblical reading itself seems straightforward. As Ed Sanders writes, "even discovering that a rule…was biblical, or was thought to be biblical, does not quite tell us what people did."[6]

[4] τί οὖν ἐποίησε; ταῖς ἑβδόμαις ταύταις ἡμέραις αὐτοὺς εἰς ταὐτὸν ἠξίου συνάγεσθαι καὶ καθεζομένους μετ᾽ ἀλλήλων σὺν αἰδοῖ καὶ κόσμῳ τῶν νόμων ἀκροᾶσθαι τοῦ μηδένα ἀγνοῆσαι χάριν. (Hyp 7:12) More of Philo's references to Torah readings are found in *Embassy* 156 and *Good Person* 81-82.

[5] Bruce Wells, "What is Biblical Law: A Look at Pentateuchal Rules and Near Eastern Practice," *CBQ* 70 (2008): 223-243.

[6] Sanders, *Practice and Belief*, 466.

2.2 Elephantine[7]

The Elephantine papyri document life in a fifth century B.C.E. colony of Jewish mercenaries in Egypt.[8] The papyri are of diverse genres, including financial, legal, and personal documents, and are divided into three distinct archives—one communal and two belonging to individual families.[9] Historians who have studied the papyri have noted two striking tendencies in the archive. First, the financial and legal documents of the archive exhibit a strong egalitarian impulse, perhaps inspired by military ideology or Egyptian practices.[10] Second, the papyri indicate that the Jews of Elephantine were well integrated into the larger society in which they lived.[11] For example, documents in the collection depict the close business and personal ties of the Elephantine Jews to their gentile neighbors. In fact, the two groups were so close that marriages sometimes took place between the Jewish and gentile residents of Elephantine (P. Cowley 14, 15).[12]

While the communal archive provides many details about life on Elephantine, the two family archives from the collection are of most interest for this study. Both the family archives of Ananiah and Mibtahiah contain various documents regarding the establishment of marriage and financial documents concerned with both marriage and divorce. The Ananiah archive, which spans forty-seven years, includes a marriage contract between a slave girl, Tamut, and a Jewish temple official, Ananiah son of

[7] Unless otherwise specified, this study uses Arthur Cowley's transcription and translation of the Aramaic papyri from the communal and Mibtahiah archives and Edward Bleiberg's translation of the Ananiah archive (Cowley, *Aramaic Papyri* and Bleiberg, *Jewish Life*).
[8] Bleiberg, *Jewish Life*, 9, 17.
[9] *Ibid.*, 23.
[10] Tal Ilan, *Integrating Women*, 253; Ilan, "Notes and Observations," 196, 201; Jackson, "Introduction," 5; Brody, "Evidence for Divorce," 231, fn. 7; Ze'ev W. Falk, *Jewish Matrimonial Law in the Middle Ages* (ScrJud 6; London: Oxford University Press, 1966), 120-121; and Terry G. Wilfong, "Marriage and Divorce," *OEAE* 2:340-345.
[11] Bleiberg, *Jewish Life*, 11, 13, 18-19, 30, 34, and 43.
[12] *Ibid.*, 9, 15, and 26.

Azariah, as well as the marriage deed of Tamut's daughter, Yehoishema, to the son of a prominent Elephantine Jewish family, Ananiah son of Haggai.[13] Mibtahiah's archive preserves documents relating the to archive's namesake's three (or four) marriages, including marriage contracts, deeds of renunciation and various property contracts (P. Cowley 9, 14, 15).[14]

The importance of these two personal archives to our study of the Herodians' marital practices is that, as we find with the royal Jews, they provide evidence of highly assimilated Jews who were also committed to Judaism. Furthermore, like the Herodians, the Elephantine Jews adopted legal practices that did not survive over time as licit Jewish alternatives. For example, the Elephantine legal practice of swearing by the names of pagan gods is at odds with standard views of how Jews in antiquity should have behaved (P. Cowley 44, 14).[15] More relevant to the study at hand, the Elephantine tradition of granting men and women legal equality in marriage and divorce proceedings suggests that some of the Herodian family's marital practices may not have been unique in Jewish legal history (P. Cowley 15; P. Kraeling 2).[16]

Nonetheless, there are several reasons why we must be cautious in using the Elephantine papyri for this study, namely the community's chronological, geographical, and cultural distance from Roman Palestine. First, five centuries separate the writing of

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[13] *Ibid.,* 9 and 14-16 and Bezalel Porten and Ada Yardeni, *Archives From Elephantine: The Life of an Ancient Jewish Military Colony* (Berkeley: University of California Press, 1968), 149 and 154.
[14] Arthur Cowley, *Aramaic Papyri of the Fifth Century B.C.* (Oxford: Clarendon, 1923), 84 and Joseph Modrzejewski, *The Jews of Egypt*: *From Ramses II to Emperor Hadrian* (trans. Robert Cornman; Philadelphia: Jewish Publication Society, 1994), 35.
[15] Bleiberg, *Jewish Life,* 18. Two of the Judean Desert papyri also preserve examples of Jews swearing by the genius or *tyche* of the emperor (Hannah M. Cotton, "The Rabbis and the Documents," in *Jews in a Graeco-Roman World* (ed. Martin Goodman; Oxford: Clarendon, 1998), 167-168). Other practices of the Elephantine community may have been unique to it. For example, a papyrus from Elephantine lists the payments of the communal taxes for the upkeep of their temple. In addition to collecting for the temple at Elephantine, the papyrus lists contributions for the worship of Anat-Bet'el and Ashim-Bet'el (Modrezejewski, *Jews of Egypt*, 37).
[16] Bleiberg, *Jewish Life,* 26-27.

the Elephantine papyri from the rise of the Herodian family to political prominence in the first century C.E. Second, the island of Elephantine is geographically distant from Judea, especially by ancient standards, when travel time for both correspondence and people would have been very long. Third, because the Elephantine community adopted some practices in opposition to what is thought of as normative Jewish practice, most scholars dismiss the papyri as lacking long-term significance and therefore would question the papyri's inclusion in a study of marital practices in late Second Temple times.[17]

2.3 Philo[18]

Philo, a philosopher-historian from turn-of-the-millennium Alexandria, wrote a series of studies on religious thought in Judaism, as well as histories of the Alexandrian Jewish community and an apology for Judaism. Philo, who is generally reticent to relate autobiographical details in his writings, does not describe his own domestic history.[19] He also refrains from discussing the marital choices of prominent Alexandrians, whether Jewish or gentile.[20] However, he does describe theoretical concepts related to marriage, divorce and its procedures as they relate to his understanding of the Torah.

Most of his references to marriage and divorce come from a treatise entitled *The Special Laws.* Philo details the rigid requirements for women who seek to marry high priests and the concessions allotted lesser priests in a treatise concerned with the issues

[17] Reuven Yaron, *Introduction to the Law of the Aramaic Papyri* (Oxford: Clarendon, 1961), 53 and 127-128; Brody, "Evidence for Divorce," 231, fn. 7; Edward Lipiński, "The Wife's Right to Divorce in the Light of an Ancient Near Eastern Tradition" *JLA* 4 (1981): 9-27; Jackson, "Introduction," 5; Tal Ilan, *Integrating Women*, 253; and Ilan, "Notes and Observations," 201.
[18] This study utilizes the Loeb Classical Library's transcription and translation of Philo's writings.
[19] See *Special Laws* 3.1-6 for one of the few exceptions to the rule that Philo does not relay autobiographical details. Also, see Barclay, *Jews in the Mediterranean Diaspora*, 161.
[20] Kraemer, "Typical and Atypical," 131-132.

related to Temple service (Philo, *Spec.* 1.101-111). In book 3 of *Special Laws*, which discusses the prohibitions of adultery and murder, Philo comments on the proper role of sexuality in marriage, reviews biblical prohibitions against adultery, and sexual intercourse with close relatives, and describes the consequences of intercourse with a betrothed woman and the legalities of divorce (Philo, *Spec.* 3.7-31, 72-78). Elsewhere in his writings, Philo describes the Essene practice of eschewing marriage and their motivations for doing so, namely, the perceived negative impact that marriage had on communal life and the supposedly evil influence of women (Philo, *Hypoth.* 11.1-18).

In addition to his discussions of subjects related to marriage, Philo is an important source for this study due to his many references to various members of the Herodian family. For example, Philo describes Agrippa I's tumultuous visit to Alexandria in 38 C.E. in great detail (Philo, *Embassy* 179) and briefly refers to Philip the Tetrarch as well (Philo, *Flaccus* 25-26).[21] These references to the Herodians are not the musings of a removed observer but rather the thoughts of a man whose own life course was affected by the royal family's actions. For example, Philo became very involved in local political affairs due to the consequences of Agrippa I's visit to Alexandria, and while Philo does not mention it, we know from other sources that Agrippa I borrowed money from Philo's brother the Alabarch, Alexander (Josephus, *Ant.* 18.159-160).[22] Moreover, Philo was an uncle by marriage to Berenice, a Herodian princess (Josephus, *Ant.* 19.277).

In addition to his descriptions of marital practices and his connections to the Herodian family, several other reasons contribute to the importance of Philo's writings to this study. First, Philo's writings are the primary source that is closest in time to the

[21] Also see *Flaccus* 25-26 and *Embassy* 294.
[22] *Philo* (LCL; trans. F. Colson et al.; 12 vols.; Cambridge, Mass.: Harvard University Press, 1929-1962), 9.532-533.

Herodian era. Second, his writings show how a Jew from the Mediterranean Diaspora who was most like the Herodians namely "Jewish to the core, and Hellenized to the same core" as well as being a member of the socially and economically elite, interpreted biblical legislation related to marriage.[23] Third, Philo's writings indicate that the Jews of Alexandria, like the Herodians, adopted certain marital practices that did not survive over time as normative Jewish practices. For example, Philo seems to indicate that women have the right to initiate divorce (Philo, *Spec. Laws* 3.30-31).

The problems of Philo as a source for a study of the Herodians' marital practices relate to his perspective. Philo's identity as a Diaspora Jew is at odds with the royal family's status as natives of the land of Israel. Diaspora Judaism developed differently than Judaism in the land of Israel, since the opportunities for contact with gentile influences were greater in the Diaspora.[24] Indeed, in the past many scholars considered the differences between the Judaism practiced in the land of Israel and that of the Greek-speaking Diaspora to have been so great that they viewed as two distinct fields of study.[25] Given the above, marital practices may have developed very differently in Alexandria than they did in Jerusalem. Interpretations of the Herodians' behavior may have also differed in the Diaspora, since Diaspora Jews were subject to different social forces than their brethren living in the land of Israel. Finally, Philo's use of allegory means that many of his references to marriage are not necessarily accurate guides for the study of marital practices in Roman Palestine.[26]

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[23] Barclay, *Jews in the Mediterranean Diaspora*, 91.
[24] *Ibid.*, 91.
[25] For example, J. Collins, *Between Athens and Jerusalem* (BRS; Grand Rapids, Michigan: Eerdmans, 2000) and Barclay, *Jews in the Mediterranean Diaspora.*
[26] George W. E. Nickelsburg, *Jewish Literature Between the Bible and the Mishnah: A Historical and Literary Introduction* (Philadelphia: Fortress, 1987), 167
and Barclay, *Jews in the Mediterranean Diaspora*, 165-170.

2.4 Josephus[27]

Josephus, a first century historian from Jerusalem, is one of the most important sources for information about ancient Judaism. His four extant works offer a rich portrait of the late Second Temple Jewish world; the problems, successes, and dreams of the ancient Jewish community are all represented in his works.[28] Jewish life in Roman Palestine, including the history of the Jewish royals, is portrayed in his work on the revolt against Rome, *The Jewish War*; in his defense of Judaism, *Against Apion*; and in his autobiography, *The Life*. His magnum opus, *Jewish Antiquities*, which is a retelling of the history of the Jews from the creation of the world to his own time, also devotes considerable attention to late Second Temple political and cultural affairs.

In addition to providing general information about life in Judea during the late Second Temple period, Josephus invests much energy in describing the Herodian family. Indeed, most of what we know about Herodian rule comes from Josephus' writings. Josephus discusses the origins of the Herodians in the region of Idumea, describes their ascent to the royal throne of Judea, and relates the beginning of the family's disappearance from the historical scene. Along the way, Josephus comments on their

[27] The Loeb Classical Library's multi-volume publication of Josephus' works is consulted in this study (*Josephus* [LCL; trans. H. Thackeray et al.; 13 vols.; Cambridge, Mass.: Harvard University Press, 1929-1962]). Where the commentary and translation of Josephus' writings edited by Steve Mason's provides overlapping information, it is noted as well (Mason, ed., *Flavius Josephus.* Because Mason's versions of *War* and the later half of *Antiquities* have not been published to date, the Loeb Classical Library's translations of Josephus' works are used in this study despite the fact that the language in the Loeb translations is clearly dated.).

[28] Josephus' importance as a source of information about the ancient Jewish world is reflected in the amount of attention that scholars have devoted to studies of his tendencies as a historian, as well as in-depth studies of the content of his writings. Given the significance of Josephus' writings, the publication of an English language commentary on them is surprisingly absent. But Steve Mason of York University currently heads a committee responsible for producing a contemporary translation of Josephus' works together with a detailed commentary that will address both linguistic and historical aspects. See Steve Mason, ed., *Flavius Josephus: Translation and Commentary* (Leiden: Brill, 2000-).

interactions with other royal houses, Rome, and their own subjects. In addition, Josephus' writings preserve many narratives describing the family's relationships to both Judaism and Hellenism, subjects of critical interest for this study.

Josephus' interest in the Herodians is far-reaching. Indeed, he appears to be as interested in sibling rivalry and spousal bickering as he is in Herodian affairs of state (Josephus, *Ant.* 17.354). One fortunate consequence of his far-flung interests is that he relates the domestic histories of both prominent and obscure members of the Herodian line. In fact, Josephus is the only extant source for most of the family's marriages and divorces.[29] Another reason why Josephus is so invaluable for this study is that he does not merely relate names of the marriage partners, he often explains the motivation behind the marriages and offers his appraisal of the unions. For example, he condemns a number of Herodian unions and one divorce as being prohibited by Jewish law (Josephus, *War* 2.114-116; *Ant.* 15.259-260; 16.224-22; 17.340-341; 18.109-115; 20.141-144). In doing so, Josephus' provides insight into how one of the Herodians' near contemporaries evaluated their marital choices.

More information about marital practices in Roman Palestine comes from Josephus' description of his own turbulent domestic history. Josephus' review of the circumstances surrounding his three marriages and two divorces helps contextualize the royal Jews' marital choices, in that one can compare the Herodians' choices to those of one of their non-royal yet elite peers (Josephus, *Life* 414-415, 426-428). This comparison helps clarify which aspects of the Herodians' marriage decisions were unique to them because of their royal status, and which elements they would have shared with other elite

[29] In *War*, for example, citations of marriages and divorces barrage the reader to the point that descriptions of various marital unions and dissolutions is the thread that holds the work together in certain sections (Josephus, *War* 1.431-578).

Judean Jews. Moreover, one can glean insights into the social acceptability of serial marriages and multiple divorces from the way that Josephus describes his personal domestic history.

Josephus' discussion of biblical texts describing marital practices, which reveal a great deal about Jewish views of marriage and divorce procedure in Roman Palestine, supplements the information derived from the examples of "real world" marriages and divorces provided by his review of the Herodians' and his own domestic histories. For example, Josephus' summary of Deuteronomy 24's marital legislation diverges in significant ways from the most literal readings of biblical teachings, thereby informing us as to how at least one first-century interpreter understood lawful Jewish marital practice.[30] Consequently, his review of theoretical ideas about marriage further contextualizes the Herodians' marital choices in that one can evaluate the lawfulness of their decisions in the framework of first-century interpretation.

In addition to the content of his writings, Josephus' perspective makes his material invaluable for our study. Unlike most of the sources used in this study, Josephus was a contemporary of the Herodians and may have even shared certain social networks with them (Josephus, *Ant.* 16.187).[31] Indeed, Tamar Landau argues that Josephus was likely active in the same social circles as King Agrippa II and his sister Berenice.[32] Moreover, he spent the first half of his life in the environs of Jerusalem, the seat of the Herodian throne. Given these close contacts, the cultural, historical, and geographical differences that present so many obstacles to our use of other sources do not hinder our use of Josephus' writings.

[30] See Chapter Three: Diversity in Second Temple Judaism.
[31] Landau, *Out-Herodi*ng, 6.
[32] *Ibid.*, 6.

Despite Josephus' many advantages as a source of information about the Herodians, there are some caveats to our use of his histories for this study. Some scholars question the overall accuracy of his writings. Although archaeology and other written materials provide some information about Second Temple Judaism, Josephus' writings are the only source for much of what we know about the era from the Hasmonean period through the destruction of the Second Temple in 7O C.E. [33] Indeed, nearly all the information used to evaluate the Herodians' relationship to Judaism and the Herodian family's marital practices comes from Josephus. Thus, the biggest problem and greatest asset of his work are one and the same, namely that so much of it is unique. While Josephus offers an unmatched window onto the ancient Jewish world, the lack of external controls to corroborate or contradict his views is problematic.[34]

Another issue with Josephus' writings relates to his use of sources. While all historians rely on sources, many scholars feel that Josephus' dependence on one particular source complicates the use of his writings as a reliable historical source.[35] Scholars have long known, and Josephus himself readily admits in his writings, that he used the works of Nicolaus of Damascus in preparing his histories (Josephus, *Ant.* 1.94,

[33] The standard secondary history of the Second Temple era is largely a retelling of Josephus' narrative. See Schürer, *The History of the Jewish People*. While there are other primary sources for Second Temple Judaism, such as Philo's writings as well as the New Testament, rabbinic literature, the Dead Sea Scrolls, the Apocrypha, Pseudepigrapha, and select Roman texts, none of these other sources attempts to write a comprehensive history of the ancient Jewish community, as Josephus does.

[34] For example, without Josephus' histories we would not know of the many decrees issued by the Roman emperors confirming the rights of the Jews (Josephus, *Ant.* 14.214-264). Similarly, without his writings we would have to puzzle out the tale of the siege of Masada from the archaeological records alone (Josephus, *War* 7.280-406). See Tessa Rajak, "The Herodian Narratives of Josephus" in *The World of the Herods and the Nabateans* (SAKIN 14; ed. Nikos Kokkinos; München: Franz Steiner, 2007), 23-34, esp. 23. More relevant for the study at hand, Josephus' writings are the only source for the majority of the Herodian marriages and divorces.

[35] For a general introduction to the problem of the relationship between Nicolaus' and Josephus' writings see Tal Ilan's treatment of the subject in *Integrating Women*, 87-88. For a more comprehensive treatment of Josephus' works see Shaye J. D. Cohen, *Josephus in Galilee and Rome: His Vita and Development as a Historian* (CSCT 8;Leiden: Brill, 1979). Discussions of Josephus' attributes as a historian (often focusing on his shortcomings) appear in almost all secondary literature that uses his histories as sources.

108, 159; 7.101; 13.250-1, 347; 14.9, 68, 104; 16.183-6).[36] He reveals his dependence on Nicolaus, Herod's court historian, in sections relating to the Herodian dynasty, for example where he criticizes Nicolaus' methods or interpretations (Josephus, *Ant.* 13.127; 14.9; 16.184).[37] How heavily dependent Josephus was on Nicolaus is still open to debate.[38] In general, earlier critiques tend towards the view that Josephus' reliance on Nicolaus was substantial, and therefore argue that Josephus' depiction of the Herodian court is at best an editorialized version of Nicolaus' material.[39] Contemporary studies, in contrast, uphold the view that Josephus played a more active role in shaping the histories; advocates of this position often liken Josephus' role to that of a redactor.[40] Moreover, modern scholars tend to stress that regardless of Nicolaus' contribution to Josephus' histories, Josephus wielded the final editorial pen over the manuscripts.[41]

More significant than his use of sources is the inescapable fact that Josephus is a typical ancient historiographer. Historians in antiquity were much less reluctant to add (blatantly) their own points of view to the histories they wrote than are their modern counterparts. In particular, one could point to the inventive re-creation of speeches in

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[36] Some would make a similar argument about his use of assistants. Indeed, it is certain that many of the passages in Josephus' writings were not authored by him but rather by one of the many assistants he employed (Josephus, *Ag. Ap.* 1.50). See Harold W. Attridge, "Josephus and His Works," in *Jewish Writings of the Second Temple Period* (ed. Michael Stone; Philadelphia: Fortress, 1984), 194-195 and Tessa Rajak, *Josephus: The Historian and His Society* (Philadelphia: Fortress, 1984), 233-236.

[37] Abraham Schalit, "Josephus Flavius," *EncJud* 11:439 and Attridge, "Josephus and His Works," 194-195. Josephus criticizes Nicolaus for inventing a genealogy for Herod to justify his claim to the throne. Nicolaus' sham genealogy depicts Herod's roots to lie in the esteemed Babylonian Jewish community (Josephus, *Ant.* 14.9 and Schalit, "Josephus Flavius," 11:439).

[38] See the viewpoint in Schalit's *Encyclopedia Judaica*'s entry on "Josephus" (Abraham Schalit, "Josephus," *EncJud*, 12:1140-1141) versus that of scholars, who think that Josephus played a more active role in composing his works (Landau, *Out-Herodin*g, 23-25, 196 and Daniel Schwartz, *Agrippa I,* xiii-xiv). Schwartz rejects the position adopted by most of his colleagues that Josephus played an active role in shaping the histories attributed to him, instead seeing Josephus' role as marginal, a view that has become outmoded in recent years (Daniel Schwartz, *Agrippa I,* 24-27, 114, 117 and Attridge, "Josephus and His Works," 185-232). Also see Josephus' harsh and lengthy diatribe against Herod (Josephus, *Ant.* 15.267-291).

[39] Landau, "Power and Pity," 163-164.

[40] *Ibid.*, 163-164.

[41] *Ibid.*, 166.

ancient histories. Since there were no means in antiquity to record the exact words of individuals and accurate transcription of a person's words may not even have been valued, historians used speeches and quotations as opportunities to display both their skill in crafting a moving and dramatic story, and to insert their own perspective into the historical account they were writing.[42] That is not to say that all ancient historians intentionally sought to mislead their readers. On the contrary, historians like Josephus sought to recreate the essence of what they believed historical figures said. They were less concerned, however, with the accuracy of the finer points that they relayed.[43] Consequently, we cannot confirm the absolute accuracy of Josephus' descriptions of the royal family's explanations of their marital choices.

Many also feel that the circumstances of his own life influenced his works.[44] Born circa 38 C.E. to a wealthy and influential priestly family in the environs of Jerusalem, Josephus offers an idealized portrait of himself as a child prodigy whom religious leaders sought out for advice (Josephus, *Life* 9).[45] While his depiction of some elements of his childhood may be more fiction than fact, no one could dispute that Josephus would have received an education fitting for his station in life. Thus, he was

[42] Attridge, "Josephus and His Works," 194-195.
[43] Josephus' histories are subject to this characteristic of ancient historiography. For example, he relates the private thoughts of various figures immediately preceding their deaths without providing an explanation of how he could have known their thoughts and fashions speeches to reflect his viewpoint of what various historical figures would have said. In the case of his retelling of the siege of Masada, Josephus reports the final (and lengthy) speech given by the rebel commander, Eleazar, in its entirety (Josephus, *War* 7.320-388). Although he reports that two women and five children survived the mass suicide that followed Eleazar's speech by hiding in the underground aqueducts (*War* 7.398-399), it is questionable how much information these survivors would have about Eleazar's speech to relay to Josephus. The pandemonium caused by mass suicide combined with the ongoing attacks from the Roman army would not have been conducive for a detailed transmission of the contents of Eleazar's speech.
[44] For a more complete discussion of the differences between Josephus' writings and the work of modern historians, see Rajak, *Josephus*, 4-9.
[45] Landau, *Out-Herodi*ng, 14-15.

presumably tutored by experts in Jewish law and received some sort of apprenticeship training appropriate for a young aristocrat.[46]

While the circumstances of his early years certainly affected Josephus' outlook on life, later developments are of more interest to scholars concerned with possible bias in his histories. Active in the religious and political affairs of first-century Judea, he was sent to Rome in his mid-twenties as part of an embassy charged with negotiating the release of a group of Jewish prisoners. Later, from 66-68 C.E., he assumed the role of commander for a battalion of Jewish fighters stationed in the Galilee during the First Revolt against Rome (Josephus, *Life* 13-16).[47] Subsequently captured by the Romans, he became their confidant and lived out the remainder of his life in Rome, supported by the largesse of the emperor himself (Josephus, *Life* 423). It was under the patronage of the Roman emperor that Josephus penned his histories of the Jewish world. In fact, one might question if Josephus would ever have become a historian had he not settled in Rome, since the unique circumstances of his life among gentiles seem to have prompted him to write his histories. Indeed, *Antiquities*, a comprehensive history of the Jewish people, is Josephus' attempt to correct the gross misunderstandings of Jews and Judaism that his Roman contemporaries held (Josephus, *Ant.* 1.1-26).[48]

Writing for his neighbors and patrons had its perils.[49] Because of his sense of loyalty to Rome, engendered by his social and financial ties to the Roman elite, many students of Josephus' writings question how freely he expressed his opinions. Clearly,

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[46] Attridge, "Josephus and His Works," 185-186.
[47] For Josephus' evolving role in the Great Revolt against Rome see Eric M. Meyers, "Sepphoris on the Eve of the Great Revolt (67-68 C.E.): Archaeology and Josephus," in *Galilee Through the Centuries: Confluence of Cultures* (ed. Eric Meyers; Winona Lake, Ind.: Eisenbrauns, 1999), 109-122, esp. 115-118.
[48] Josephus describes the impetus behind the writing of Antiquities as follows: "I was constrained to narrate it [the war against the Romans] in detail in order to refute those who in their writings were doing outrage to the truth" (Josephus, *Ant.* 1.4 [Thackeray, LCL]).
[49] Schalit, "Josephus Flavius," 11:435-437.

Josephus was careful not to criticize the Roman regime too harshly. The care that Josephus took to avoid unduly criticizing the Romans makes it clear he was not merely writing about Roman-Jewish relations; his intended audience often was the Romans themselves.[50] For example, he usually blamed the Jews for fomenting rebellion against Rome.[51] By and large, Josephus depicted Rome as the innocent party in the conflagration despite the fact that Rome was at least partly responsible for the outbreak of hostilities. At the very least, he could have criticized the severity of Rome's response to the Jewish revolt.[52] Similarly, as we shall see in our discussion of illicit unions in the Herodian family, Josephus clearly moderated his views when prominent Romans were involved in the marriages and intimate relationships, which are undesirable from the Jewish point of view. For example, Josephus' description of the prohibited marriage of Drusilla, a granddaughter of Herod, to Felix, the Roman procurator of Judea, is uncharacteristically benign (Josephus, *Ant.* 20.141-144).[53]

Another issue related to his background that colors Josephus' portrayal of the Herodian family is his strong pro-Hasmonean leanings.[54] In his autobiography, Josephus

[50] Although both Jews and non-Romans were included as potential audiences for his writings, Josephus intended the Romans to be the principal audience for at least one of his works, *Antiquities*, which is a review of Jewish history from its beginnings (Schalit, "Josephus Flavius," 11:438 and Landau, "Power and Piety," 169). Josephus writes, "I have undertaken this present work in the belief that the whole Greek-speaking world will find it worthy of attention" (Josephus, *Ant.* 1.5 [Thackeray, LCL]). In *War*, Josephus explicitly states that the intended audience of the work was the Jews from Babylon who did not take part in the revolt against Rome and "the subjects of the Roman Empire" or "τοῖς κατά τήν ‹Ρωμαίων ήγεμονίαν" (Josephus, *War* 1.3 [Goold, LCL]). The dual goals of *War* accounts for the fact that, in addition to the Aramaic version intended for his fellow Jews, Josephus wrote a Greek version authorized by Vespasian and Titus for the benefit both of Greek-speaking Jews and gentiles (Schalit, "Josephus Flavius," 11:436-437 and Landau, *Out-Heroding*, 34).

[51] Josephus' loyalty to Rome did not mean that his connection to Judaism suffered. Throughout his writings Josephus takes pains to identify his lot with that of the Jews (Rajak, *Josephus*, 11-12).

[52] Josephus does not blame Jews as a whole for the revolt but rather limits his blame to one specific segment of the Jewish population—the zealots (Attridge, "Josephus and His Works," 196-200).

[53] For a fuller discussion of this marriage, see Chapter Six: Illicit Unions and the Herodians.

[54] As an example of this, consider Josephus' critique of how Nicolaus handles Herod's murder of his wife, the Hasmonean princess Mariamme (Josephus, *Ant.* 16.184-187 and Attridge, "Josephus and His Works," 185-232).

proudly informs his readers of his Hasmonean ancestors (Josephus, *Life* 1-6).[55] Given his familial connection to the Hasmoneans, it is understandable that Josephus would view the Herodian family negatively since the Herodians were non-royal usurpers of the Hasmonean throne.

Indeed, in *Antiquities* 16 Josephus practically makes this point explicit in his criticism of Nicolaus' presentation of Herod. First, Josephus argues that Nicolaus is too favorable to Herod in that he consistently twists his account of the monarch to depict him in a positive light (Josephus, *Ant.* 16.184-186). Second, Josephus uses the example of Nicolaus' description of Herod's murder of his Hasmonean wife to make this point (Josephus, *Ant.* 16.185). Third, Josephus interjects the comment that his own background is Hasmonean and therefore priestly and honorable in every way. Consequently, Josephus declares it unfitting for him to repeat what he perceives to be Nicolaus' falsehoods about the family and instead states that he will recount the Hasmoneans' actions with "sincerity and fairness" (Josephus, *Ant.* 16.187 [Marcus and Wikgren, LCL]). Fourth, Josephus opposes Nicolaus' favorable portrayal of the Hasmoneans with a series of incidents that he views as indications that God's wrath fell upon the Herodians (Josephus, *Ant.* 16.188).[56]

While much of his anti-Herodian stance can be attributed to his Hasmonean descent, another reason for his poor appraisal of the Herodian family is the fact that the Herodians were not only his contemporaries, but at times his adversaries as well. Various members of the Herodian family appear as characters in Josephus' own life story.[57] For example, Josephus exhibits anger at Agrippa and his sister Berenice for their patronage of

[55] Also, *Ant.* 16.187.
[56] See *Ant.* 15.319 for another unflattering statement about Herod.
[57] Landau, *Out-Herodin*g, 6.

Josephus' opponent Justus of Tiberias (Josephus, *Life* 343, 356). Thus, Josephus' attitude towards the Herodians is deeply personal in a way that his favorable critique of his own Hasmonean ancestors is not.

2.5 New Testament[58]

One of the best sources regarding Second Temple Judaism is the New Testament. Indeed, many scholars prefer the New Testament to many Jewish writings as a resource for the study of Judaism in Roman Palestine. For example, since the Mishnah (the first large collection of Jewish writings purporting describing the Second Temple world) was not transcribed until 220 C.E., the New Testament writings, the earliest of which dates to the year 49 C.E., are often privileged since they are earlier.[59] Authored by members of the emerging Jesus movement and the early Christian community, the texts describe first-century life in Judea and the Galilee. In particular, the gospels, which date from 70-100 C.E., the letters of Paul, the earliest of which dates to 49 C.E., and the book of Acts, of disputed dating, provide valuable information relevant for our study.[60]

Since the narratives about Jesus take place during the time of Herodian rule (albeit under Roman aegis), it is not surprising that the synoptic gospels and Acts frequently refer to various members of the Herodian family. Indeed, four generations of the Herodian family are referred to in the texts, including Herod, Agrippa I, Agrippa II,

[58] The Greek text of the New Testament used in this study is from the text published by the United Bible Societies as edited by Barbara and Kurt Aland and other scholars. Translations from the New Testament are from the Oxford edition of the New Revised Standard Version.
[59] Bart D. Ehrman, *The New Testament: A Historical Introduction to the Early Christian Writings* (New York: Oxford University Press, 2000), 197, 201. Paul's earliest letter, 1 Thessalonians, dates to 49 C.E.
[60] Paula Fredricksen, *From Jesus to Christ: The Origins of the New Testament Images of Jesus* (New Haven: Yale University Press, 1988), 3-4.

Herod Antipas, Archelaus, Philip, Herodias, and Drusilla.[61] From these texts we learn a great deal about the Herodians' role in first century Judea and their relationships to Rome and their Jewish subjects. For example, the New Testament refers to two Herodian marriages. Drusilla's status as Felix's wife is noted in passing in Acts 24:24**.** More attention, however, is devoted to Herodias' controversial second marriage to Herod Antipas. John the Baptist's reaction to this union and the fallout from his public disapproval is described in detail in Mark 6:17-29, whereas Luke 3:19 briefly alludes to the marriage.[62]

General references to marriage and divorce are also common in the New Testament. For example, a wedding feast provides the setting for one of Jesus' most famous miracles, that of turning water into wine (John 2:1-11). Wedding feasts also figure in parables about humility, sharing God's kingdom (Luke 14:7-24) and the kingdom of heaven (Matt 25:1-13). Statements about divorce attributed to Jesus appear in all three synoptic gospels (Matt 5:31-32; Mark 10:2-12, 19:3-9; Luke 16:18). Marriage and divorce also figure prominently in two of Paul's letters. In Romans, Paul uses marriage in an analogy to Christians who have "died" to sin (Rom 7:1-3), whereas in I Corinthians he presents practical teachings about marriage, including specific spousal responsibilities (I Cor 7:1-40).

In addition to providing valuable information about the Herodian family and marital practices, the New Testament offers insight into the general political climate of

[61] Steve Mason, *Josephus and the New Testament* (Peabody, Mass.: Hendrickson, 1992), 87.
[62] Something about the New Testament's prospective on the Herodian family may be gleaned from the fact that both of the Herodian marriages mentioned in the texts are controversial ones from the standpoint of Second Temple Jewish practice. For example, Herodias' marriage to Herod Antipas is described as transgressing the laws against marriage to a living brother's ex-wife in both Mark and Luke. Although Acts 24 does not explicitly condemn Drusilla and Felix's union as illicit, by describing Drusilla as Jewish, the author makes his viewpoint clear enough.

Roman Palestine. For example, narratives about Jesus' trial and execution and Paul's arrest provide information about how the Jewish and Roman legal systems interfaced (Matt 26:57-27:61; Mark 14:53-15:47; Luke 22:54-23:56; John 18:1-19:42; Acts 21:27-28:30). Disagreements about Jewish law between Jesus and the Pharisees, as well as references to the scribes and Sadducees, serve to clarify the identity of the various factions in the late Second Temple era and demonstrate how the groups coexisted (Matt 15:1-20; 16:1-12; 23:1-39; Mark 2:15-3:6; 7:1-13; 10:2-9; Luke 11:37-54; 16:14; 20:27).

Although the New Testament has many advantages as a source for this study, there are also a number of drawbacks to the use of this source, some of which are detailed below. First, most of our information about the Herodians comes from the Gospels, the earliest of which was written forty years, and the latest seventy years, after the events they purport to describe.[63] Consequently, many scholars feel that the years that the narratives circulated in oral form compromise the accuracy of the information presented in the gospels.[64] Second, although the Gospels and Acts were set during the period of Herodian rule, the gospel writers do not show much interest in the royal Jews in and of themselves.[65] Even Acts, the New Testament text that is most interested in the Herodian line, does not bother to identify the various Herodian rulers accurately.[66] Third, some of the authors of the New Testament texts in question were from gentile Diaspora communities and as such were removed from the people and events they described.[67] Fourth, these sources present conflicting information. For example, Matthew's version of Jesus' teaching on divorce differs from that found in Mark and Luke.

[63] Mason, *Josephus and the New Testament*, 5.
[64] *Ibid.*, 5.
[65] *Ibid.*, 90.
[66] *Ibid.*, 90.
[67] *Ibid.*, 21.

2.6 Judean Desert Finds[68]

The first- and second-century C.E. papyri from the Judean desert hail from two distinct sites. A small number of unrelated papyri dating to the late 60's and early 70's C.E. were uncovered at Masada. The majority of the papyri, however, hail from Nahal Hever, a site eighteen kilometers to the north of Masada. This second collection of documents post-dates the destruction of the Temple by twenty to fifty years. The Judean Desert papyri provide information about the relationship between the Roman and Jewish legal systems in a time and place where the two systems had overlapping jurisdiction. In particular, the papyri reveal how varying customs and languages played a role in the composition of the legal documents and highlight the confidence with which Jews viewed the Roman legal system. For example, one of the women featured in the papyri regularly seeks out the Roman courts to address her grievances, presumably since she believed that these courts would protect her interests (P. Yadin 12, 20, 25).[69]

Two of the papyri from the Judean Desert collection are of particular interest to this study, namely, the Masada *get* and the quittance, sometimes referred to as a *get*, from Nahal Hever (P. Murabba'at 20; P. XHev/Se 13).[70] The divorce deed from Masada, which is a clear precursor to the rabbinic *get*, and the writ from Nahal Hever, whose

[68] The transcriptions and translations of the Judean Desert papyri published by the Israel Exploration Society are used in this study.
[69] Kraemer, "Typical and Atypical," 138.
[70] The official translation of the document from Nahal Hever refers to the deed as a waiver of claims, see Cotton, *Aramaic, Hebrew and Greek,* 65-70. The Masada *get* was originally published by Jozef Milik. Léonie Archer published the first English translation of the document. See Jozef T. Milik, "Le travail d'édition des manuscript de Désert de Juda," (VTSup 4; Leiden: Brill, 1956), 21 and Archer, *Her Price,* 298-299.

origins are in dispute, reveal the various legal options available to Jews in documenting the legal aspects of their personal lives.

The problem with using these papyri in this study relates to their chronological distance from the era of Herodian rule, and to the genre of the documents themselves. For example, most of the Judean Desert papyri postdate the end of Herodian rule by at least forty years. Consequently, it is unclear whether the documents actually provide reliable evidence for the Herodian era. Moreover, there is no certain reference to the Jewish royals in the documents. However, one scholar has tentatively suggested that one of the documents from the Judean Desert may have a connection to the Herodian family, linking a commoner to a member of the royal house.[71] Another drawback of using these papyri as sources is that they are legal documents, which do not necessarily correspond closely to the narratives that Josephus relates about the Herodians' marriages and divorces.

2.7 Rabbinic Literature[72]

Rabbinic literature constitutes the largest body of writings available as a source for this study. The vastness of rabbinic literature, combined with its diversity both in terms of date of composition and point of view, means that one must take great care in asserting that certain ideas or practices were, or were not, found among Jews in antiquity. This vastness and diversity characterize even the earliest layer of rabbinic literature, the

[71] Indeed, Ilan identifies Julia Crispina, the guardian for the nephews of Babatha's second husband, as the granddaughter of the Herodian queen Berenice. See Ilan, *Integrating Women*, 217-233.

[72] This study cites Herbert Danby's translation of the Mishnah and Philip Blackman's version of the Hebrew text (Herbert Danby, trans., *The Mishnah* [Oxford: Clarendon Press, 1933] and Philip Blackman, ed. and trans., *Mishnah* [7 vols.; New York: Judaica Press, 1964]. The texts and translations of other rabbinic texts will be noted when they appear).

writings attributed to the *tannaim*, or the generations up to and including the close of the Mishnah around the year 220 C.E. Not only are the writings of diverse geographic and chronological origins, but a number of other complications make the literature problematic. Individual writings often express multiple worldviews, the sayings ascribed to the various rabbis were written down generations after their deaths, and the veracity of the ascriptions to various rabbis are recurring weaknesses in this literature. All of these factors compromise the usefulness and reliability of rabbinic literature as an historical source. Because of the many problems with rabbinic literature's use as a historical source, it should not be surprising that there is no scholarly consensus on how to deal with the rabbinic materials in academic study. Given the limitations of space and the fact that other studies offer a comprehensive review of the problem, a full review of scholarly attitudes towards the rabbinic corpus shall not be undertaken here.[73] Instead, a brief overview of some the issues that compromise the rabbinic writings will be identified, and the major positions on how to deal with these issues will be noted.

In the past it was largely assumed that the rabbis were loyal transmitters of history. Consequently, rabbinic materials were used without much thought that the world described by the rabbis did not necessarily correspond to the contemporary reality.[74] If it was recorded that Jews should not dine with gentiles or that they should tithe their income, for example, it was assumed that Jews in antiquity heeded those stipulations.[75] Today there are few who would approach rabbinic writings so uncritically in theory. In

[73] Jacob Neusner, ed., *The Modern Study of the Mishnah* (StPB 23; Leiden: Brill, 1973) and Baruch M. Bokser, "An Annotated Bibliographical Guide to the Study of the Palestinian Talmud," in *The Study of Ancient Judaism* (SFSAJ 49; ed. Jacob Neusner; New York: Ktav, 1981).
[74] The standard history of the period, originally written in the nineteenth century and revised in the late twentieth century, adopts this positivist view of rabbinic literature as do many other students of the Second Temple era (Schürer, *History of the Jewish People*).
[75] Catherine Hezser, ed. *Rabbinic Law in Its Roman and Near Eastern Context* (TSAJ 97; Tübingen: Mohr [Siebeck], 2003), 3.

practice, however, it has proven far more difficult to escape this view of the writings, principally because the body of rabbinic literature is our most comprehensive source about Jewish life in antiquity. While most contemporary scholars would lean towards a more minimalist view of the rabbinic sources, there remain a number of stalwarts committed to the older understanding of the rabbis and their writings.

Louis Feldman is one of the contemporary academics who has maintained a positivist view of rabbinic literature throughout his career. Along with a number of other traditional Jewish scholars, he finds the rabbis to be good transmitters of history.[76] He argues for the integrity of rabbinic literature as a historical source by pointing to the nature of the corpus itself. Since the rabbinic writings were clearly not intended to be "a history book in a self-conscious way," Feldman contends that anything that the rabbis reveal incidentally should be considered to reflect reality.[77] From the standpoint of their critics, this is one of the positivists' strongest points.

Feldman's case for the integrity of the sayings preserved in the rabbinic texts has garnered fewer supporters. Feldman highlights two Talmudic sayings that suggest that the rabbis sought accuracy in ascribing sayings. The first saying, "Whoever reports a saying in the name of its originator brings deliverance to the world," is attributed to the third century rabbi Eleazar ben Pedath in the name of the second-century sage, Rabbi Hanania (*b. Meg.* 15a).[78] The second declaration is from a mishnah in *Eduyot* and makes the same point: "A person must state teachings in the language of his teacher" (m. *Ed.*

[76] Louis Feldman, "Some Observations on Rabbinic Reactions to Roman Rule in Third Century Palestine," *HUCA* 63 (1992): 39-81 and *Judaism and Hellenism Reconsidered* (JSJSup 107; Leiden: Brill, 2006), 45. Cf. Mordechai A. Friedman, "Babatha's *Ketubba*: Some Preliminary Observations," *IEJ* 46 (1996): 55-76, esp. 56.
[77] *Ibid.*, 265.
[78] Many scholars, who take a more critical approach to rabbinic literature than that forwarded by Feldman, would agree that the rabbinic ascriptions of sayings to named individuals are largely accurate. For example, see Satlow, *Jewish Marriage,* xxiv.

1.3). According to Feldman, that phrase requires a person to cite his teacher as exactingly as possible. Those who hold more critical views of the rabbinic corpus would not find compelling Feldman's citation of these two sayings to bolster his case for the historicity of the rabbinic corpus. In fact, Feldman's opponents take issue with his method of using what they consider to be programmatic sayings from rabbinic literature itself to prove the integrity of the literature as a whole.

A group of critical historians who question the traditional assumption that rabbinic texts reflect the daily practice of ancient Jews has recently emerged.[79] The major issue that has occupied academics opposed to Feldman is this: To what extent can we claim that the contents of rabbinic literature represent normative Jewish behavior and thought prior to its date of publication? While there is a good deal of disagreement over the details of this issue, a consensus is emerging that rabbinic literature can be used only with caution as a historical source for the earlier periods. Consequently, it has become normal to qualify one's approach to rabbinic literature when using it as a historical source. An important example of such qualification can be found in Sanders' monograph, *Judaism: Practice and Belief*, where he meticulously defines and delimits his understanding of the rabbinic corpus, precisely because its classification and authentication is so contentious.[80]

Jacob Neusner, however, should be looked to as the person who popularized critical studies of the rabbis.[81] Neusner opposes the uncritical use of rabbinic literature to

[79] Hezser, *Rabbinic Law*, 3; D. Schwartz, *Agrippa I*, 158; and Philip R. Davies, "'Law' in Early Judaism," in *Judaism in Late Antiquity: Part Three: Where We Stand: Issues and Debates in Ancient Judaism* (HO 41; ed. Jacob Neusner and Alan Avery-Peck; Leiden: Brill, 1999), 4-5.
[80] Sanders, *Practice and Belief*, 13.
[81] Along with Jacob Neusner, Ellis Rivkin was instrumental in developing the field of critical study of rabbinic literature.

describe any period prior to the redaction of the Mishnah itself.[82] He is bothered by the fact that using Talmudic material to understand the late Second Temple era requires one to make the leap that a document composed in fifth-century Babylon accurately describes first-century Jewish life in Roman Palestine. Sanders and many others, such as Hayim Lapin, agree with Neusner on this point.[83] Critical rabbinic scholars likewise concur with Neusner that one should be suspicious of the veracity of the ascription of various statements to named sages in the literature.[84] For example, they argue that since most of the sages cited in the Mishnah lived in the second century C.E., if there was a chain of transmission preserving the second-century rabbis' sayings, it likely miscarried by the early third century C.E. when the teachings were finally transcribed. Instead, they argue that fifth-century Babylonian Jews composed the sayings attributed to the various sages given traditions about their character and legal tendencies that had been passed down over the centuries, composed the sayings attributed to the various sages. That is, in accordance with the practice of historians in their time, sages composed sayings to reflect what they understood to be the viewpoints of their predecessors.

Although these dissenting scholars do not agree with Feldman's interpretation of the historicity of the rabbinic corpus, they are not united in their critique of his position. The most extreme proponents of the view that the rabbinic writings are not reliable are Fergus Millar and Jonathan Price, both of whom go much further than simply not trusting

[82] S. Cohen and Sanders both hold that Josephus' histories reflect older traditions than those recorded in the Mishnah. See Feldman's article for a discussion of Cohen and Sanders' approach to the rabbinic materials: Louis H. Feldman, "Palestinian and Diaspora Judaism in the First Century," in *Christianity and Rabbinic Judaism: A Parallel History of Their Origins and Early Development* (ed. Hershel Shanks; Washington D.C.: Biblical Archaeology Society, 1992), 1-39, esp. 15.
[83] Hayim Lapin, *Early Rabbinic Civil Law and the Social History of Roman Galilee: A Study of Mishnah Tractate Baba' Mesi'a'* (BJS 307; Atlanta: Scholars Press, 1995), 26.
[84] Jacob Neusner, *Judaism: The Evidence of the Mishnah* (Chicago: University of Chicago Press, 1981) and Lapin, *Early Rabbinic Civil Law*, 26.

the corpus to accurately reflect the Second Temple period. They state that rabbinic materials lacking outside confirmation should be assumed to be fictitious.[85] Even though the majority of scholars would not hold to this most stringent view of the ahistoricity of the rabbinic corpus, their insistence on outside corroborating witnesses has influenced many studies of Second Temple Judaism. While not requiring as high a level of proof, Shaye Cohen and Sanders agree with the extreme minimalists in understanding Josephus' traditions to be older and more authentic generally than those transcribed in the Mishnah.[86] Indeed, their studies include extensive comparisons of rabbinic literature with parallels in Josephus and other early sources as a means of testing the historicity of the rabbinic corpus.[87] Feldman is not alone in opposing the underlying assumption of their methodology: when the rabbis and Josephus disagree about the same materials, Josephus' viewpoint is generally considered more accurate.[88] Students of Josephus' writings might counter that his ascriptions are no more accurate than those forwarded by the rabbis. They would also argue that one should not necessarily assume Josephus to reflect *the* practices and beliefs of first-century Jews as a whole. Indeed, it is likely that

[85] Fergus Millar, "Letter to Louis Feldman," cited in Feldman, *Judaism and Hellenism Reconsidered*, 763; Jonathan Price, *Jerusalem Under Siege: The Collapse of the Jewish State 66-70 C.E.* (SJS; Leiden: Brill, 1992), 264; and Feldman, *Judaism and Hellenism Reconsidered*, 763.
[86] Sanders, *Practice and Belief*, 178 and Feldman, "Palestinian and Diaspora Judaism," 14-15.
[87] Feldman, *Judaism and Hellenism*, 767. Shaye Cohen is more critical of the historicity of the rabbinic writings than Sanders, who is generally more reluctant to criticize the historicity of the rabbinic corpus.
[88] Feldman, *Judaism and Hellenism.*, 763-781. The maximalist-minimalist debate about the nature of rabbinic literature has much in common with the ongoing argument concerning the historicity of the biblical texts. The maximalists or positivists, take the position that rabbinic literature and the Bible should be assumed to be inherently historical unless proven otherwise. The minimalists or skeptics, in turn, would start with the opposite view, presuming a text to be inherently ahistorical unless outside sources and disciplines can confirm a text's historicity. For comparison to such issues as they manifest in study of the Hebrew Bible, see Iain Provan, V. Phillips Long, and Tremper Longman III, *A Biblical History of Israel* (Louisville, Ky: Westminster, 2003) for an example of the maximalist view and Israel Finkelstein and Neil Asher Silberman, *The Bible Unearthed: Archaeology's New Vision of Ancient Israel and The Origin of Its Sacred Texts* (New York: Simon and Schuster, 2001) for an example of the minimalist view.

on a number of points Josephus does not speak for anyone but himself, as an aristocratic first-century priest.

While much of the scholarly debate around the use of rabbinic texts has been centered on theoretical critiques of the literature, Lapin brings the discussion to a practical level by conducting a test case of the Mishnah's historicity using the tractate of *Baba Mesi'a*. Lapin finds that in large measure the mishnaic law of *Baba Mesi'a* is reflected neither in non-rabbinic Second Temple documents nor in the post-70 C.E. literature.[89] Given the limitations of his study, Lapin does not specify whether the absence of texts that actualize the legal rulings of *Baba Mesi'a* is happenstance or rather reflects a larger phenomenon.[90] Given his findings, Lapin argues that one should refrain from reading the Mishnah as a description of the way in which first-century Jews lived.[91] Moreover, he is not surprised that the material from *Baba Mesi'a* is not reflected in the pre- and post-70 narratives in any detailed way. He argues that even if rabbinic stipulations held sway among the disciples of the sages themselves, we lack convincing evidence that the rabbis had any authority beyond their own core groups in the late Second Temple era.[92]

Lapin goes on to refine his views on the nature of rabbinic literature by putting conditions on his view that the rabbinic documents do not accurately reflect first-century

[89] Lapin, *Early Rabbinic Law*, 121

[90] Philip Davies, Paul Flesher, and Jacob Neusner among others, agree with Lapin, since they question whether individuals outside of the rabbinic circle would have known of the laws promulgated by the sages. See Philip Davies, "'Law' in Early Judaism" in *Judaism in Late Antiquity: Part Three: Where We Stand: Issues and Debates in Ancient Judaism* (HO 41; eds. Jacob Neusner and Alan Avery-Peck; Leiden: Brill, 1999), 3-33, esp. 5.

[91] Lapin, like many others, is uncertain what the intent was behind the composition of the Mishnah. For example, was the Mishnah a compendium of laws that Jews had followed for generations, a newly promulgated law code, or the rabbis' attempt to make sense of the world in which they lived (Lapin, *Early Rabbinic Civil Law*, 25)?

[92] *Ibid.*, 237.

practice. Because of significant overlaps with gentile materials from the same era, he thinks that the documents reflect reality on some level. He finds that many of the ideas accredited to the rabbis in *m. Baba Mesi'a* are similar to legal concepts known from gentile texts. He is not surprised by the intersection of gentile and rabbinic law given that the rabbis were part of the larger gentile world. What Lapin does find unique about the rabbinic texts, however, is that the sages used their enactments to articulate boundaries between Jews and gentiles. Lapin offers the example that usury, while prohibited among Jews, was not similarly prohibited for gentiles.[93]

Because the Mishnah's laws are in large part concerned with defining differences between Jews and gentiles, Lapin would not attribute the absence of laws such as long-term tenancy and dependent labor in *Baba Mesi'a* to mean that Jews did not establish these types of legal relationships. Rather, in his view, such laws are absent because the Jewish practice of long-term tenancy and dependent labor did not differ from that among gentiles.[94] Implicit in this argument is that the rabbinic materials should not be seen as comprising a traditional law code.[95]

Lapin's view notwithstanding, the precise nature of the rabbinic corpus and its usefulness for recovering first-century practice are still open to debate. What is irrefutable is that the rabbinic corpus is our most comprehensive source for understanding Judaism in antiquity. Even though one cannot be certain which aspects of rabbinic law were actually in practice among Jews in late antiquity, and which reflect the ways in

[93] *Ibid.*, 234.
[94] *Ibid.*, 234.
[95] Martin Goodman offers a different hypothesis for the Mishnah's origins, arguing that the positions recorded in the Mishnah are reflective of common Judaism in antiquity. Thus, any argument disclosed in the Mishnah is an example of a normative Jewish view. Goodman's stance accounts for the contradictory positions recorded in the Mishnah by seeing them as examples of the fact that common Jewish practice was not monolithic but included a range of practices. See Martin Goodman, *Jews in a Graeco-Roman World* (Oxford: Clarendon Press, 1998), 43-45.

which the rabbis *wished* the Jews behaved, few would disagree that hidden within the early rabbinic writings are references to real-world behaviors. While separating theoretical musing from actual practice may be nearly impossible, it would be erroneous to ignore the rabbinic corpus in discussing the Herodian family's marriage and divorce practices.

The rabbis and the Herodians emerged from the common cultural tradition of Roman Palestine. Although they might not have always agreed about what constituted proper behavior, they both acknowledged that there were limits on how one ought to behave and that those limits should take into account the divine will.[96] While almost all contemporary scholars reject the idea that rabbinic law was authoritative across the Jewish world in the first century, it is certain that at a later time the rabbinic corpus did become authoritative for Jews. Because our interest in the relationship of the Herodian family to established Jewish practices is hindered by the lack of clear biblical legal material on marriage and divorce, when used critically rabbinic literature can help supplement the biblical information since it can provide a basis for discerning how at least one group of Jews in antiquity envisioned lawful Jewish practice.[97]

[96] References to the fact that Jews generally upheld the teachings of the Torah in antiquity are common in Jewish sources from the Second Temple era (Josephus, *Ag. Ap.* 1.42-43; 2.227-228, 232-235, 272-3;.*War* 1.111-114; Philo, *Embassy* 31.210; Rom 9:30, 10:4). For a fuller discussion of Jewish piety in antiquity, see Sanders, *Practice and Belief*, 47 and Barclay, *Jews in the Mediterranean Diaspora,* 426.
[97] See Davies, "Law," 6.

2.8 Roman Law[98]

Roman legal codes exhibit many of the same complications that plague the interpretation of rabbinic literature. Greco-Roman legal codes are notoriously difficult to date, and ascertaining the accuracy of ascriptions of various laws to named individuals is equally problematic.[99] As with the rabbinic materials, there are no extant copies of the Roman legal codes dating to their issuance.[100] Instead we have summaries of the law codes as compiled by later legists. Thus, one cannot even be certain that the law codes as we have them are complete. In addition, it is impossible to determine to what extent the laws as we have them are in their original form or to what extent later redactors altered the texts to better reflect the legal realities of their own day.[101]

Jurisdiction must also be considered as we study the Roman legal codes. The Roman Empire was vast, and the sometimes quick succession of emperors often resulted in the withdrawal of previously issued laws in favor of new collections of legal rulings endorsed by the freshly crowned emperor. It is therefore nearly impossible to define the exact jurisdiction of particular law codes.[102] Just because a law was promulgated in Rome does not necessarily mean that it had any enduring effect either in Rome proper or in the provinces beyond, where distance combined with the concomitant legality of native legal codes complicated any clear legal chain of authority. Like rabbinic law, the Roman

[98] The primary source material for Roman law is Judith Grubbs' compilation and translation of various Roman laws from the imperial period of 30 B.C.E. through 476 C.E. In particular, this study focuses on the laws promulgated under the reign of Augustus who ruled from 31 B.C.E. to 14 C.E. as they are presented in the writings of late second and early third-century legalists, such as Gaius, Ulpian, and Paulus. See Judith Grubbs, *Women and the Law in the Roman Empire: A Sourcebook on Marriage, Divorce and Widowhood* (New York: Routledge, 2002).
[99] Hezser, *Rabbinic Law*, 12 and Marks, *Jewish Weddings*, 114-115.
[100] O. Larry Yarbrough, "Paul, Marriage, and Divorce," in *Paul in the Greco-Roman World: A Handbook* (ed. J. Paul Sampley; Harrisburg, Pa.: Trinity, 2003), 405.
[101] Marks, *Jewish Weddings*, 114-115.
[102] Yarborough, "Paul, Marriage, and Divorce," 405.

legal codes also suffer from the complication that they preserve a great number of partly or wholly contradictory statements, leaving one with questions as to which legal rulings, if any, correspond to actual daily practice.

Given the similarity of issues that affect both the rabbinic and Roman legal corpus, it is not surprising that scholars have articulated their understanding of the problems inherent in the two legal bodies simultaneously.[103] Catherine Hezser writes:

> …in line with some of the earlier approaches…the view of rabbinic and Roman legal texts as homogenous presentations of "the" rabbinic or Roman legal "system" has to be rejected. The Mishnah and Talmud as well as Roman law codes contain a large variety of different partly contradictory statements on the topics they address. All of these traditions originated in different settings, formed part of different discourses, and underwent many states of transmission and redaction…[104]

The comparative study of legal codes, however, is not without its complications. One often notes striking similarities between laws codified in rabbinic and Roman legal collections, for example. In the past, it was popular to attribute these similarities to the direct influence of one of the legal systems on the developments taking place in the other. Scholars have traditionally wanted to identify the direction of this supposed influence.[105] Recently, however, a much more complex portrait of the influence of one body of law on another has emerged. This newer model stresses commonalities between the two legal systems or cultures as a whole but shies away from asserting the direct influence of one culture over another. There are two reasons for this approach. First, it assumes that similar environments often result in the establishment of similar structures. Second, it

[103] Hezser, *Rabbinic Law*, 1.
[104] *Ibid.*, 12.
[105] Marks, *Jewish Weddings*, 86.

also recognizes that the influence was mutual. The exchange of ideas went both ways, from the rabbis to the Romans and, in turn, from the Romans to the rabbis.[106]

Hezser, for one, imagines that some rabbis occasionally visited cities that served as Roman legal centers and, as a result, gained familiarity with the Roman legal system. She also envisions that some rabbis were well acquainted with Roman law due to the circumstances of their own lives. For example, some rabbis might have been gentile converts to Judaism or resident in cities ruled by Roman jurisprudence; or they may have attained knowledge of Roman law through their own intellectual curiosity, which led them to explore the ways of other peoples. Other rabbis might not have had any interest in gaining knowledge of the Roman legal system, or they remained unaware of many of its complexities because they lacked the life circumstances that would have allowed for that luxury. Naturally, it is difficult to imagine that many Jews of Roman Palestine would have been ignorant of Roman law in its entirety, since their common residence within the boundaries of the Roman Empire would have ensured some familiarity with at least the broad strokes of the legal system.[107]

Given the complications that beset the Roman legal sources as we have them, we will be careful to state the date and jurisdiction of all Roman laws discussed in this study, inasmuch as we have information to that effect. We will also be careful to evaluate whether the marriage and divorce laws that we encounter were applicable to Roman *subjects* generally, including minority groups from distant provinces, or only to Roman *citizens*.

[106] Hezser, *Rabbinic Law*, 9.
[107] *Ibid.*, 1.

2.9 Cairo Geniza[108]

Found in a storeroom of the Ben Ezra Synagogue in Cairo, these documents discovered in the 1800's were not widely publicized until Solomon Schechter's work on the papyri at the end of the nineteenth century. The documents of the *geniza*, a storage place for discarded writings considered too holy to throw out with normal refuse, span many centuries.[109] The oldest document in the *geniza*, a divorce document, dates from the early medieval period, 750 C.E., whereas the latest document hails from the fifteenth century C.E.[110] Found among the many fragments of biblical and rabbinic texts are personal documents, including divorce writs and marriage documents. Two marriage contracts, dating from the tenth to the thirteenth centuries, contain clauses permitting women to initiate divorce.[111] Although documents holding this position are a minority, their presence in the *geniza* makes a clear statement that the documents were considered authentic Jewish writings.

The importance of the Cairo Geniza to our study is that it shows that diversity in Jewish legal practices continued even after the rise of the rabbis. In particular, the Egyptian Jewish community's tendency towards granting equality in divorce provides a possible connection to the Herodians' practices. The main problem of the geniza as a source for this study is that the earliest text in the collection postdates the Herodian era by seven hundred years.

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[108] The transcription and translations of the texts from the geniza are from Mordecai Friedman's studies of marriage and divorce issues described in the geniza documents. See Mordecai A. Friedman, *Jewish Marriage in Palestine: A Cairo Geniza Study* (Jerusalem: Daf-Chen, 1980) and "Divorce upon the Wife's Demand," 103-126.
[109] David Halberstam, "Genizah," *EncJud* 7:404.
[110] *Ibid.*, 7:406 and Shelomo D. Goitein, *A Mediterranean Society: The Jewish Communities of the Arab World as Portrayed in the Documents of the Cairo Geniza* (6 vols.; Berkeley: University of California Press, 1967-1993), 3:260-272.
[111] Rishkin, *Women and Jewish Divorce*, 79.

2.10 Conclusion

We have now reviewed the advantages and disadvantages of the primary sources available for this study and can arrive at some preliminary conclusions regarding their reliability. While the merits of most of the sources are certain, it is important to note that the difficulties with the sources pose problems for this study if one fails to identify how those weaknesses affect the sources' portrayals of the Herodian family and Jewish marriage and divorce practices in antiquity. Turning now to closer study of these sources, we see how they support the case for the diversity of Judaism in Roman Palestine.

3. Diversity in Second Temple Judaism

When scholars think and write about the lives of Jews in antiquity, they often make assumptions about what their lives would have looked like. In large measure, the imagined Jew of antiquity lives in strict accordance with the teachings of the Torah and the later Mishnah. One often reads that Jews did "such and such," followed up by a citation to a particular chapter of the Mishnah, for example.[1] The lived experience of Jews in antiquity, however, is probably not so easy to characterize.

We actually have two sets of exhaustive legal documents from Jewish communities in antiquity, namely the Elephantine and Bar Kokhba papyri, and neither of these collections looks as they "should" compared to the Bible and the Mishnah.[2] Instead, these documents indicate great diversity in both practice and legal tradition. While it has proved very popular over the years to ignore the disconnect between authoritative texts and actual practice by dismissing as non-normative the communities that produced the extant papyri, i.e., the Jews of Elephantine and the Bar Kokhba supporters from the Judean Desert, this approach is problematic.[3] It is impossible to dismiss the richly-documented fifth-century B.C.E. Egyptian Jewish community of Elephantine as irrelevant to the overall course of Jewish life simply because the group was comprised of mercenaries in the service of the Persian imperial power who would

[1] Peter Schäfer, ed., *The Bar Kokhba War Reconsidered* (TSAJ 100; Tübingen: Mohr [Siebeck], 2003), 2, 14, 21 and Greg H. Horsley, ed., *New Documents Illustrating Early* Christianity (9 vols.; Marrickwille, Australia: Southwood, 1981-2002), 9:84**.** The standard history of the Second Temple era, namely, Schürer's *History of the Jewish People at the Time of Jesus Christ* understands rabbinic views to determine first-century practice. See Sanders' critique of Schürer's work (Sanders, *Practice and Belief*, 10-11).
[2] Cotton, "The Rabbis," 168.
[3] Ilan, *Integrating Women*, 253 *versus* Jackson, "Introduction," 4.

have been strongly influenced by Egyptian custom or militaristic tendencies.[4] Because we lack significant evidence from Jewish communities contemporaneous to the one that flourished at Elephantine, we cannot definitively state that the Elephantine group was atypical. Moreover, the need to label the Elephantine community as non-normative because it does not neatly conform to biblical law may itself be apologetic.

Similarly, it is problematic to call into question the "normativeness" of the community represented in the second-century papyri from the Judean Desert simply because the Bar Kokhba era was a difficult time for Jews in the land of Israel.[5] Indeed, in all places and in all times the Jews have been affected by the cultures and events of the people surrounding them. In short, it is premature to disregard the experiences of various Jewish communities in antiquity in relation to the norms of Jewish life merely because they do not look as a scholar in the twenty-first century would have them look.[6]

According to the evidence in the extant legal documents from the ancient world, Jewish communities were at times guided by principles recorded in their authoritative writings, such as the biblical texts, but do not appear to have been necessarily constrained

[4] For the view that the Elephantine papyri are not representative of the larger, ancient Jewish community see Tal Ilan, *Integrating Women*, 253; Ilan, "Notes and Observations," 201; Jackson, "Introduction," 5; and Brody, "Evidence for Divorce," 231, fn. 7.

[5] The Judean Desert/Bar Kokhba papyri have been published by the Israel Exploration Society. Unlike the case with the Elephantine papyri, scholars do not dismiss all of the documents in the Judean Desert as aberrations from standard Jewish practice. On the contrary, scholars are more than willing to see the many examples of rabbinic-inspired, or proto-rabbinic, legal texts as examples of normative Jewish life. Some scholars, however, are not willing to extend that same appraisal to documents in the collection that contain Roman or Nabatean elements. Indeed, scholars often brand texts exhibiting markers of gentile legal forms as exceptions from the norm, a classification not necessarily borne out by the documents themselves. For example, see Schäfer's discussion on the nature of the Judean Desert papyri (Schäfer, *Bar Kokhba Revolt*, 21). Schäfer also explains that he agrees with Hannah Cotton, who does not believe that the Jews who left behind the Judean Desert/Bar Kokhba papyri were assimilated or an atypical Jewish "fringe group." Rather, following Cotton's lead, Schäfer thinks that the Jews of the Judean Desert formed a group who had not yet experienced the standardizing tendencies of the rabbis at Yavneh (*ibid*., 21).

[6] Easy classifications are often problematic. Cotton points out that the Jews of the Judean Desert were active in the Bar Kokhba Revolt and did not engage in business transactions on the Sabbath, yet their legal forms differ little from those in use by their gentile peers: see Hannah Cotton, "The Bar Kokhba Revolt and the Documents from the Judean Desert: Nabatean Participation in the Revolt," in *The Bar Kokhba Revolt Reconsidered* (TSAJ 100; ed. Peter Schäfer; Tübingen: Mohr [Siebeck], 2003), 134-135).

by them.[7] On the contrary, these communities seem to have approached their traditions with a good deal of creativity as well as a keen understanding of the non-Jewish legal traditions of their neighbors. Unwilling to remain bystanders to legal progress, Jews often sought to update their own legal codes in order to respond to changing life circumstances; often this was accomplished by adopting gentile legal practices. For example, most scholars attribute the Jewish practice of the giving of dowry to the Jews adopting a practice common to Greco-Roman marriage.[8] At times these foreign practices were accepted in their entirety and at other times only in part. These outside legal traditions were frequently cast in "traditional" Jewish ways, for example, by translating them into languages that were considered "traditional" to one community or another. Thus, the Aramaic and Egyptian contracts from 500 to 400 B.C.E. exhibit many similarities. Deeds of conveyance are nearly identical, with the Jews writing their documents in Aramaic rather than Demotic, as favored by the Egyptians. Loan contracts between the two groups are also quite similar with, once again, language choice being the only easily identifiable dissimilarity.[9] In some cases, foreign laws were adopted without any alterations although the explanation of the law's purpose was altered to reflect the particular concerns of the Jewish community. For example, both the rabbinic and Demotic marriage contracts present the bride and groom addressing one another directly

[7] This is not to say that Jewish legal forms do not exhibit any unique features. In contrast to the Egyptian contracts of the sixth-century B.C.E., for example, the Jews at Elephantine inserted clauses into their legal contracts stipulating what should happen in the event of death (Porten, *Archives*, 185). Another notable difference between the Jewish and Egyptian texts from Elephantine is that the Jewish documents are sealed while the Egyptian ones are not (Bleiberg, *Jewish Life,* 23). Lastly, the Jewish contracts identify individuals by their father's name (i.e., Judah son of Simon), whereas the Egyptian contracts use the mother's name (i.e., Judah son of Miriam) (Bleiberg, *Jewish Life,* 26-42).

[8] Satlow, *Jewish Marriage,* 201.

[9] *Ibid.,,* xvi , 87 and Porten, *Archives,* 191.

and stipulate that the husband's property is surety for the divorce payment. [10] In other instances, slight variations of wording were used to signify the difference of the Jewish community. Thus, an Edomite marriage contract dating from 176 B.C.E. is almost identical to Jewish contracts with the exception of a phrase specifying the tradition by which the marriage was established. The line in question is reconstructed as follows: "Give her to me in accordance with the customs of Edom." Similarly, the phrase specifying the tradition by which the marriage of Shelamzion and Judah from the Judean Desert was established is "according to Greek custom." The standard wording of the same phrase in Aramaic writs is according to "the custom of Moses." [11] More often than not, however, legal innovations appear to have been adopted wholesale without any fear that these innovations would compromise the identity of the Jews who used them.[12]

There are two key reasons why we cannot describe ancient Jewish practice by merely summarizing the teachings of the Bible and other authoritative texts. First, the Jews of antiquity show a good deal of flexibility in their approach to actualizing their inherited traditions. For example, in reviewing the history of the Temple of Onias in Egypt, founded shortly before the Maccabean Revolt, the later rabbinic writings do not condemn the temple even though the shrine was in clear violation of the deuteronomic call for a single shrine in Jerusalem (Deut 12:13-14). While the Mishnah states that the priests who served in the Temple of Onias were not fit to serve in the Jerusalem Temple, the sacrifices offered there were in many cases understood to be legitimate (*m. Menah.* 13:10). The acceptance of the shrine of Onias opens up the possibility that the

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[10]. See Markham J. Geller, "The Elephantine Papyri and Hosea 2,3: Evidence for the Form of the Early Jewish Divorce Writ," *JSJ* 8 (1977): 244-245.
[11] For the translation, see Esther Eshel and Amos Kloner, "An Aramaic Ostracon of an Edomite Marriage Contract from Maresha, Dated 176 B.C.E.," *IEJ* 46 (1996): 12.
[12] Cotton, "Nabatean Participation," 134-135.

Elephantine Jewish community, which had its own Temple yet was in regular contact with the Jerusalem-based priesthood, was not necessarily seen as outside the pale of the Jewish community despite what appears to have been a flagrant violation of biblical law.[13] Second, while Jews seem to have been unified by some overarching concepts, they do not appear to have been united under a common interpretation of the law. Indeed, there are many hints in texts from antiquity that various Jewish groups differed with one another over interpretative traditions.

3.1 Diversity

Josephus, the most prolific Jewish writer from antiquity, is very clear that his Jewish contemporaries were divided into a number of camps. At various points in his work, Josephus refers to sects or parties such as the Pharisees, Sadducees, Essenes, Zealots, the Fourth Philosophy, and the followers of John the Baptist (Josephus, *Life* 10-12; *Ant.* 13.288-298; 18.11-25, 116-119; *War* 2.119-166; 4.158-162).[14] Philo, the New Testament, and rabbinic literature corroborate the existence of some of these groups (Philo, *Hypothetica* 11.1-18; *Good Person* 75-91; *Contempl. Life* 1-90; Matt 23:2; Luke 5:17; Acts 26:2-5; Phil 3:5; *b. Ber. 2*9a; *m; Yad.* 8; *'Abot R. Nat.* 5).

Not only did these groups differ on certain philosophical issues, but also actual daily practice was in dispute.[15] Perhaps most explicit in elucidating points of contention

[13] See J. Collins, *Between Athens and Jerusalem*, 72.

[14] There is an ongoing scholarly debate about whether the various Jewish splinter groups, such as the Pharisees, were sects or parties. Sects are separatist groups that claim that the group alone has religious truth. A party, on the other hand, has distinguishing characteristics but does not claim to be the sole holder of religious truth. See Shaye Cohen's review of the issue in the secondary literature. Shaye J. D. Cohen, "The Significance of Yavneh: Pharisees, Rabbis, and the End of Jewish Sectarianism," *HUCA* 55 (1984): 27-53, esp. 29-31.

[15] Sanders argues that Judaism was particularly susceptible to diversity since all aspects of life, not just a limited ritual life, fell under the heading of Judaism. He stresses that there were hundreds of minor

among Second Temple Jewish groups is the famous *Halakhic Letter*, or *4QMMT*. One of the Dead Sea Scrolls, the *Halakhic Letter* outlines a number of legal disagreements between the Dead Sea sect and the Jewish leadership in Jerusalem. For example, the two groups disagreed about the proper dating of the holiday of Shavout or Pentecost.[16] More common than philosophical disagreements, however, were variations based on geography. Indeed, the rabbinic writings from the third century, such as the Mishnah and Tosefta, cite many of these types of divisions. The mishnaic tractate of *Megillah*, for example, refers to differences in legal traditions for the inhabitants of walled cities versus those applicable to inhabitants of unwalled villages (*m. Meg*. 1:1-3; 2:3; 4:1). Differences in practice between the region of Judea and other areas in Roman Palestine are broached from time to time in rabbinic texts (*m. Pesah. 4:5*; *m. Ros Has.* 4:1, 3; *m. Meg.* 1:11; *m. Ket.* 1:5-6; 4:12; 5:9; 13:10; esp. *m. Git*. 1:2). Moreover, rabbinic literature commonly cites variants in practice between the land of Israel and the Diaspora (*m. Ket.* 13:10-11; *m. Demai* 2:1).

Given the above, one could argue that the defining feature of ancient Judaism in general and the rabbinic movement in particular is their preference for diversity over unity and inclusivity over exclusivity. As Sanders describes it: "Besides the desire to understand the sacred text…toleration of disagreement was their most consistent characteristic."[17] Because scholars largely agree that Judaism in antiquity was highly

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decisions made every day that enabled one to respond to his/her call to follow the divine will. There was thus a need for each and every Jew to have knowledge of the Law in order to know how to actualize its precepts on a daily basis (Sanders, *Practice and Belief*, 50-51, esp. 191-192).

[16] Michael Wise, Martin Abegg, Jr., and Edward Cook, *The Dead Sea Scrolls: A New Translation* (New York: HarperCollins, 1996), 297-298.

[17] Ed P. Sanders, "Comparing Judaism and Christianity: An Academic Autobiography" (paper presented at the New Views of First-Century Jewish and Christian Self-Definition: An International Conference in Honor of E. P. Sanders, Notre Dame, April 2003). Also see Goodman, *Judaism in the Roman World*, 46 and *y. Sanh*. 29c. A number of scholars prefer to describe the Second Temple Jewish world as one

diverse, it is not necessary to continue to argue that point here.[18] Instead, we turn to a discussion of the ramifications of Jewish diversity on the issue under discussion in this study, namely, marital practices in Roman Palestine.

3.2 Marital Practices and Diversity

Jewish marriage and divorce practices in antiquity were not uniform. Indeed, both theoretical and practical approaches to marriage and divorce varied due to interpretative, cultural, and historical differences. Theoretical discussions in both the earlier and later strata of rabbinic literature, as well as the practical examples provided by marriage and divorce documents from the Judean Desert, illustrate these differences.

3.2.1. Marital Practices in Rabbinic Literature

While we have few examples from texts that can be definitively dated to the Second Temple era, early rabbinic writings such as the Mishnah preserve many examples of competing versions of marital law, some of which may reflect Judaism in the Herodian era. Particularly prominent are disagreements between Shammai and Hillel, two first-century sages, over the correct interpretation of biblical passages relating to marriage. For example, while both sages agree that Exod 21:10 defines regular sexual intercourse as a woman's marital right (אם־אַחֶרֶת יִקַּח־לוֹ שְׁאֵרָהּ כְּסוּתָהּ וְעֹנָתָהּ לֹא יִגְרָע), they disagree over the length of time that a man could abstain before he would be in violation of the

characterized by a variety of *Judaisms* to underscore the fact that Judaism was far from monolithic in Roman Palestine. See Alan Segal, *The Other Judaisms of Late Antiquity* (BJS 127; Atlanta: Scholars, 1987) and Alan J. Avery-Peck and Jacob Neusner, *Judaism in Late Antiquity: Life-After-Death, Resurrection, and the World-to-Come in the Judaisms of Antiquity* (HO 17; Leiden: Brill, 1999).

[18] For example, see Barclay, *Jews in the Mediterranean Diaspor*a, 83.

biblical requirement. Whereas Shammai argues that a man could abstain for two weeks, Hillel only permits week-long vows of chastity (*m. Ket.* 5.6). They also disagree about the amount of money that a woman's *ketubah* could be reduced by if she refused her husband's sexual advances (*m. Ket.* 5.7).

Because of Hillel and Shammai's differences over the proper interpretation of Lev 18:6-18 and 21:7, which detail forbidden sexual pairings and prohibit priests from marrying harlots or divorced women, they also disagree about who could contract a levirate marriage and whether a woman who had been rejected for levirate marriage was a divorcee and thus ineligible for marriage into the priestly class (*m. Yev.* 1.4). Other disagreements between the two schools relating to marriage and divorce concern the property rights of a husband over his wife's assets, the number and gender of children that a man was required to father, and the effect that failure to produce the requisite number of children had on his marital status (*m. Yev.* 4.3; 6.6).[19]

In addition to differences that arose out of divergent schools of interpretation, the Mishnah is clear that geography too helped create diversity in Jewish material practices. The tractate *Ketuboth* explicitly states the significance of geography in determining marriage practices. The mishnah in question reads: "Three countries [are to be distinguished] in what concerns marriage: Judea, beyond the Jordan and Galilee" or "שלש ארצות לנשואין: יהודה, ועבר הירדן, והגליל" (*m. Ket.* 13.10). Specific examples of differences based on geography are found elsewhere in the same tractate. For example, in Judea a husband's family paid widows the marriage settlement due them and the women then returned to their natal families (*m. Ket*. 4.12). In the Galilee and Jerusalem, on the other hand, widows remained in their husbands' family homes (*m. Ket*. 4.12).

[19] Instone-Brewer, *Divorce and Remarriage*, 91-93.

Expectations of a woman's role during marriage also differed in the Galilee versus Judea. Thus, Galilean women were obligated to spin twice as much wool for their husbands as women living in Judea (*m. Ket.* 5.9).

In later rabbinic writings the diversity of Jewish marital practices becomes even more pronounced. In particular, the isolation of the two leading interpretative schools from one another due to geography led to the development of sharp differences in the communities' respective understanding of the purpose and ideal of marriage. Examining the Talmudic evidence, both Satlow and Schremer note the many differences between the Babylonian and Jerusalem based Jewish communities' understanding of marriage and its protocols.[20] In general, the Jerusalem-based community exhibited a positive view of marriage since it understood the marital relationship as a way to fulfill oneself personally and fulfill the divine will.[21] The Babylonian community, on the other hand, exhibited more ambivalence towards marriage.[22] Because the Jews writing in Babylon viewed themselves primarily as a class of scholars, much of their anti-marriage sentiment relates to the responsibilities created by marriage and family life that conflict with the obligation to study Torah.[23]

In addition to different philosophical approaches to marriage, the laws and rituals that may have pertained to everyday married life were in dispute too. Riskin found sharp differences between the Jerusalem and Babylonian Talmuds' definition of a rebellious wife, a definition that is important in establishing the right to divorce.[24] Other contentious aspects of marital law discussed in later rabbinic literature include the

[20] Satlow 4, 34-36 and Schremer, *Male and Female,* 85-101, 127-142, 186-227, and 246-260.
[21] Satlow, *Jewish Marriage,* 14, 16-17 and Schremer, *Male and Female,* 37-72.
[22] Satlow, *Jewish Marriage,* 11-12, 26-34 and Schremer, *Male and Female,* 339-341.
[23] Satlow, *Jewish Marriage,* 30-34.
[24] Riskin, *Women and Jewish Divorce,* 21-31 vs. 33-44.

permissibility of premarital sex between betrothed couples who were not yet fully married, and the status of children born of such unions. For example, whereas a Judean man's ability to bring a virginity suit against his bride was limited because betrothed couples often engaged in premarital sexual intercourse, Galilean husbands could bring these suits since premarital sex was strictly forbidden in this more conservative territory (*m. Ket.* 1.5; *b. Ket.* 7b, 12a).[25] A related dispute with real life implications concerns the status of children conceived during their parents' betrothal period. The question was whether they were to be labeled bastards (ממזרין) and consequently suffer from an impaired status under Jewish law, or had the same status as children conceived after the completion of formal wedding proceedings (*b. Yev.* 69b; *b. Kid.* 75a).

3.2.2 Judean Desert Documents: Masada get vs. Nahal Hever "get"

While theoretical discussions of marital practices and expectations recorded in rabbinic literature merely *suggest* that Jews in antiquity may have understood marriage's protocols and rituals in diverse ways, the extant papyri from the Judean Desert prove this to be the case. Indeed, comparing two of the papyri from the Judean Desert collection, namely, the Masada *get* (P. Murabba'at 20) and the *get*/quittance from Nahal Hever (P. XHev/Se 13), provides a practical example of this diversity.[26]

Written in the year 72 C.E., a few decades after the end of Herodian rule, the divorce deed from Masada testifies to the end of Joseph b. Naqsan's marriage to Miriam

[25] The rabbis' notion of premarital sex refers to a betrothed couple who had not yet undergone *kiddushin*, the final step authorizing marriage in the rabbinic worldview.
[26] Ilan discusses the controversy over the proper identification of the document from Nahal Hever (Ilan, "Notes and Observations, 196-197).

b. Jonathan.[27] The document is a clear precursor to the *get* described in the rabbinic writings, in that it closely mirrors the template of the later rabbinic *get*.[28] That is, it is written from the perspective of the husband, opens with the date, includes the full name of the divorcing parties, and ends with the signatories of the husband and the deed's witnesses (P. Murabba'at 20). The text also records three statements that the husband makes to his ex-wife, namely a declaration of intent to divorce, permission for the wife to remarry, and a promise to replace the deed should it be lost or damaged. The permission to remarry, which is considered the heart of the deed (גופו של גט) according to the later rabbis (*m.* Git. 9.3), reads as follows: "You [Miriam b. Jonathan] are free on your part to go and become the wife of any Jewish man that you wish" (את רשיא בנפשכי למהך ולמהי אנת לכול גבר יהודי די תצבבין) (P. Murabba'at).[29] This permission clause closely mirrors the later mishnaic versions of the same statement, namely, "you are free to marry any man" (הרי את מתרת לכל אדם) and "let this be from me your writ of divorce and document of dismissal and deed of liberation, that you can marry any man you desire" (ודין דיהוי ליכי מנאי ספר תרוכין ואגרת שבוקין וגט פטורין למהך להתנסבא לכל גבר דתצבין) (*m. Git.* 9.3 [Danby]).[30] Evidence of the permissibility of this variation to the remarriage clause, namely, the stipulation that Miriam b. Jonathan's future marriage had to be to a *Jewish* man, is also found in early rabbinic literature (*m. Git.*9.2).

A second Judean Desert document relating to divorce was written sixty years later at a site eighteen miles away from Masada, namely the *get*/quittance from Nahal Hever (P. XHev/Se 13). The nature of this document, written from the perspective of the wife

[27] *Ibid.*, 196, 198-199
[28] Pierre Benoit, Józef T. Milik, and Roland de Vaux, eds., *Les Grottes de Murabba'at* (DJD 2; Oxford: Clarendon, 1961), 104-109 and Ilan, "Notes and Observations," 196.
[29] Ilan, "Notes and Observations," 199.
[30] Translation from Archer, *Her Price is Beyond Rubies*, 298-299.

to her ex-husband, is subject to ongoing debate in the secondary literature since it does not conform to any known model.[31] Some scholars, such as Brody and Schremer, identify the deed as a receipt for the payment of the marriage settlement, a type of document described in rabbinic literature but not surviving in any extant exemplars (*m. Ket.* 9.9; *m. Git.* 8.8; *m. B. Batra* 10:3).[32] Others, such as Instone-Brewer, Ilan, and Milik, argue that the document is a divorce deed sent from a woman to her ex-husband.[33]

Scholars advance two main arguments in support of the position that the deed is a receipt for the payment of the marriage settlement, first, the lack of a statement from the wife granting her husband permission to remarry, and second, a series of grammatical technicalities.[34] The absence of a declaration from the wife is self-explanatory. The argument from grammar, on the other hand, is more complex. Schremer, following an earlier commentary on the deed written by Ada Greenfield and Jonas Yardeni, argues that the text is not written solely from the wife's perspective.[35] On the contrary, one line of the document is written from the husband's perspective or minimally is a quotation from the *get* that Shelamzion already received from Eleazar. The clauses in question, as they are commonly reconstructed, read: לא איתי לי אנה שלמצין... עמך אנת אלעזר... די הוית בעלה מן קדמת דנן די הוא לך מנה גט שבקין ותרכין מלת מדעה לא איתי לי עמך אנת אלעזר על צבת כל מדעם וקים עלה. According to Schremer's translation, the text reads: "I do not have—I,

[31] The official translation of the document refers to the deed as a waiver of claims, see Hannah M. Cotton *Hebrew and Greek Documentary Texts*, 65-70.
[32] Brody, "Evidence for Divorce," 232 and Schremer, "A Reply," 201.
[33] Instone-Brewer, "Jewish Women Divorcing," 349 and 357; Ilan, "Notes and Observations," 198 and Józef T. Milik, "Le travail d'édition des manuscript du Désert de Juda," Volume del Congrès Strasbourg 1956; VTSup 4; Leiden: Brill, 1956), 21.
[34] Hannah Cotton and Elisha Qimron suggest a third possibility for the identification of the deed, namely, that it is a wavier claims (financial) sent by the wife to her ex-husband after *she* had sent him a bill of divorce (Hannah M. Cotton and Elisha Qimron, "XḤev/Se of 134 or 135 C.E.: A Wife's Renunciation of Claims," *JJS* 49 [1998]: 108-118.).
[35] Ada Greenfield and Jonas C. Yardeni, "A Receipt for Ketubba," in *The Jews in the Hellenistic-Roman World: Studies in Memory of Menachem Stern* (Isaiah M. Gafni, Aharon Oppenheimer, and Daniel Schwartz, eds.; Jersualem: Zalman Shazar Center, 1996, [Hebrew]), 197-298.

Shelamzion…with you, Eleazar…who had been my husband before this time, and who have said: 'this is to you from me a bill of divorce and release without reservation.'"[36]

Scholars who argue that the document is a divorce deed sent by a woman to her husband contest Schremer's translation. Ilan, for example, contends that there are no linguistic clues indicating that the document abruptly changes its perspective from wife to husband.[37] She translates the clause in question as follows: "I do not have…I Shelamzion, daughter of Joseph Qebshan of Ein Gedi , with you. Eleazar son of Hananiah who had been the husband before this time, that this is from me to you a bill of divorce and release. I do not have with you…"[38] Moreover, the structure of the deed has many parallels to the Masada *get*, with the exception of the clauses that detail the husband's financial obligations towards his ex-wife—obligations that a wife does not have to her husband (P. Murabba'at 20).[39] The strongest argument advanced by scholars who maintain that the deed is a divorce bill sent from a woman to a man is based on historical precedent. Indeed, both Instone-Brewer and Ilan present convincing evidence of Jewish women's right to initiate divorce in antiquity.[40]

Regardless of the Nahal Hever papyrus' proper identification, that is, whether the deed is a receipt for the payment of the divorce settlement or a *get* sent from a woman to a man, the document can be used to support the case for diversity in Jewish marital practices in antiquity. If the papyrus is a *get*, then the "traditional" divorce bill from Masada and the "atypical" Nahal Hever one are excellent examples of legal diversity, since they show two very different possibilities for divorce from a circumscribed

[36] Schremer, "A Reply," 201-202.
[37] Ilan, "Notes and Observations," 198.
[38] *Ibid.*, 199.
[39] *Ibid.*, 202.
[40] *Ibid.*, 201-202.

geographic area and a relatively contemporaneous period of time. Even if the deed from Nahal Hever is a quittance, we still can still argue for diversity, since this one community used a sort of document not attested to elsewhere to finalize the terms of divorce.

While the documents related to divorce from the Judean Desert hint at diversity in Jewish marital practices, they do not present a perfect case for this diversity. Stronger proof for variety in marital practices would come from deeds that are geographically and chronologically even closer than the Masada and Nahal Hever documents. Indeed, writs from the same site and within the same family would provide the best proof of diversity in Jewish marital practices and procedures. Fortunately, close study of the papyri from Babatha's family archive found at Nahal Hever provides just such an example.

3.2.3 Marriage in Babatha's Family

Among other documents, a personal archive found in the Cave of Letters in the Nahal Hever area near the shores of the Dead Sea contains two marriage contracts belonging to members of the same family. The older of the two marriage contracts belonged to a woman named Babatha and stipulated the terms of her polygynous marriage to Judah son of Elazar; he was concurrently married to a woman named Miriam (P. Yadin 10, 26).[41] The contract, written in Aramaic, is widely identified as having features common to "Jewish" marriage deeds, including: choice of language, viewpoint (it is written from the perspective of the groom and is addressed to the bride), and requirements (the writ lists Exod 21's obligations of marriage, namely, food, clothing,

[41] Yigael Yadin et. al., eds., *The Documents from the Bar Kokhba Period in the Cave of Letters: Hebrew, Aramaic and Nabatean-Aramaic Papyri* (Jerusalem: Israel Exploration Society), 118-141 and Friedman, "Babatha's *Ketubah*," 61.

and sexual rights (לחמך וכוסותך ופרשך) [P. Yadin 10, line 7]).[42] More telling yet, the contract explicitly states that the marriage was consecrated according "to the laws of Moses and the Judeans" (כדין מושה ויהודאי).[43] Given the deed's close correspondence to the forms expressed in later rabbinic literature, it is widely identified as a *ketubah* in the scholarly literature.[44]

The second marriage document found in Babatha's archive belonged to her stepdaughter, Shelamzion (P. Yadin 18).[45] Dated a mere four years after Babatha's contract, Shelamzion's marriage deed differs a good deal from the one used for Babatha's marriage. Most significantly, Shelamzion's marriage contract was for a monogamous union. Shelamzion's document stipulating the terms of her marriage to Judah also was written in Greek and from the perspective of the groom to the bride's father.[46] Perhaps even more significant is that the phrase "in accordance with Greek custom and Greek manner" (νόμω ἑλληνικῶ καί ἑλληνικῶ τρόπω) appears in lieu of the statement declaring that the marriage was consecrated according to "the laws of Moses and the Judeans" (כדין מושה ויהודאי). Given the above, a number of scholars identify Shelamzion's marriage writ

[42] The use of "פרש" as a euphemism for marital relations is found also in *Ruth Rabbah* 3:9, the *Mekilta de-Rabbi Yishmael* and *b. Kid.* 18b in the Babyloinian Talmud (see Friedman, "Babatha's *Ketubah*," 64, 67-68). The version of this phrase used in the later rabbinic formulations of the *ketuba* is: ועלי מזוניכי וכסוותיכי וספוקיכי ומעל עליכי כאוררח כל ארעא

[43] *Ibid.*, 128 and Friedman, "Babatha's *Ketubba*," esp. 69. The standard phrasing of this clause in rabbinic literature and the Cairo geniza documents is "כדת משה ויהודאי." A variation of this phrase is recorded in Tobit as well. Tobit 7:12 reads: "κατὰ τὴν κρίσιν τῆς βίβλου Μωυσέως" or "take her to be your wife in accordance with the law and decree written in the book of Moses."

[44] Yadin, *Documents from the Bar Kokhba Period: Greek Papyri*, 118-141, esp. 119 and Friedman, "Babatha's *Ketubba*," 69. The word *ketubah* also appears in the deed (line 5: ובכתבתך).

[45] Lewis, *Documents from the Bar Kokhba Period*, 76-82.

[46] Some Jewish marriage documents were written from the perspective of the bride's father to the groom as well. For example, the deed described in Tob 7:11-13 is written from the perspective of the bride's father, which agrees with the Mishnah's view that this is the proper protocol in the event of the marriage of a minor (*m. Yev.* 13.2 and *m. Ket.* 4.2). The Elephantine contracts are also written from the perspective of the bride's father and addressed to the groom (P. Cowley 8, 15; P. Kraeling 2, 7).

as a gentile document, as opposed to her stepmother's Jewish deed and would not consider this deed as an example of diverse *Jewish* practices.[47]

Scholars have generally responded in two ways to the fact that Shelamzion's deed does not conform to preconceived notions of what a "Jewish" contract should look like. Some would brand her marriage document as representing the whims of a highly assimilated Jewess.[48] Others would account for the document's "aberrant" legal form by claiming that she was forced to adopt Greek elements in her marriage contract by the non-Jewish officials who controlled the Judean Desert.[49] The evidence from the larger history of Jewish marital practices and the Judean Desert, however, do not support either of these explanations of the nature of Shelamzion's document.[50]

If the widely held view that the documents from the Judean Desert belonged to zealous supporters of Bar Kokhba is correct, then Shelamzion cannot have been running away from her connections to Judaism in favor of the charms of Hellenism.[51] Indeed, scholarly consensus is that the Jews of Nahal Hever were not highly assimilated.[52] For example, none of the Judean Desert documents were written on Shabbat in accord with the prohibition of conducting business on the seventh day.[53] Moreover, the Jews of the Judean Desert, including Shelamzion's family, appear to observe Jewish inheritance

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[47] Adi Wasserstein, "A Marriage Contract from the Province of Arabia Nova: Notes on Papyrus Yadin 18," *JQR* 80 (1989): 90-130, esp. 108-113 and Yadin, *Hebrew, Aramaic and Nabatean-Aramaic Papyri,"* 118, 120, and 141.
[48] Llewelyn, "A Jewish Deed ," 97.
[49] *Ibid.*, 97.
[50] See Goodman's conclusion about the heterogeneity of Jewish life in the Judaean Desert: Martin Goodman, review of Orah Buck, *Babatha's Story*, *JRS* 81 (1991): 169-175.
[51] Adam Porter, "Babatha's Family and Historical Reconstruction of the Jewish Community of Arabia" (paper presented at the annual meeting of the SBL/AAR, Denver, November, 2001) and Cotton, "The Rabbis," 173.
[52] Schäfer, *Bar Kokhba Revolt*, 21; Cotton, "Nabatean Participation," 134-135; and Cotton, *Aramaic, Hebrew, and Greek*, 235.
[53] Cotton, "The Bar Kokhba Revolt," 134-135.

structures.[54] That is, the documents make provisions for biblical inheritance guidelines, which only allow women to serve as heirs in the event that they have no living brothers (Deut 21:15-17; Num 27:1-11; 36:1-13). Consequently, both Babatha's and Shelamzion's fathers gifted much of their property to their daughters shortly before their deaths to compensate for the fact that they were ineligible to inherit from them after they died (P. Yadin 7, 19).[55] The fact that Babatha enters into a polygynous marriage with Judah in contravention of Roman norms and law likewise reveals that the Judean Desert Jews were not under any compulsion, whether legal or social, to adopt Roman ways (P. Yadin 26). A final indication that the Judean Desert Jews were not highly assimilated comes from language. Although some of the Judean Desert papyri are written in Greek, the Jewish witnesses to the deeds sign in Aramaic suggesting that they had limited knowledge of Greek.[56] Indeed, even the summary section of Shelamzion's Greek marriage contract is in Aramaic.[57]

The argument that Shelamzion was forced to use a Greek legal instrument in contracting her marriage also carries no weight since there does not appear to be any consistency of legal practice in the papyri that make up the collection. For example, the documents were written in a number of different languages and exhibit diverse legal formulae, including those common among Jews, Romans, and Nabateans.[58] Sometimes the documents might even reflect a combination of different customs. For example,

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[54] Kraemer, "Typical and Atypical," 138.
[55] The Elephantine community appear to have followed Jewish inheritance laws (Bleiberg, *Jewish Life in Ancient Egypt*, 16, 34, 36) as do the Herodians in large measure (Hanson, "Economics," 19-20).
[56] Horsley, *New Documents Illustrating*, 96 and Llewelyn, "A Jewish Deed," 96. Moreover, some of the documents in use by Jews were written in very poor Greek (Cotton, "The Rabbis and the Documents," 170).
[57] *Ibid.*, 95-96
[58] This language issue is not a problem for establishing the validity of Shelamzion's contract in a Jewish context. The later rabbis, at least, accept the validity of documents written in languages other than Hebrew and Aramaic (*m. Git.* 9.8).

Shelamzion's own deed contains a legal phrase of unknown provenance. The phrase νόμω ἑλληνικῶ καί ἑλληνικῶ τρόπω is not attested in any of the other papyri from the Roman Near East or Egypt.[59] With the exception of the preference for Hebrew texts during the Bar Kokhba Revolt itself, there is no clear pattern to the choice of language and legal forms that the various papyri exhibit.[60] Indeed, Shelamzion's father, who used an Aramaic writ in the establishment of his own marriage, uses a Greek document to record his deeding of property to his daughter (P. Yadin 19). Consequently, it is unlikely that Shelamzion and Judah were compelled to use a Greek document to establish their marriage.

The most significant challenge to the position that Shelamzion's marriage deed cannot be used to prove the diversity of Jewish marital practices in antiquity is based on the paucity of biblical guidelines about the marriage document's content. Indeed, although the use of marriage contracts in and of itself does not distinguish the Jews from many of their gentile neighbors, the Jewish use of this contract has unique roots, that is, it is partially based on biblical texts (Mal 2:14; Prov 2:17; Ezek 16:8).[61] While biblical texts assume the usage of marriage writs, they never articulate a set form for the deed nor explain the writ's function. Lacking clear guidelines for the text and purpose of such a deed, those who held these biblical texts to be authoritative would have to determine how

[59] Cotton, *Aramaic, Hebrew, and Greek Documentary Texts*, 235.
[60] The only statement that we can make about the languages of the Judean Desert papyri is that during the time of the Bar Kokhba revolt itself (though not the years leading up to it) Hebrew seems to have been the preferred language (Schäfer, *Bar Kokhba Revolt*, 20). To be fair, many different theories have arisen to explain the diverse languages and legal forms used in the documents from the Judean Desert, none of which has yet to achieve dominance (Marks, *Jewish Weddings*, 102-103). Miriam Peskowitz attributes Shelamzion's choice of a Greek contract to her desire to ensure the maintenance of daughters resulting from her marriage, a right not granted outright by biblical or rabbinic law (Miriam B. Peskowitz, *Spinning Fantasies: Rabbis, Gender, and History* [Berkeley: University of California Press, 1997], 127-128). Others, such as Cotton, understand the documents to reflect the practices of the local district court at the time (Cotton, *Aramaic, Hebrew, and Greek Texts*, 153).
[61] Instone-Brewer, *Divorce and Remarriage*, 8, 12-14, and 18-19.

such a document should look. Given the above, we would expect marriage contracts to develop in diverse ways, which they do; this is especially true for the contracts of Babatha and Shelamzion since the prophetic texts, from which the majority of the biblical references to the marriage contract derive, were likely not yet authoritative. Although the extent of the differences between Babatha's and Shelamzion's marriage documents might be unexpected given that they both belong to the same family, the diversity itself is not surprising.

Temporarily abandoning our narrow focus on the marriage documents from the Babatha archive, let us consider the entire collection of marriage writs from the Judean Desert. Even texts written in the same language, that is, the Aramaic *or* the Greek deeds, exhibit considerable variation. For example, even though the Aramaic documents exhibit many similarities, the ordering of clauses as well as the inclusion and exclusion of certain stipulations vary.[62] For instance, the placement of the clause stipulating what should happen in the event that the wife predeceases the husband differs a great deal.[63] The Greek writs likewise exhibit variation. Two of the Greek marriage documents, namely P. Murabba'at 115 and 116, contain financial clauses analogous to those found in the Aramaic contracts and codified in the later Mishnah. That is, they stipulate that sons were to inherit their mother's dowry and daughters were to be maintained from the estate (P. Murabba'at 115, 116; *m. Ket.* 4.10-11).[64] Two of the other Greek marriage contracts, however, omit these clauses altogether (P. Yadin 18; P. Hev/Se 65).

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[62] Cotton, "The Rabbis and the Documents," 173-177.
[63] *Ibid.*, 175-176.
[64] Hayim Lapin, "Maintenance of Wives and Children in Early Rabbinic and Documentary Texts from Roman Palestine," in *Rabbinic Law in Its Roman and Near Eastern Context* (ed. Catherine Hezser; Tübingen: Mohr [Siebeck], 2003), 177-198, esp. 198 and Cotton, *Aramaic, Hebrew, and Greek*, 271.

What these many variations in documents suggest in turn is that the text of the marriage writ was not standardized by the early second century.[65] Indeed, the biblical reticence on the topic combined with the fact that there does not seem to have been any halakhic sanction for a Jewish instrument of marriage until the time of the Mishnah, means that the Judean Desert Jews likely lacked an authoritative model for the text of this type of contract.[66] Consequently, the widely held view that Babatha's marriage writ is a *ketubah* and Shelamzion's writ is a gentile deed that was unacceptable for committed Jews is fallacious.[67] Indeed, there is no indication that Babatha was obliged to formulate her marriage document in the way that she did, nor is there any indication that an alternate formulation of the deed would have necessarily implied something negative about one's connection to the Jewish tradition.

Later evidence, such as the Mishnah, codified less than one hundred years after the writing of the Judean Desert papyri, can also be used in support of the argument that the two very different marriage deeds used by Babatha and Shelamzion are not necessarily determinative of their identity. Indeed, the Mishnah seems to downgrade the importance of the contents of the marriage deed altogether. For example, on multiple occasions the Mishnah rules that the text of the marriage writ does not determine the scope of marital obligations enjoined upon the husband and wife (*m. Ket.* 4.7-12; 9.1 also 5.4-5.9). Consequently, the Mishnah does not require that contracts specify the standard obligations of marriage (*m. Ket.* 4.7-12). On the contrary, the rabbis understood that

[65] *Ibid.*, 173-177.
[66] Even the Mishnah does not relate a standard text for the *ketubah.* Instead, the Mishnah refers to stipulations that generally appear in marriage contracts in an incidental way. Thus, we can derive that marriage deeds sometimes cite the amount of money that a husband has to pay his wife in the event of divorce (*m. Ket.* 1.2-3; 5.1), includes inheritance provisions (*m. Ket.* 4.10-12), and requires a husband to provide for his wife's material needs (*m. Ket.* 4.1) Also, see Yadin, *The Greek Papyri,* 274.
[67] Yadin, *Greek Papyri,* 118-141, esp. 119 and Friedman, "Babatha's *Ketubba*," 69. The word *ketubah* also appears in the deed (line 5: ובכתבתך).

marriage entailed certain obligations, whether these obligations were recorded in a written deed or not. For example, the rabbis enjoin a husband to redeem his wife from captivity (*m. Git.* 4.8) and to pay for her medical care should she become sick (*m. Git.* 4.9), whether these stipulations were recorded in the marriage deed or not. Similarly, male children were to inherit their mother's *ketubah* (*m. Git.* 4.10), female children were to be maintained until marriage (*m. Git.* 4.11), and the wife, if widowed, was permitted to remain in her husband's house (*m. Git.* 4.12), whether the marriage contract listed these obligations or not.

The fact that the Mishnah obligates a husband (and wife) to fulfill what it considers to be obligations of marriage, whether they are documented in a writ or not, calls into question the importance of the marriage contract. Another Mishnah provides an even clearer attack on the significance of the marriage writ. *Ketuboth* 4:7 reads: "*If the husband had not written out a Ketubah* for his wife, she may still claim 200 *denars* if she was a virgin [at marriage] or one *mina* if she was a widow, since that is a condition enjoined by the court" (Danby; emphasis mine). In this mishnah, the rabbis indicate both that a written deed was not essential to the establishment of a lawful union and that even in the absence of such a writ altogether, the normal requirements for marriage to remain in force. Given the above, we learn that the actual text of the marriage document did not necessarily have any correlation to the obligations that marriage enjoined upon husband and wife—a marriage of two Jews may have automatically obligated one to these stipulations.

If the marriage document did not relate the specific terms of individual marriages, what was the deed's purpose? A number of factors come together to suggest that the function of the writ was to regulate the financial aspects of marriage.[68] For example, a significant portion of the mishnaic discussion of marriage contracts concerns the financial regulations of marriage, that is, the amount of the *ketubah* (or the fee paid in the event of divorce or a wife's death) and a valuation of the dowry and confirmation of its receipt by the groom (*m. Ket.* 1.2-5; 2.1; 3.2-5.1; 5.1; 6.3-7; 9.1, 8-9; 10:1-12.4).[69] Moreover, all of the marriage contracts from the Judean Desert record the contents of the dowry and its receipt by the groom as do all the Greek marriage contracts from Egypt.[70] The centrality of the documentation of these financial terms is further supported by the fact that a number of the extant papyri, both from Elephantine and the Judean Desert, indicate that the signing of a *ketubah* did not always initiate a new marriage; on the contrary, at times the unions had already been formed and the impetus behind the writing of the deed was the transformation of unwritten marriages into written ones (P. Murabba'at 65).[71] For example, the occasion of the issuance of P. Murabba'at 115 in 131 C.E. was Yeshua son of Menahem's receipt of dowry from his wife Salome Komaise, thereby transforming their unwritten marriage to a written one.[72] The critical clauses read:

> Yeshu'a son of Menahem….agreed with Sal]ome also called K[omaise, daughter of Levi], his wife, who is from Mahoza [that they continue] life together…as before this time…, [and that he owes?] the above-mentioned Komaise, as her dowry, ninety-six denarii of silver. (Yadin) [73]

[68] Satlow, *Jewish Marriage*, 84.
[69] Yadin, *The Greek Papyri*, 226 and 229.
[70] *Ibid.*, 267.
[71] Ibid., 229 and Bleiberg, *Jewish Life in Ancient Egypt*, 26.
[72] Yadin, *The Greek Papyri*, 266.
[73] *Ibid*., 232.

Similarly, at least one of the marriage deeds from Elephantine marks the transformation of an unwritten marriage to a written one, with the payment of the marriage fee and dowry—often closely following the birth of a first child (P. Kraeling 2).

The importance of recording these monetary valuations is understandable since the amount of the marriage fee and dowry generally varied from union to union and the bride's family was interested in protecting its financial interests in the marriage. For example, while the later rabbis set minimums for the amount of the *ketubah* payment, they did not set the maximums (*m. Ket.* 1.2, 5.1). Consequently, there was no rule for determining the amount of the *ketubah.* Among the Judean Desert marriage writs, the amount of the *ketubah* varies between 300 and 400 *denarii* (P. Yadin 18, 10). Dowry amounts vary even more, from a low of 96 (P. XHev/Se 65) to a high of 500 *denarii* (P. XHev/Se 69).[74]

A final piece of evidence that suggests that financial regulation was the chief function of marriage deeds derives from a cross-cultural comparison. The Romans did not require a written deed to establish the validity of marriages.[75] On the contrary, the free consent of both parties (and their families) was sufficient to form lawful unions (*Digest* 23.1.7.1; 23.2.2; 23.1.11-13; 23.2.21-22).[76] That said, often Romans did draw up legal deeds upon marriage. These contracts only documented the valuation of the dowry to protect the assets of the wife's family should the union end in divorce; they did not affect the legality of the marriages themselves.[77]

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[74] The later rabbis, by contrast, set the minimum as 200 *denari* for a virgin and 1 *mina* for a widow (*m. Ket.* 1.2; 5.1).
[75] Harlow, *Growing Up,* 60, 63 and Grubbs, *Women in the Law,* 82.
[76] *Ibid.*, 83.
[77] Yadin, *The Greek Papyri,* 226. In addition to the Romans, many societies of the Ancient Near East also wrote marriage contracts to record the amount of the payments between the families of the bride and groom (Instone-Brewer, *Divorce and Remarriage,* 7-8)

Because there was no standard formulation for the marriage deed in the early second century and the later sources contend that the content of the writ was not necessarily determinative of the nature of the marriage described in it, there may be grounds for viewing both Babatha and Shelamzion's deeds as examples of diverse Jewish marriage practices. This is particularly true, since overtime the *ketubah's* function became so attenuated that it is not clear that observant Jews would have considered the signing of such a document as important. Moreover, given the Bible's reticence on the topic, there is no indication that the writing of such a deed was compulsory in Roman Palestine. Lastly, because contemporary Roman practice and the Mishnah hint that financial regulation was the chief purpose of the *ketubah,* Shelamzion's Greek document would have fulfilled that requirement every bit as well as Babatha's Aramaic writ.

The careful preservation of both Babatha's and Shelamzion's marriage deeds, which were found bundled together with other legal documents of concern to the family, speaks to the fact that both manifestations of the marriage contract were considered to be legally binding among the Jews who left the documents behind. If one accepts the arguments outlined above, what one finds in the papyri from the Judean Desert is that a variety of approaches to the legal formulation of marriage were in use concurrently at a single site—indeed, within a single Jewish family—in the early second-century. The acceptability of both documents in turn once again hints at the diversity of Judaism in Roman Palestine. This is particularly true since all indications suggest that the Jews of the Judean Desert were not highly assimilated.

3.3 Common Judaism

While it is certain that Judaism in the late Second Temple era was far from monolithic, that diversity must be placed within its proper perspective. Indeed, although Second Temple Judaism was varied and boasted many different parties, one must bear in mind that nearly all the texts from antiquity suggest that the members of these competing sects did not make up the majority of Jews. For example, Josephus writes that there were some three million Jews celebrating Passover at the Temple in the year 65 C.E. (Josephus, *War* 2.280; 6.400-427).[78] Yet in his estimate of the number of adherents of the various sects, Josephus cites the numbers of 6,000 and 4,000 respectively for the Pharisees and Essenes' membership (Josephus, *Ant.* 13.298; 17.42; 18:20).[79] It is certain that the sects had some influence beyond their official members. Indeed, it is easy to imagine that some Jews might have looked to the various parties for inspiration or guidance while not joining or favoring one group over another. Many texts suggest that the masses learned from and admired the Pharisees' facility with scripture, while the zealousness of the Dead Sea Sect and the Theraputae in carrying out the divine will may have inspired ordinary Jews just as they did Josephus and Philo (Philo, *Good Person* 91; *Hypothetica* 11.1, esp. 11.18; Josephus, *Ant.* 13.14-15, 20; Matt 23:1-3). None of this, however, takes away from the fact that most Jews were not members of a particular sect.

[78] Both Philo and the *Letter of Aristeas* refer to the masses that made pilgrimage to Jerusalem (Philo, *Spec.* 1.69; *Let. Aris.* 88).

[79] While no one argues that Josephus provides an exact count for the membership of the various parties, all agree that his numbers demonstrate that most Jews did not belong to a sect. Many agree that the numbers of adherents he attributes to the various sects give us insight into the proportion of members of the various sects. That is to say, the Pharisees were the largest of the three major sects followed by the Essenes, whereas the Sadducees were comparatively few in number (Sanders, *Practice and Belief*, 11, 181). The largest subdivision within Second Temple Judaism was not a sect united by a shared philosophy or approach to practice, but rather the members of the hereditary priesthood, which as been estimated at 18,000-20,000 (*Ibid.*, 181).

Jews, who were unaffiliated with any of the sects, and even those who did choose to cast their lot among the Pharisees or Sadducees for example, seem to have understood that the diversity that was the spirit of the times had its limits, or perhaps better, existed within a framework.[80] In fact, it may be that this diversity gained acceptance precisely because those who formed these diverse opinions had already asserted their willingness to stand unified on a number of key factors, such as adherence to certain traditional beliefs and customs. This made the sect members at once distinct from and similar to Jews who opted to forgo sect affiliation.

Ed P. Sanders coined the term "common Judaism" in his book *Judaism: Practice and Belief;* but the ideas that stand behind his term already existed, albeit less influentially.[81] The uniqueness of Sanders' work was that he was the first person to take so seriously the challenge of defining "common Judaism." After the publication of his monograph, academics more frequently stressed the existence of a series of practices and theoretical concepts that were shared across Jewish antiquity and thereby bound together

[80] The Qumran covenantors may at first appear to be an exception to this rule, since they considered only themselves to be the true Israel, that is, rightful Jews; all other Jews were heretics (E. Meyers, "Jewish Culture," 151). Nonetheless, it is important to note that the Qumran group's willingness to dismiss other Jews was not as thorough as some might suggest. In fact, both Josephus and the Dead Sea Scrolls witness that the Qumran covenanters sent first fruits to the Temple in accordance with biblical teachings (Josephus, *Ant.* 18.19; CD 6.20). Sanders also argues that the demarcation between the Qumran group and other Jews was not so clear cut. Indeed, the covenanters sometime refer to the Jews who were not members of their sect as the "wicked of Israel" (4QpPs37 3.12) and recognize the possibility that the wicked might join their group and become among the elect. Indeed, their vision of the end of time included the adoption of the sects' special practices by all Jews and emphasizes that gentiles, not other Jews, are the true enemy of Israel (Sanders, *Paul and Palestinian Judaism,* 242-257, esp. 247).

[81] Sanders' teacher Morton Smith uses the term "normative Judaism," which he describes as those practices that the Bible and ordinary people and priests agreed on (Sanders, "Comparing Judaism," 23). Earlier studies attempting to define rabbinic theology were published both by George Foote Moore, who is often associated with the term "normative Judaism," and Ephraim E. Urbach. See also George Foote Moore, *Judaism in the First Centuries of the Christian Era: The Age of the Tannaim* (Cambridge: Harvard University Press, 1927) and Ephraim E. Urbach, *The Sages: Their Concepts and Beliefs* (trans. I. Abraham; Cambridge, Mass.: Harvard University Press, 1987).

Jews of diverse ethnic, cultural, ideological, and geographic origins.[82] For example, John Barclay notes that Jewish communities survived "as coherent and enduring entities" and identifies those practices and concepts that diverse Jewish communities would have agreed on.[83] The argument advanced both by Sanders and Barclay is important since it gives the reader a compelling explanation for the feeling of solidarity manifest across the ancient Jewish world, irrespective of sect membership. One would not necessarily note this common feeling if one were to pursue study of the sects outside of their larger context.[84]

There are many hints in Second Temple and rabbinic literature that Jews manifested a spirit of unity that transcended sect membership, class, and cultural leanings. For example, Josephus and Philo describe incidents in which Diaspora Jews came to the aid of Jews in the land of Israel and vice versa (Josephus, *Ant.* 18.261-302; Philo, *Embassy*). The pilgrimages described by both Josephus and Philo as unifying events which helped to strengthen relationships between Jews from distant communities (Philo, *Embassy* 156; *Spec.* 1.69; *m. Hag.* 1:1; Josephus, *War* 2.280; 6.420-427; *Ant.* 17.313). The zeal to pay the temple tax revealed in Josephus' writings similarly suggests that ancient Jews were relatively united (Philo, *Spec. Laws* 1.76, 1.141-4; *Embassy.* 156; Josephus, *Ant.* 18.312; Matt 17:24), as does the fact that Julius Caesar rewarded Jews

[82] For example, Meyers adopts Sanders' use of the term "common Judaism" to describe the shared elements of Jewish life in antiquity. He expands upon Sanders' list of the practices that were common across the Jewish world in antiquity by appealing to the archaeological evidence. In particular, Meyers offers a particularly strong argument for finding elements of common Judaism in burial practices. See Eric M. Meyers, "Common Judaism and the Common Judaism of Material Culture," in *Redefining First-Century Jewish and Christian Identities: Essays in Honor of Ed Parish Sanders* (Fabian E. Udoh et. al., eds; CJAS 16; Notre Dame, Ind.: University of Notre Dame Press, 2008), 153-174..

[83] Barclay, *Jews in the Mediterranean Diaspora*, 400-401 and 424.

[84] Sanders, like a number of other scholars, prefers the terms "parties" or "philosophies" over "sects." Because Sanders understands the term "sect" to refer to a group that believes it has the only correct practices and that all other groups are untrue, he does not think that the word "sect" is applicable to Second Temple Judaism. The notable exception to this rule is the Qumran group, as was mentioned above (Sanders, *Practice and Belief*, 13).

throughout his empire for the loyalty that a group of Jews from the land of Israel showed him (Josephus, *Ant.* 14.202-210).[85] Moreover, the fact that even the Dead Sea Sect, which was at odds with the Jewish leadership in Jerusalem, sent sacrifices to the Temple suggests that a framework of unity undergirded any movement towards separatism (Josephus, *Ant.* 18.19; CD 6.20).

In addition to hints of the existence of a common Judaism, on at least one occasion Josephus makes this point explicit. Despite the fact that Josephus is our main source for the sects, he describes something in *Apion* that sounds very much like Sanders' common Judaism. Although Josephus is likely exaggerating, given that the statement is apologetic in nature, I would argue that he must have believed the core of his statement in order for this to have been a compelling argument. Explaining how Judaism is much superior to the endlessly variegated Greco-Roman cults, Josephus writes:

> To this cause [the Jews' intimate knowledge of the Law] above all we owe our remarkable harmony. Unity and identity of religious belief, perfect uniformity in habits and customs, produce a very beautiful concord in human character. Among us alone will be heard no contradictory statements about God, such as are common among other nations…Among us alone will be seen no difference in the conduct of our lives. With us all act alike, all profess the same doctrine about God, one which is in harmony with our Law and affirms that all things are under His eye. (Josephus, *Ag. Ap.* 2:179-81 [Thackeray, LCL])

> Τοῦτο πρῶτον ἁπάντων τὴν θαυμαστὴν ὁμόνοιαν ἡμῖν ἐμπεποίηκεν τὸ γὰρ μίαν μὲν ἔχειν καὶ τὴν αὐτὴν δόξαν περὶ θεοῦ τῷ βίῳ δὲ καὶ τοῖς ἔθεσι μηδὲν ἀλλήλων διαφέρειν καλλίστην ἐν ἤθεσιν ἀνθρώπων συμφωνίαν ἀποτελεῖ παρ᾽ ἡμῖν γὰρ μόνοις οὔτε περὶ θεοῦ λόγους ἀκούσεταί τις ἀλλήλοις ὑπεναντίους ὁποῖα πολλὰ παρ᾽ ἑτέροις οὐχ ὑπὸ τῶν τυχόντων μόνον κατὰ τὸ προσπεσὸν ἑκάστῳ λέγεται πάθος ἀλλὰ καὶ παρά τισι τῶν φιλοσόφων ἀποτετόλμηται τῶν μὲν τὴν ὅλην τοῦ θεοῦ φύσιν ἀναιρεῖν τοῖς λόγοις ἐπικεχειρηκότων ἄλλων δὲ τὴν ὑπὲρ ἀνθρώπων αὐτὸν πρόνοιαν ἀφαιρουμένων οὔτ᾽ ἐν τοῖς ἐπιτηδεύμασι τῶν βίων ὄψεται διαφοράν ἀλλὰ κοινὰ μὲν ἔργα πάντων παρ᾽ ἡμῖν εἷς δὲ λόγος ὁ τῷ νόμῳ συμφωνῶν περὶ

[85] Sanders, *Practice and Belief*, 47

> θεοῦ πάντα λέγων ἐκεῖνον ἐφορᾶν καὶ μὴν περὶ τῶν κατὰ τὸν βίον ἐπιτηδευμάτων ὅτι δεῖ πάντα τἆλλα τέλος ἔχειν τὴν εὐσέβειαν.

Josephus never details what specific practices and beliefs he is referring to when he writes that Jews "all act alike and profess the same doctrine about God." Following Josephus' lead, Sanders seeks to remedy this deficiency by imagining those observances and doctrines that were common across the Second Temple world.[86] To begin, Sanders points to at least one shared concept across the ancient Jewish world about which there seems to have been little dispute—the divinely inspired nature of the Torah and the implication of this belief, namely, that the biblical teachings should be actualized (Josephus, *Ant.* 3.223; *Ag. Ap.* 2.82, 149, 176-178; Philo, *Embassy* 210-211; *Moses* 2.37-38; Aristob.**,** frag. 2).[87] For example, Josephus writes:

> Meanwhile Moses, no longer ascending Mount Sinai but entering into the tabernacle, was there diligently seeking instruction from God on duties to be done and on the compilation of law. Those laws, excellent beyond the standard of human wisdom, have, so it has come to pass, been in every age rigidly observed, because they are believed to be a gift of God, insomuch that neither in peace, through luxury, nor in war, under constraint, have Hebrews transgressed any one of them. (Josephus, *Ant.* 3.223 [Thackeray, LCL])

> Μωυσῆς δὲ οὐκέτ᾽ ἀναβαίνων ἐπὶ τὸ Σιναῖον ἀλλ᾽ εἰς τὴν σκηνὴν εἰσιὼν ἀνεμάνθανε παρὰ θεοῦ περί τε τῶν πρακτέων καὶ τῶν νόμων τῆς συντάξεως οὓς κρείττονας ἢ κατὰ σύνεσιν ἀνθρωπίνην ὄντας εἰς τὸν ἅπαντα βεβαίως αἰῶνα συνέβη φυλαχθῆναι δωρεὰν εἶναι δόξαντας τοῦ θεοῦ ὡς μήτ᾽ ἐν

[86] Martin Goodman has an easier time defining common Judaism since he believes that the Judaism that is reflected in rabbinic literature was just that. Goodman argues that the sects had their influence, but what is described in rabbinic literature are the practices that were common across Jewish antiquity; see Martin Goodman, *Judaism in the Roman World: Collected Essays* (AGJU 66; Leiden: Brill, 2007), 44.

[87] Also, see Barclay, *Jews in the Mediterranean Diaspora,* 425-426. By late Second Temple times, the known biblical corpus included the Torah, the prophetic books of the Bible and even a majority of the texts that would eventually comprise the writings section of the Bible. An exact date for the canonization of the Hebrew Bible has long eluded scholars. Among other complicating elements, the reality that the various texts comprising the Bible were recognized as authoritative in stages makes identifying a precise date for canonization difficult. In general, it is known that the authority of the five books of the Torah was recognized quite early. For more on the dating of the canonization of the various sections of the Hebrew Bible, see Leiman, *Canonization of Hebrew Scripture.*

εἰρήνῃ ὑπὸ τρυφῆς μήτ᾽ ἐν πολέμῳ κατ᾽ ἀνάγκην Ἑβραίους παραβῆναί τινα τῶν νόμων ἀλλὰ.

In addition to the statements from Second Temple writings cited above, many less explicit supports of this position are found in both ancient texts and archaeological finds evidencing the elevated status of the Torah, as well as the fact that Jews "*in general* and *as communities*" were observant of the Torah's decrees.[88] For example, Barclay views the Alexandrian annual celebration of the translation of the Torah into Greek as highlighting the authority of the Law in the North African Jewish community (Philo, *Moses* 2.41).[89] Likewise, the prominence of Torah niches in ancient synagogues evidences its unique status.[90] Barclay thinks that the depiction of a Torah scroll in the arch of Titus underscores the importance of the Torah to ancient Jews.[91] Lastly, the later rabbinic writings are even more emphatic on this point, when they rule that one could desecrate the Sabbath in order to save a Torah scroll from a fire (*m. Shabb.*16.1).

Many references in both Philo's and Josephus' writings suggest that the Jews were generally observant of the Torah's decrees. For example, the many exemptions to Roman laws granted to Jews to accommodate Sabbath observance and the sabbatical year, as well as the fact that many gentiles describe Jews by their observance, hints at widespread observance of the Law (Josephus, *Ag. Ap.* 1.42-43, 2.227-228, 232-235, 272-3; *War* 1.111-114; Philo, *Embassy* 31.210; Rom 9:30, 10:4).[92] Likewise, the fact that there are so few documented cases of Jews who severed their connection to Judaism of their own free will, the most prominent of those of being Tiberius Julius Alexander,

[88] Barclay, *Jews in the Mediterranean Diaspora,* 424-426, esp. 426.
[89] *Ibid.,* 424.
[90] *Ibid.,* 424-425.
[91] *Ibid.,* 425.
[92] Barclay, *Jews in the Mediterranean Diaspora,* 426.

Philo's nephew and the children of Herod's son, Archelaus, and his wife, Jotape, support this assertion about Jewish observance (Josephus, *Ant.* 18.141).[93] Thus, while not all Jews approached observance with equal zeal (for example Philo disparagingly refers to Jews who only attend synagogue on the high holy days), outright disregard for the commandments appears to have been rare.[94]

Sanders' understanding of common Judaism, in turn, is predicated on this very belief in the divine origins of the Torah and the consequence thereof, namely, that Jews largely sought to observe the commandments closely.[95] Having made the argument for the centrality of the Torah to Jews in antiquity, Sanders, like Josephus, divides up his description of common Judaism into the practices and beliefs that most Jews agreed upon. Sanders identifies commonalities in worship, observance of holy days, the food laws, a concern for the specifics of the charitable system, and ritual purity as central Jewish practices.[96] Under these headings would fall any number of other subcategories

[93] Josephus comments that Tiberius Julius Alexander "did not stand by the practices of his people" (Josephus, *Ant.* 20.100 [Feldman, LCL]. For more on Alexander's choice to leave Judaism see, Barclay, *Jews in the Mediterranean Diaspora*, 105-106. Describing the children of Alexander and Jotape, Josephus relates that they "abandoned from birth the observance of the ways of the Jewish land and ranged themselves with the Greek tradition" (Josephus, *Ant.* 18.141 [Feldman, LCL]).

[94] Barclay, in particular, is careful to note the various levels of assimilation found among Jews in the Greek Diaspora. His study groups Egyptian Jews and Jews outside of Egypt as exhibiting the following levels of assimilation: high, medium, low, and unknown (Barclay, *Jews in the Mediterranean Diaspora*, 103-124 and 320-333).

[95] Sanders, *Practice and Belief*, 20, 47, 144, 195, and 236 and Barclay**,** *Jews in the Mediterranean Diaspora,* 426.

[96] Barclay's list differs from Sanders. For example, he identifies an ethnic bond, that is, ancestry combined with cultural practices as connecting all Jews. He points to the following factors to support this argument: 1. ethnic terminology; 2. gentile perceptions of Jews as an ethnic group; 3. endogamy; and 4. education of children in the Jewish way of life (Barclay, *Jews in the Mediterranean Diaspora*, 405-413). He argues that local communities were bound by: 1. festivals and fasts ; 2. Shabbat gatherings; and 3. collection of the temple dues. These local bonds were supplemented by links to Jerusalem/land of Israel. For example, pilgrimage to the Temple as well as the offering and donations that Jews contributed towards its upkeep connected Diaspora Jews. Similarly, the interest of Diaspora Jews in the welfare of the land of Israel (Josephus, *Ant.* 17.300, 324-31) illustrates that connections to the homeland unified Jews from diverse communities (Barclay, *Jews in the Mediterranean Diaspora*, 413-424).

of Jewish observance, such as pilgrimage to the Temple and the recitation of the *Shema* prayer.

The beliefs are more difficult to define than the practices. Sanders includes the following beliefs as having been common across the ancient Jewish world: election, providence, creation as a divine act, sacrifice as a preferred system for communion with God, and divine judgment.[97] Though it is difficult to trace a common theology since nowhere is such a theology articulated, many of the passages in Second Temple writings suggest the universality of some of these concepts across the Jewish world.[98] For example, Sanders notes the centrality of the idea of election, that is, God's choosing the people of Israel for a unique role in history. Philo explicitly states that God chose Israel out of all of the peoples of the world (Philo, *Spec. Laws* 1.303). Sanders also interprets the references to covenants in the *Damascus Document* from Qumran as stressing the same points (*CD* 5.15; 6.19). Pseudo-Philo refers to God's glorification of "my people above all nations" (Pseudo-Philo, *Bibl. Antiq.* 11.1 [Harrington, OTP]). New Testament texts also refer to the election of a chosen people. For example, Rom 11:28 notes: "as regards election they are beloved, for the sake of their ancestors."

Although both Josephus and Sanders bifurcate their descriptions of common Judaism into practices and beliefs, it is conceivable that both belief and observance worked together to strengthen Jewish unity. One can imagine that at times common theology might have united Jews even when common practice did not. For example, disagreeing parties in a dispute over proper observance of the Law could step back and reflect upon the fact that as Jews they had both been created by the same God, who chose

[97] Sanders, *Practice and Belief*, 241-278.
[98] *Ibid.*, 263.

them to receive the Torah and observe its precepts. Thus, the contentiousness created by different interpretations of the Torah may have been mitigated by a theology emphasizing their common origins and duty to observe the Law. The rabbis in particular are emphatic on this point. The rabbinic corpus not only reports intense debates over the proper interpretation of the Torah, it also affirms the rabbis' right to disagree with each other on these issues. A mishnah in *Yevamot* makes this point clear: "If this is *Halakah* [which thou hast received] we receive it; but if it is but an inference [of thine own] a counter-inference may rebut it" (אם הלכה—נקבל, ואם לדין—יש תשובה) (*m. Yev*. 8.3). Despite the intensity of many of the rabbinic debates, the sages understood that these differences did not mitigate their shared obligation to study and observe Torah. Thus, they repeatedly stress the validity of legal decisions with which they disagreed, provided that the sages who advanced these competing interpretations were doing so "for the sake of heaven," a phrase that occurs six times in *Avot* alone (*m. Avot* 2.2, 17; 5.20,). These statements about unity were not merely theoretical ideals; rather they had practical application. Indeed, even the disciples from the two schools of interpretation most famous for their many points of disagreement did not let legal disputes override any sense of common purpose. On the contrary, the schools of Hillel and Shammai actualized their unity in the most intense of ways—they married into each other's families (*m. Yev*. 1.4). After relaying a series of disagreements about the ability of certain classes of people to form lawful unions with others (*m. Y*ev. 1.1-3), the Mishnah records:

> Notwithstanding that these forbid what the others permit, and these declare ineligible whom the others declare eligible, yet the [men of] the School of Shammai did not refrain from marrying women from [the families of] of the School of Hillel, nor the [men of] the School of Hillel from marrying women from [the families of] the School of Shammai. (*m. Yev.* 1.4; Danby)

Although this saying from *Yevamot* is an idealized one, the underlying idea that some Jews disagreed over proper legal interpretation yet respected that their opponents'opinions may have had some legitimacy, may have a kernel of historical truth.

3.4 Conclusion

Judaism in the late Second Temple period was at once deeply varied and profoundly unified. Provided one accepted the tenets of common Judaism, some references suggest there was a great deal of leeway in how one actualized one's Judaism. The many examples of social and ethnic unity across the Jewish world show this to be true. For instance, there are some indications that the extremist Qumran group and the more worldly Pharisees were united in their loyalty to Judaism and the Jewish people as evidenced by the fact that they were in regular communication with each other in hopes of influencing each others' behavior (*4QMMT;* CD 6.20; Josephus, *Ant.* 18.19). Likewise, the rabbis could set aside their disagreements and acknowledge their underlying unity (*m. Yev.* 1.4; 8.3). Even though Second Temple Judaism was highly diverse, it is clear that there were some limits on acceptable Jewish practices. For the further justification of this claim, we now turn to study of the Herodians, a family which has often been accused of adopting practices that fell outside of the purview of Jewish custom and law.

4. The Herodians and Jewish Diversity

Students of the Herodian family in general and of Herod the Great in particular often label the family members as lackluster Jews or even consider their Jewish piety feigned. Herod's patronage of pagan culture is viewed as being inconsistent with his Jewishness; and many find his true loyalties to lie with the Hellenistic, Greco-Roman world. Any connections to Judaism, on the other hand, are viewed as part of a calculated agenda to retain the throne of Judea. Some scholars, aware of where the Herodians stand *vis-à-vis* rabbinic law, have even adopted the drastic approach of declaring the Herodians to be gentiles. If the Herodians were not Jews, of course, then one does not need to account for their behaviors that seem suspect from the standpoint of Judaism.

4.1 The Herodians as "Half-Jews"?

The claim that the Herodians were not Jewish has some basis.[1] Indeed, both ancient and modern critics of the Herodians have raised suspicions about the family's true loyalties given their lineage and questionable behavior.[2] For example, Josephus relates that Herod the Great, the first Herodian regent, was often taunted by his contemporaries with the charge that he was a "half-Jew" (Josephus, *Ant.* 14.403).[3] Of

[1] The most comprehensive recent treatment of Herod's Jewishness was undertaken by Shaye Cohen (S. Cohen, *The Beginning of Jewishness*, 13-24). Daniel R. Schwartz's monograph on Herod's grandson, Agrippa I, offers another discussion of the Jewishness of the Herodian family (D. Schwartz, *Agrippa I*, 219-222). Both Cohen and Schwartz argue that the Jewishness of the Herodian family is certain. Cohen bases his claim of the family's Jewishness on an investigation of Roman era Jewish law and descriptions of the behavior of the various family members themselves. Schwartz's argument, in contrast, is restricted to Jewish law.

[2] See also Schwartz, *Agrippa I*, 219-222 and Baumgarten, "Exclusions From the Temple," 219-224.

[3] In *Antiquities* 14.403, Antigonus denies Herod's right to rule because he was "an Idumaean, that is, a half Jew." The impetus behind the charge was his family's Idumaen origins. Herod's mother's identity as a Nabatean princess, conversely, does not appear to have been an issue. Given Josephus' presentation of

Idumaean descent, Herod's family was among those forcibly converted to Judaism by the Hasmoneans after their conquest of Idumaea (Josephus, *Ant.* 14.8-10; 15.255). Moreover, the status of Herod's mother as an Arab further complicated Herod's identity (Josephus, *War* 1.181). Herod's atypical lineage combined with his patronage of pagan temples, statues, and other pagan accoutrements in the gentile areas of his realm did little to bolster his standing as a Jew among his peers (Josephus, *Ant.* 19.328-345).[4]

Modern scholars, such as those identified in chapter one, offer much harsher criticisms of the royal Jews than the Herodians' own contemporaries did (see section 1.1). Kokkinos, bothered by what he perceives as the family's lack of proper piety, stresses that the Herodians became Jews only by an accident of history, and that the resulting insincere conversion of the family meant that some members of the Herodian family "tipped one way and some the other" regarding their connection to Judaism.[5] That is, failing to reconcile the Herodians' behavior with his notions about Jewish practice in the late Second Temple period, Kokkinos questions whether the royals were Jews.[6] Other scholars, such as Schiffman and Baumgarten, offer arguments based on Jewish law, such as the fact that Herod's mother was a gentile, or cite the family's questionable

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Herod's background, it is suspected that the patrilineal principle continued to establish Jewishness in the first centuries B.C.E. and C.E. (Richardson, *King of the Jews*, 52-53 and D. Schwartz, *Agrippa I*, 221-222).

[4] Some would add as additional indications of the Herodian family's Hellenistic leanings their preference for Greco-Roman architecture, as is shown in the renovation and rebuilding of the Temple as well as the cities and monuments built by Herod. See Malina, *The New Testament World*, 150. This point is spurious as there is little in the way of *Jewish* building form/architecture or artistic tradition, with the exception of certain elements of synagogue, such as the בימה , and מקוה architecture, from which Herod could have drawn.

[5] Kokkinos, *Herodian Dynasty*, 360.

[6] Schiffman, *From Text to Tradition*, 144 and *Who was a Jew?*, 12-14. Few of Schiffman's contemporaries accept his view of the Herodians' identity. Among earlier studies of the Herodians, however, the view that they were gentiles was popularly held. For example, see Busch, *The Five Herods*, 17; Gross, *Herod the Great*, 107; Baumgarten, "Exclusions from the Temple," 219-225; and D. Schwartz, *Agrippa I*, 219-222.

motives for conversion and their post-conversion behavior, in support of their position that the Herodians were gentiles (Josephus, *Ant.* 14.121, 403; *Gerim* 1.7).[7]

Despite tainted lineage and questionable behavior, it seems clear that Herod thought of himself as a Jew.[8] Indeed, his strenuous efforts to refurbish the Temple, the absence of images in his building projects, the presence of ritual baths and possibly synagogues at all his palaces and his unofficial status as protector of downtrodden Jewish Diaspora communities worldwide all speak to his commitment to both Jewish practice and the Jewish people (Josephus, *Ant.* 15.380-425).[9] In addition to the circumstantial evidence of Herod's Jewishness, there is physical evidence; the wine amphorae found in his desert palace at Masada inscribed with "For King Herod the Jew" constitute definitive evidence that some considered Herod a Jew.[10] Further convincing proof of Herod's Jewish identity comes from the fact that the larger Jewish community was quick to point

[7] Schiffman, *Text to Tradition*, 140, 144; Baumgarten, "Exclusions From the Temple," 222, 224; and D. Schwartz, *Agrippa I*, 220, esp. 223-224.

[8] Goodman, "Identity and Authority in Ancient Judaism," *Jud* 39 (1990): 192-201; S. Cohen, *Beginnings*, 13-24; and Richardson, *King of the Jews*, 58-59 and 110.

[9] All agree that Herod had ritual baths built at all of his palaces; see, for example, E. Meyers, "Jewish Culture," 148. More contentious, however, is the debate over whether Herod himself built the synagogues found at his palaces or they were built by later inhabitants of the buildings (Sanders, *Practice and Belief*, 200-202). The case of the Temple building is more tenuous yet. The construction of the Temple required forced labor and massive taxes and clearly was motivated by Herod's need to enhance the reputation of the province of Judea. On the other hand, Herod's method of construction may indicate his concern for Jewish piety. For example, his insistence that only priests take part in the construction of the holiest portions of the Temple, which necessitated a first training the priests in the craft of stone masonry, demonstrates his respect for certain Jewish sensibilities.

[10] It is unknown who insisted that the wine amphorae be inscribed as they were. That is, did the wine merchants think it was important to identify Herod as a Jew or did Herod himself demanded this? The text of the amphora is a reconstruction based on thirteen different amphorae of Italian wines. No.805 is reconstructed here:

[C. Se[ntio Satur(nino) Co(n)s(ule)
Philo]nian(um) de L. Laen(ii fundo)
[Regi] Her(odi) Iudaic(o)

See Hannah M. Cotton and Joseph Geiger, *Masada II: Latin and Greek Documents* (Jerusalem: Israel Exploration Society, 1989), 140-177, esp. 150.

out that Herod was one of them when it was to their benefit.[11] For example, in an argument with gentiles over their right to live in the city, the Jews of Caesarea asserted their right to dwell in the city on the grounds that its founder, Herod, was a Jew (Josephus, *Ant.* 20.173).[12]

The Jewishness of the other Herodians is easily derived. Josephus' criticism of Salome for transgressing Jewish law in her divorce of Costobarus would not have been possible had Josephus not considered her a Jew (Josephus, *Ant.* 15.259-260).[13] In addition, Josephus accused other Herodians of "flouting the ancestral ways" when their actions did not agree with traditional Jewish norms. For example, Josephus chastised both Herodias and Drusilla for their failure to adhere to biblical laws binding only upon Jews. Herodias' particular offense was entering into marriage that Josephus considered incestuous according to his interpretation of Jewish biblical norms (Josephus, *Ant.* 18.136). Drusilla's marriage likewise sparked Josephus' ire. In her case it was the particular Jewish offense of marrying an outsider—a gentile—that was brought against her (Josephus, *Ant.* 20.141-143). Thus, although Herod specifically, and the Herodian family in general, might not always have acted in accord with Jewish teachings, they were Jews both by their own admission and in the eyes of some of their observers.

[11] Ilan understands the dispute over Herod's Judaism as being mainly political. She argues that Herod's political opponents contested his Jewish practice since they sought to delegitimize his rule (Ilan, "Intermarriage," 11).
[12] The saying attributed to Augustus that it was better to be Herod's pig than his son only makes sense if others considered him an observant Jew (Macrobius, *Sat.* 2.4.11 and Ilan, "Intermarriage," 14).
[13] Some of the actions and remarks cited in the previous paragraph about Herod's identification as a Jew could be read as his identification as a Judean instead. Josephus' critique of the Herodians' observance of Jewish law, however, only makes sense if Josephus considered them to be Jews.

4.2 The Herodians as Impious Jews

While dismissing the problematic tendencies of the Herodians by claiming that they were gentiles has not proved fruitful, a more restrained approach might have more merit. One might argue that while the Herodians were Jews, they were not pious Jews. Indeed, this has been the standard approach of scholars examining the behavior of the Herodians.

Josephus' writings provide much fodder for the view that the Herodians were impious Jews. Throughout his retelling of the history of the Herodian dynasty, Josephus interjects comments to the effect that various members of the royal family transgressed Jewish law or tradition. In a number of cases, the marital practices of the Herodians draw Josephus' scorn (Josephus, *Ant.* 15.259-260; 18.136; 20.141-143). Sometimes Josephus labeled the behavior of the Herodians towards other Jews as being in violation of Jewish law. For example, Herod is condemned for punishing Jewish thieves by selling them to gentiles, since Josephus thinks that Jewish law prohibits this type of sale (Josephus, *Ant*. 16.1-15).[14] Other acts deemed violations of Jewish law include Herod's installation of standards in a theater in Jerusalem and his placement of a golden eagle over an entryway to the Temple. Josephus describes both actions as violating the biblical prohibition on images (Josephus, *Ant.* 15.380-425). Herod's decision to put to death two of his sons and

[14] Rabbinic law prohibits the selling of Jewish slaves to gentiles (*Sifre* 118), although this is later evidence and we cannot be sure that the Herodians (of Josephus) would have known it. The biblical evidence is more ambiguous. Josephus' criticism of Herod's sale of the thieves is connected to his interpretation of Exod 21:2, which deals with the sale of a Hebrew slave. He does not link his position to Exod 22:1-2, which concerns punishment for theft. Moreover, Ilan notes that Herod may have been following Exod 22:2, which permits the sale of a thief if he does not have anything that can be sold to compensate the victim (Ilan, "Intermarriage," 14). She also notes that the Bible does not specify to where or to whom the slave could or could not be sold (Ilan, "Intermarriage," 14). Consequently, Ilan argues that the prohibition on selling Jews to gentiles was a minority position, perhaps a Pharisaic one (Ilan, "Intermarriage," 14).

his wife similarly causes one to question Herod's piety (Josephus, *Ant.* 15.231, 266-279; 17.151-167; *War* 1.551).[15]

Our reliance on Josephus as a source for the behavior of the Herodians, however, should give us pause before we accept his interpretation of the royal family's observance of Jewish tradition. Indeed, any appraisal of the Herodian family's commitment to Judaism offered by Josephus should be tempered by the fact that he is hardly sympathetic towards the royal family. On the contrary, Josephus' work exhibits a decidedly negative attitude towards the Herodians.[16] For example, see section 2.4 for a review of Josephus' depiction of the Herodians and how his own status as a Hasmonean descendant plays into his presentation of the royal Jews. Moreover, in assessing the Herodians' commitment to Jewish observance, it is important to define the yardstick that Josephus employed to measure their behavior.

4.3 Josephus and the Pharisees

Josephus is widely identified as a Pharisee in the secondary literature.[17] For example, all three of the previous studies of the Herodians marital practices stress Josephus' identification as a Pharisee in their explanations of the family's marital choices.[18] The two main arguments advanced in support of this identification are first, Josephus' declaration of membership in the Pharisaic party in his autobiography

[15] Herod's decisions to install a golden eagle in the Temple and standards in the theater, as well as his order to have his wife and sons killed, were not necessarily in conflict with Jewish law. The incidents of the golden eagle and the standards will be treated below. As for the execution of his family members, the pretext behind Mariamme's killing was that she had committed adultery; and death is the biblical punishment for sexual infidelity (Lev 20:1-16). Herod's sons, Aristobulus and Alexander, were executed for allegedly inciting rebellion against their father; the Bible at least theoretically allows fathers to execute their rebellious sons (Deut 21:18-21).
[16] Landau, *Out-Heroding*, 129, 181, 191, and 194.
[17] Mason, *Flavius Josephus*, 326; Ilan, "Intermarriage," 14; and Hanson, "Marriage and Divorce," 150.
[18] Ilan, "Intermarriage," 14; Hanson, "Marriage and Divorce," 150; and Hadas-Lebel, "Les mariages," 397.

(Josephus, *Life* 10-12) and second, the many overlaps between Josephus' legal and interpretative views with those recorded in the literature that has traditionally been ascribed to the Pharisees, namely, the rabbinic corpus.[19] Recently, however, a number of scholars have begun to contest these points, thereby weakening the once solid link between Josephus and the Pharisees.[20]

To begin with, there are questions about the accuracy of Josephus' self-report of his party loyalties.[21] That is, "Being now in my nineteenth year I began to govern my life by the rules of the Pharisees" (ἐννεακαιδέκατον δ᾽ ἔτος ἔχων ἠρξάμην τε πολιτεύεσθαι τῇ Φαρισαίων) (Josephus, *Life* 12 [Thackeray, LCL]). Some scholars have noted that other than Josephus' own declaration of membership in the Pharisaic party in *Life*, there is no indication that Josephus had a unique relationship to the Pharisees or any other party.[22] For example, while Josephus clearly admires the Pharisees' facility with scriptural interpretation, this does not necessarily indicate that he affiliated with the group, since most of the literature from the Second Temple period, whether friendly or hostile, recognizes the Pharisees' excellence in this area (Josephus, *War* 2.162-163; *Life* 191; Matt 23:1-3).[23] Moreover, his praise of the bravery of individual Pharisees who let nothing, including the threat of death, stand in the way of their principles also does not necessarily reveal his affiliation (Josephus, *Ant.* 14.172-176;

[19] Mason, *Flavius Josephus*, 330.
[20] *Ibid.*, 105.
[21] All agree that Josephus wants to be identified as a Pharisees, the debate concerns whether he actually was a Pharisee (Mason, *Flavius Josephus*, 330).
[22] *Ibid.*, 330, 340; Mason, *Book of Acts*, 161-162; and Attridge, *Biblical Interpretations*, 176-179.
[23] The Pharisees are repeatedly noted in connection with the ancestral laws (τὰ πάτρια νόμιμα), which they are said to interpret most accurately (μετὰ ἀκριβείας δοκοῦντες ἐξηγεῖσθαι τὰ νόμιμα) (Josephus, *War* 2.162).

15.367-370).[24] The main reason to question Josephus' affiliation with the Pharisees, however, is that his occasional praise of the group is tempered by his general ambivalence towards them.

Steve Mason and to a lesser extent Ed Sanders have noted Josephus' ambivalence, which at times borders on hostility, towards the Pharisees.[25] Mason, in particular, finds Josephus to be somewhat antagonistic towards the Pharisees in accord with his general disrespect for the "masses" as a whole.[26] For example, Mason views Josephus' report that the Pharisees wielded much influence over the decisions of Salome Alexandra and the women of the Herodian court as criticism of the Pharisees, not praise of the group (Josephus, *Ant.* 13.417; 17.41-43; *War* 1.110). Further support for the position that Josephus is somewhat ambivalent towards the Pharisees derives from Josephus' unbridled admiration of the Essenes in contrast to his more balanced appraisal of the Pharisees (Josephus, *War* 2.119-161; *Ant.* 18.18-22).[27]

Sanders' criticism of Josephus' connection to the Pharisees is more all-encompassing. He takes issue with the accuracy of Josephus' remarks about the Pharisees in addition to questioning the strength of Josephus' connection to the group. For example, Sanders notes the mismatch between Josephus' general statements about the Pharisees, namely, that they controlled everything, with the far more modest reality revealed in his history of late Second Temple Judea.[28] The disparities between Josephus' general statements about the Pharisees and social reality suggests that he had some

[24] Mason, *Flavius Josephus,* 340.
[25] *Ibid.,* 327, 340, 370-371, and 374-375; Mason, *Book of Acts,* 161; and Sanders, *Practice and Belief,* 410-412.
[26] Mason, *Flavius Josephus,* 375.
[27] Mason, *Book of Acts,* 162. Herod too appears to have admired the Pharisees (Sanders, *Practice and Belief,* 345-346).
[28] Sanders, *Practice and Belief,* 388-412.

interest in advancing the Pharisees' cause, which Sanders' identifies as Josephus' need to support the group because of their popularity both during and after the revolt against Rome, while at the same time freeing them from blame for the revolt.[29]

Noting the discrepancies detailed above, Mason returns to the statement that is at the root of Josephus' identification as a Pharisees, namely, his declaration of affiliation with the group.[30] He suggests that the language that has been traditionally understood as affirming Josephus' membership with the Pharisees is a misreading of the text.[31] Instead, Mason asserts that it is a statement announcing Josephus' entry into public life.[32] Accordingly, Mason translates *Life* 12 as follows: "Being now in my nineteenth year I began to involve myself in public life [πολιτεύεσθαι], deferring to the philosophical school of the Pharisees…" He argues that πολιτεύεσθαι, the middle passive of πολιτεύω, in Jewish and Christian literature often has the connotation of "to conduct one's (private) life" or "behave."[33] Moreover, in Greek literature this verb is related to the root πόλις, which connotes the right to live as a free citizen and to take part in government, i.e. to hold public office.[34] Furthermore, since all other fifteen occurrences of this verb in Josephus' writings relate to the ability of public figures to enact policy, Mason argues that Josephus' use of the term πόλις is a way for him to highlight the beginning of his public career and not a statement of his sect affiliation.[35] Similarly, Mason suggests that Josephus' reference to the Pharisees can be explained in connection to his entry to public life. Mason argues that Josephus' declaration is not an admission of

[29] *Ibid.*, 409-412.
[30] Mason, *Life*, 20.
[31] *Ibid.*, 20.
[32] *Ibid.*, 20.
[33] *Ibid.*, 20.
[34] *Ibid.*, 20.
[35] *Ibid.*, 20.

his membership in the Pharisaic sect; rather, he is stating that involvement in public life obliges him to defer to the Pharisaic point-of-view, given the group's popularity with the masses (Josephus, *Ant.* 18.17).[36]

Attacks on the veracity of the most important factor in Josephus' identification as a Pharisee, namely, his self-report of his affiliation with the group, is not the only piece of evidence that has led scholars to rethink his loyalties. The other factor that linked Josephus to the Pharisees, namely, traditional ideas about the authorship of rabbinic literature, is also in doubt.[37]

Historically, the Mishnah and other early rabbinic texts have been ascribed to the Pharisees.[38] A number of factors come together to support this position, four of which are identified below. First, some of the Pharisees named in Josephus and the New Testament appear in the rabbinic chain of transmission in *Avot* 1.[39] Second, some of Josephus' stories about the Pharisees reappear in the rabbinic literature as straight rabbinic history.[40] Third, beliefs and practices ascribed to the Pharisees in Josephus and the New Testament are shared by the rabbinic tradition.[41] Fourth, texts written later, that is, *Antiquities* and *Life,* are more pro-Pharisaic than the earlier materials, such as *War.*[42] Some scholars assume that these later texts praise the Pharisees more since they are aware of what happened at Yavneh, where the Pharisees achieved dominance.[43]

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[36] *Ibid.,* 21.
[37] Cohen summarizes the major scholarly positions on the connection of the Pharisees to the rabbis in a footnote in S. Cohen, "The Significance of Yavneh," n. 18.
[38] *Ibid.,* 27 and 36.
[39] *Ibid.,* 32 and 36 and Jacob Neusner, *The Mishnah: An Introduction* (Northvale, N.J.: Jason Aronson, 1989), 44.
[40] S. Cohen, "The Significance of Yavneh," 37.
[41] *Ibid.,* 37.
[42] *Ibid.,* 38. This is the most tendentious of the four main arguments for the connection between the Pharisees and the rabbis.
[43]Sanders, *Practice and Belief,* 410 and S. Cohen, "The Significance of Yavneh," 27-28 and 53.

A growing number of scholars, however, question the link between the Pharisees and rabbinic literature.[44] Scholars who oppose the traditional claim of Pharisaic authorship note that the corpus lacks any pronouncement of Pharisaic authorship.[45] No rabbi is ever refereed to as a Pharisee.[46] Moreover, references to the Pharisees are rare, and when they do appear, they are not distinctive from citations to the Sadducees, Essenes, or other groups.[47] Furthermore, while the rabbinic writings record a number of legal and philosophical positions associated with the Pharisees, they preserve many ideas that contradict known Pharisaic opinions as well.[48] Given the above, there are clear grounds for questioning Pharisaic authorship of the early rabbinic writings.[49]

Because Josephus' alleged association with the Pharisees is based on his self-report of affiliation with the group combined with the identification of the early rabbinic writings as Pharisaic in origin, and both of these connections are in some doubt, other explanations of Josephus' worldview will be explored.

4.3.1 Josephus and the Rabbis

Even though the authorship of the early rabbinic sources is a contentious subject, the often close relationship between Josephus' legal positions and the contents of early

[44] Even Neusner agrees that we should not necessary ascribe the entire Mishnah to the Pharisees (Neusner, *Mishnah*, 44).
[45] S. Cohen, "The Significance of Yavneh," 40.
[46] *Ibid.*, 39.
[47] *Ibid.*, 40.
[48] Mason, *Flavius Josephus*, 340 and S. Cohen, "The Significance of Yavneh," 39.
[49] Shaye Cohen adopts a slightly different approach. He accepts that most of the authors of the Mishnah were Pharisees, he just does not think that they authored the Mishnah with sectarian goals in mind. That is, they were not acting as Pharisees when they transcribed the Mishnah. Instead, the Pharisees, concerned with the future not with the past, gave up any claim to Pharisaic exclusivity for the sake of unity (S. Cohen, "The Significance of Yavneh," 27 and 50.

rabbinic literature is not in dispute.[50] While no comprehensive studies comparing Josephus' laws to those of rabbinic literature have been published to-date, studies of individual laws and sections of laws in Josephus' writing are available. Frequently, these studies have recognized the close correspondence of Josephus' presentation of the law to the Tannaitic corpus published a century after his death.[51] For example, Marcus Olitzki, one of the first to study this issue, finds no contradiction between Josephus and later normative *halakha.*[52] David Goldenberg agrees with Olitzki. In his study of a block of four laws in Josephus concerning lost objects and persons, Goldenberg found compelling points of contact in both vocabulary and the juxtaposition of the laws, between Josephus' works and the Tannaitic writings (Josephus, *Ant*. 4.274-276).[53] For instance, he finds that both Josephus and Tannaitic writings add details to their discussions of the laws that are missing in the biblical text and do not agree with the Septuagint.[54] Moreover, Goldenberg highlights the correlation between Josephus' and the rabbis' arrangement of the laws. For example, Josephus' discussion in *Ant.* 4.274-276 opens with a review of laws related to lost animals from Deut 22:1-3 and Exod 23:4 and continues with the laws that follow in the biblical text, namely, Deut 22:4 and Exod 23:5, which require a person to assist animals. Immediately following these laws, however, Josephus jumps to Deut 27:18 and Lev 19:14, which require a person to help a lost person find his way. Nothing about the content of the last set of laws would intrinsically connect them to the preceding two. That said, Josephus' arrangement does agree with the organization of the material in

[50] *Ibid.*, 38.
[51] Riskin, *Halakhah in Josephus*, 47 and David Goldenberg, "Halakha in Josephus and in Tannaitic Literature: A Comparative Study," *JQR* 67 (1976): 30-43, esp. 30.
[52] Marcus Olitzki, *Flavius Josephus und die Halakhah* (Berlin: Commissionsverlag, 1885).
[53] Goldenberg, "Halakha in Josephus," 30-33, 35, 37-39, 41, and esp. 43.
[54] *Ibid.*, 31.

another source, the Tannaitic corpus.[55] Goldenberg not only notes the strong similarities between the sources, including correspondences with vocabulary and the juxtaposition of laws, he also offers an explanation of why this is so. He suggests that these near correspondences might be explained by the existence of a written source of Jewish legal practices that was known to Josephus and later became part of the Tannaitic writings.[56]

While not willing to go as far as to suggest that Josephus had access to a written set of legal traditions that later became subsumed into the rabbinic corpus, Shlomo Riskin agrees that Josephus knew the views that were later recorded by the rabbis, which he argues were already in practice in his time.[57] More specifically, studying his references to the priestly code in *Apion* and *Life*, Riskin finds Josephus' views to be in agreement with the later rabbinic traditions although noting that his interpretations fall on the strict side of the spectrum.[58] For example, Riskin found that in nine cases Josephus restates biblical law, in another twelve he corroborates later standard rabbinic law, in at least twelve more cases his rulings are found in the rabbinic corpus but are not considered final and authoritative.[59] Conversely, Riskin only discovered one of Josephus' interpretations that directly contradicts extant rabbinic law. Josephus falsely declares that Jewish law prohibits the blaspheming of foreign gods (Josephus, *Ag. Ap.* 2.33-34).[60] However, given the apologetic thrust of *Apion,* Josephus' misrepresentation of Jewish law in this instance may have been intentional.

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[55] *Ibid.,* 37-39 and 43.
[56] *Ibid.,* 42.
[57] Steven Riskin, "The Halakhah in Josephus as Reflected in *Against Apion* and *The Life"* (M.A. Thesis, New York University, 1970), 8, 51-52. For example, Philo from the Greek speaking Diaspora also evidences close correspondences with Josephus' laws. Indeed, Belkin argues that Josephus' views in *Against Apion* are very close to those that Philo advances in his writings (Riskin, *Halakhah in Josephus,* 49).
[58] *Ibid.,* 8.
[59] *Ibid.,* 51.
[60] *Ibid.,* 51.

In addition to the close link between Josephus' interpretations and the rabbinic traditions discovered in the materials studied by Goldenberg and Riskin, that is the laws of escaped and injured animals, lost people, and the priestly code, Josephus' interpretations of biblical passages regarding marital practices also evidence this connection.

4.3.2 Josephus' Textual Interpretation and the Rabbis

Josephus liberally cites biblical texts in his writings. *Antiquities*, in particular, is rife with biblical quotations. Frequently, these quotations offer more than just a literal translation of the biblical text.[61] The connection between Josephus' interpretations and the later rabbinic writings is clear, since almost all of his interpretations are preserved in the later, rabbinic corpus, attributed to various first- and second-century sages,.[62]

Common to Jews in antiquity, both rabbinic and otherwise, are the outside traditions with which they understood the Torah.[63] The strength of these influences on Josephus is most evident in the fact that one is uncertain if Josephus himself is able to distinguish where the literal meaning of the text ends and interpretation takes over.[64] To illustrate the role of first-century Jewish interpretation in Josephus' writings, a few of the biblical passages dealing with divorce will be examined. Although the corpus of

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[61] Mason, *Flavius Josephus*, 330.
[62] Riskin, *The Halakhah in Josephus*, 8, 51 and Gedalyahu Alon, *Jews, Judaism, and the Classical World: Studies in Jewish History in the Times of the Second Temple and Talmud* (trans. Israel Abrahams; Jerusalem: Magnes, 1977), 31 and 90-91.
[63] Mason, *Life*, 17.
[64] Mason makes this same observation about Josephus' presentation of the laws of *Sukkot*, prayer, punishment by lashes, and sexual intercourse, among others (Josephus, *Ant.* 3:244, 386; 4:212, 238; *Ag. Ap.* 2:199 and Mason, *Flavius Josephus*, 98-100). Riskin finds Josephus to be a strict interpreter of the Oral Law, which he believes to have been in effect in Josephus' day given his intimate knowledge of its terms (Riskin, *Halakhah in Josephus*, 8). He also finds a clear strand of tradition linking the laws related by Josephus and the normative *halakhic* tradition (Riskin, *Halakhah in Josephus*, 51). Similarly, Hadas-Lebel believes that Josephus was well versed in the Pharisees' positions on *halakhah* (Hadas-Lebel, "Les mariages," 397).

passages concerning marital practices is limited, a number of Josephus' interpretations diverge from the literal meaning of the biblical text.

One particularly strong example of Josephus' inability (or unwillingness) to separate first-century Jewish interpretation from the biblical text itself is found in his review of the legislation regarding a newlywed woman whose husband wrongly accuses her of not being a virgin. The biblical text states that the husband must pay a fine and cannot divorce his wife. That is, "She shall remain his wife; he shall not be permitted to divorce her as long as he lives" וְלוֹ־תִהְיֶה לְאִשָּׁה לֹא־יוּכַל לְשַׁלְּחָהּ כָּל־יָמָיו (Deut 22:19b). Josephus' rendition of the same verse is, "If the damsel be then declared innocent, let her continue to live with her accuser, who shall have no right to dismiss her, *save only if she furnish him with grave and undeniable reasons for doing so*" (καὶ κριθεῖσα μὲν ἡ κόρη μὴ ἀδικεῖν συνοικείτω τῷ κατηγορήσαντι μηδεμίαν ἐξουσίαν ἔχοντος ἐκείνου ἀποπέμπεσθαι αὐτήν πλὴν εἰ μὴ μεγάλας αἰτίας αὐτῷ παράσχοι καὶ πρὸς ἃς οὐδ᾽ ἀντειπεῖν δυνηθείη) (Josephus, *Ant.* 4.247 [Thackeray, LCL]; emphasis mine). It is not as if Josephus' addition is unexpected. The right to divorce a woman for severe cause is easily arrived at by reading Deuteronomy 24:1-4 in light of this passage from Deuteronomy 22:19. Nonetheless, reading one biblical passage in light of another is in itself an example of the influence of first-century interpretative methods on Josephus' works. Indeed, Josephus considers this interpretative technique, known as גזירה שוה (*gezerah shavah*) by the rabbis, to be such a natural way to read the text that he does not note his use of it. Thus, Josephus likely was not aware that he did not merely quote the Bible, but read first-century interpretations into the biblical text when he discussed this facet of divorce. Although others use this interpretive technique as well, the rabbis are

well known for their enumeration of exegetical principals for biblical interpretation (*Sifra* introduction; *Abot R. Nat*., 37).[65]

We can best see the connection between Josephus' legal positions and the rabbinic corpus by examining his treatment of Deut 24:1-4, the biblical text from which the majority of later rabbinic traditions/laws about divorce clearly stem. His summary of the text in question reads as follows:

> He who desires to be divorced from the wife who is living with him for whatsoever cause—and with mortals many such may arise—must certify in writing that he will have no further inter-course with her; for thus will the woman obtain the right to consort with another, which thing ere then must not be permitted. But if she be maltreated by the other also or if upon his death her former husband wishes to marry her, she shall not be allowed to return to him. (Josephus, *Ant.* 4.253 [Thackeray, LCL])
>
> γυναικὸς δὲ τῆς συνοικούσης βουλόμενος διαζευχθῆναι καθ᾽ ἁσδηποτοῦν αἰτίας πολλαὶ δ᾽ ἂν τοῖς ἀνθρώποις τοιαῦται γίγνοιντο γράμμασι μὲν περὶ τοῦ μηδέποτε συνελθεῖν ἰσχυριζέσθω λάβοι γὰρ ἂν οὕτως ἐξουσίαν συνοικεῖν ἑτέρῳ πρότερον γὰρ οὐκ ἐφετέον εἰ δὲ καὶ πρὸς ἐκεῖνον κακωθείη καὶ τελευτήσαντος αὐτοῦ θελήσειε γαμεῖν ὁ πρότερος μὴ ἐξεῖναι αὐτῇ ἐπανιέναι.

The biblical version of the same text follows:

> Suppose a man enters into marriage with a woman, but she does not please him because he finds something objectionable about her, and so he writes her a certificate of divorce, puts it in her hand, and sends her out of his house; she then leaves his house [2] and goes off to become another man's wife. [3] Then suppose the second man dislikes her, writes her a bill of divorce, puts it in her hand, and sends her out of his house (or the second man who married her dies); [4] her first husband, who sent her away, is not permitted to take her again to be his wife after she has been defiled. (Deut 24:1-4)

[65] A second century list of thirteen principles for scriptural interpretation attributed to Ishmael ben Elisha is found in the introduction to the *tannatic* commentary on Leviticus, *Sifra.* One of ben Elisha's thirteen rules is גזירה שוה, or the principle that similar words used in different contexts are meant to clarify each other. While the rabbinic rules for text interpretation had some uniqueness, gentiles too advanced hermeneutical rules for interpreting texts. For example, rules for interpreting classical Greek literature were in use in Hellenistic circles (Levine, *Conflict or Confluence,* 113). Moreover, the New Testament authors and the Dead Sea Scrolls also use this same technique.

כִּי־יִקַּח אִישׁ אִשָּׁה וּבְעָלָהּ וְהָיָה אִם־לֹא תִמְצָא־חֵן בְּעֵינָיו כִּי־מָצָא בָהּ עֶרְוַת דָּבָר וְכָתַב לָהּ סֵפֶר כְּרִיתֻת וְנָתַן בְּיָדָהּ וְשִׁלְּחָהּ מִבֵּיתוֹ וְהָלְכָה וְהָיְתָה לְאִישׁ־אַחֵר וּשְׂנֵאָהּ הָאִישׁ הָאַחֲרוֹן וְכָתַב לָהּ סֵפֶר כְּרִיתֻת וְנָתַן בְּיָדָהּ וְשִׁלְּחָהּ מִבֵּיתוֹ אוֹ כִי יָמוּת הָאִישׁ הָאַחֲרוֹן אֲשֶׁר־לְקָחָהּ לוֹ לְאִשָּׁה לֹא־יוּכַל בַּעְלָהּ הָרִאשׁוֹן אֲשֶׁר־שִׁלְּחָהּ לָשׁוּב לְקַחְתָּהּ לִהְיוֹת לוֹ לְאִשָּׁה אַחֲרֵי אֲשֶׁר הֻטַּמְּאָה כִּי־תוֹעֵבָה הִוא לִפְנֵי יְהוָה וְלֹא תַחֲטִיא אֶת־הָאָרֶץ אֲשֶׁר יְהוָה אֱלֹהֶיךָ נֹתֵן לְךָ נַחֲלָה׃

We cannot definitively derive anything from Josephus' omissions in his rendition of the passage since he is merely summarizing the Torah, not relating it in its entirety. However, any additions to his summary of the biblical text that are either his own personal glosses, or first-century interpretations of the Torah that he incorporated, whether consciously or not, can teach us something about Josephus' point-of-view.

One notes three major differences between the biblical text and Josephus' summary. The first involves an insertion. Josephus describes the wife who is being divorced as one "who is living with him." Deuteronomy 24, in contrast, does not define the wife's status by her residence. Because this insertion does not appear to have much significance to the passage, we will disregard it for the time being. In chapter eight, "Finding a Legal System for Salome's Divorce," we will return to this phrase, since after more study of Josephus' views on divorce some meaning may be derived from this phrase.

The second difference is also an insertion. Josephus comments on the frequency of divorce in his era when he states: "He who desires to be divorced from the wife who is living with him for whatsoever cause—*and with mortals many such may arise. . .*" (γυναικὸς δὲ τῆς συνοικούσης βουλόμενος διαζευχθῆναι καθ᾽ ἁσδηποτοῦν αἰτίας πολλαὶ δ᾽ ἂν τοῖς ἀνθρώποις τοιαῦται γίγνοιντο) (Josephus, *Ant.* 4.253 [Thackeray,

LCL]; emphasis mine).[66] Criticism of the perceived high rate of divorce among members of the Roman elite was widespread. As will be discussed in chapter seven, pithy sayings condemning the frequency of divorce were common in ancient Roman writings (see section 7.1). Josephus' criticism or perhaps excuse of the frequency of divorce in the context of his summary of the biblical text places him squarely within the Roman culture of his day. It also suggests that elite Jews generally led lifestyles that were not far removed from those of their Roman counterparts. In fact, both loathing divorce and viewing the divorce rate to have been excessive seem to have been widespread attitudes in antiquity. For example, the later rabbinic writings inform us that many Jews too subscribed to these ideas about divorce; but because it was a common value of their society as a whole, we cannot necessarily label this interpretation as exclusively rabbinic or even Jewish (see sections 7.2-3). Moreover, since this addition to the biblical text is more of a comment on the state of marriage in general and is not an alteration to the biblical text itself, we have to continue on to find an example of first-century interpretation affecting Josephus' review of Deut 24.

The third of Josephus' additions to the text is a gloss intended to specify the nature of the divorce document called for in Deut 24. In the Torah, the obligation of the divorcing husband to give his wife a divorce writ is noted without any hint as to the content or purpose of such a document (Deut 24:1, 3). Josephus' review of the biblical passage, in contrast, reveals his understanding of the essential clause and the function of the document. He states that the divorcing husband "must certify in writing that he will have no further intercourse with her [his former wife]; for thus will the woman obtain the

[66] πολλαὶ δ᾽ ἂν τοῖς ἀνθρώποις τοιαῦται γίγνοιντο.

right to consort with another, which thing ere then must not be permitted" (Josephus, *Ant.* 4.253 [Thackeray, LCL]).[67] That is, the purpose of the divorce writ is to establish a woman's right to remarry.

Josephus' position that the purpose of the divorce writ described in the Deut 24 was to establish a woman's right to remarry is not intrinsic to the biblical text itself. Moreover, other Jewish texts from biblical times through the first century do not emphasize the establishment of the right to remarry as central to divorce proceedings—although the ability to do so was a consequence of divorce. Similarly, the divorce practices of gentiles from the first centuries B.C.E. and C.E. do not focus on the right to contract a new marriage; rather, the termination of the original marriage is of concern. To that end, most of the extant texts and divorce practices, whether Jewish or gentile, are concerned with detailing the repayment of the marriage fee and/or the payment of the divorce fine as well as stipulating the woman's expulsion from the marital home.[68]

For example, the divorce clauses in the Elephantine marriage documents from the fifth century B.C.E. legislate that the public confession of one's "hatred" for a spouse along with the payment of a divorce fine and the woman's departure to her father's house was the proper procedure for divorce (P. Cowley 15, 46; P. Kraeling 2, 7). Jehoishma's marriage contract with Ananiah reads:

> And if Jehoishm[a] hate (sic) her husband Ananiah and say to him: "I hated You; I will not be to you a wife," silver of hatred is on her head (and) her *mohar* will be lost. She shall place upon the balance scale and give her husband Ananiah silver, 7 shekels, [2] q(uarters), and go out from him with the rest of her money and her goods and her property, [valued (in)

[67] γράμμασι μὲν περὶ τοῦ μηδέποτε συνελθεῖν ἰσχυριζέσθω.
[68] Raymond Westbrook, "The Prohibition and Restoration of Marriage in Deuteronomy 24:1-4," in *Studies in Bible* (SH 31; ed. Sara Japhet; Jerusalem: Magnes Press, Hebrew University, 1986), 387-405, esp. 400 and Instone-Brewer, *Divorce and Remarriage*, 7. Similarly, the prophetic books of the Bible agree that divorce proceedings were about separation not remarriage (see section 7.2).

> silver (at) 6 karsh…He shall give to her on [1] da[y] at 1 stroke and she may go to her father's house. (P. Kraeling 15 [Porten, alt.])[69]

One notes that there is no mention of a wife's permission to remarry whomever she wishes in the Elephantine papyri.[70] On the contrary, the divorce proceedings only concern themselves with severing marriage.

Similarly, the divorce proceedings of Josephus' gentile contemporaries were focused on repayment of the marriage fee or payment of the divorce fine, and the expulsion of the wife from the couple's residence.[71] For example, among Romans declarations such as, **"**take your property, return mine to me" combined with the woman's departure from the marital home were the essence of divorce proceedings.[72] Although Romans sometimes issued documents upon their divorces, these writs documented the payment of monetary fees and were not necessary to end the marriage.[73] Given that their purpose was solely financial, the deeds did not need to cite a woman's right to remarry.

First and second century Jewish sources' portrayal of divorce proceedings vary. Philo does not mention a divorce writ, although he notes the practice of issuing marriage documents (Philo, *Spec. Laws* 3.72). The Dead Sea Scrolls hint at the sect's unique divorce practice, such as the overseer's role in approving divorces, but do not mention a divorce deed in any extra-biblical text (CD 13.15-17). Other first and second texts, such as the New Testament writings, do refer to the deed. Both of the references to divorce

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[69] Bezalel Porten, *The Elephantine Papyri in English* (Leiden, Netherlands: Brill, 1996), 230 and Modrzejewski, *The Jews of Egypt*, 34.
[70] Instone-Brewer, *Divorce and Remarriage*, 75-76 and 79.
[71] The Jews were the only group that universally used divorce writs. The Arabians, Greeks and Romans all used oral agreements for divorce. See David Werner Amram, *The Jewish Law of Divorce According to the Bible and Talmud with Some References to its Development in Post-Talmudic Times* (Philadelphia: Edward Stern, 1869), 136 and Instone-Brewer, *Divorce and Remarriage*, 72-73.
[72] Amram, *Jewish Law of Divorce*, 138-139 and Treggiari, *Roman Marriage*, 446-447.
[73] *Ibid.*, 136 and 138-139.

deeds in Mark 10 and Matthew 19 references are connected to the depiction of divorce protocol in Deuteronomy 24. Neither citation, however, relates the text of such a document. Instead, they merely note that the divorce protocol described in the Torah requires a written deed (Mark 10:3-5; Matt 19:7-8). First Corinthians 7:39 may also cite the text of the divorce deed. The verse reads: "she is free to marry whichever man she wishes, (but) only in the Lord" (ἐὰν δὲ κοιμηθῇ ὁ ἀνήρ, ἐλευθέρα ἐστὶν ᾧ θέλει γαμηθῆναι, μόνον ἐν κυρίῳ). However, the verse refers to a widowed woman not a divorcee.[74]

Matthew 5:31 also alludes to a divorce writ. The passage in question reads: "Whoever divorces his wife, let him give her a certificate of divorce. But I say to you that everyone who divorces his wife, except on the ground of unchastity, causes her to commit adultery; and whoever marries a divorced woman commits adultery" (ὃς ἂν ἀπολύσῃ τὴν γυναῖκα αὐτοῦ, δότω αὐτῇ ἀποστάσιον). Once again, this passage does not cite the text of the divorce deed. However, the presentation of the issue in Matthew 5 suggests that a divorce writ specifically did not give a woman the right to remarry since the passage notes that someone who marries a divorced woman, even if she has a divorce deed, is an adulterer. That said, Jesus' remark in his passage is intended to prohibit divorce entirely.

Compared to the New Testment's position, Josephus' somewhat counterintuitive view of the divorce document—that the text of the document concerns a woman's right to remarry—oddly excludes any statement about divorce. There is, however, one other body of literature that agrees with Josephus in identifying an identical theme as the

[74] Instone-Brewer, *Divorce and Remarriage*, 122.

essential clause of a valid divorce document—the rabbis' Mishnah. In the context of a discussion over the proper text of the divorce writ, the anonymous redactor of the Mishnah states: "the essential clause of the divorce document is, 'Behold you are permitted to any man'" גופו של גט: הרי את מתרת לכל אדם (*m. Git.* 9.3 [Danby]).[75] Because parallels with other texts are particularly meaningful when they go against the grain of the expected approach, the Mishnah's and Josephus' common understanding that the purpose of the divorce document was to grant women the right to remarry is notable.

4.3.3 Josephus as a Proto-Rabbi vs. Common Judaism

While the many points of contact between Josephus' views and those expressed in the rabbinic corpus are certain, these similarities do not necessarily mean that we can identify Josephus as one of the rabbis or proto-rabbis any more than it means that Josephus was a Pharisee. Indeed, even though there are many points of agreement between Josephus' writings and the rabbinic materials, the rabbinic corpus preserves many conflicting opinions. Moreover, while Josephus does sometimes transmit rabbinic ideas, he does not always do so.[76] For example, sometimes he transmits biblical ideas without the overlay of rabbinic traditions and other times his opinions disagree with the rabbinic writings.[77] Even Riskin, who found Josephus to be a good transmitter of the later normative *halakhic* tradition, admits that Josephus occasionally diverges from it.[78] Thus, while Josephus' writings attest that many rabbinic practices were in force in first-

[75] Rabbi Judah, in contrast, thought that a slightly longer text was required for the divorce document. He suggested that the document should read: "Let this be from me to you a document of divorce, a letter of abandonment, and a deed of leaving that you may marry any man you wish" (*Git*. 9.3 [Danby]).
[76] Mason, *Flavius Josephus*, 99-100 and 104 and Attridge, *Biblical Interpretation*, 178.
[77] *Ibid.*,178; Mason, *Flavius Josephus*, 99-100; and Bernard Revel, "Anti-Traditional Laws of Josephus," *JQR* 14 (1923-24): 293-302.
[78] Riskin, *Halakhah in Josephus*, 8, 51.

century Judea, there is a problem of knowing which ones.[79] Given the above, Harold Attridge's alternative view that there is "no consistent relation between Josephus and later halakhic tradition" may best account both for Josephus' similarities and dissimilarities to the rabbinic tradition.[80]

An increasingly popular view championed by Martin Goodman helps us develop Attridge's insight into Josephus' relationship to the rabbinic tradition in light of the findings of Olitski, Goldenberg, Riskin, and others. Goodman argues that while the various Jewish sects had their influence, rabbinic literature describes those practices that were common across Jewish antiquity.[81] Consequently, Goodman likely would not understand Josephus' agreements with the rabbinic worldview to imply something about his sect affiliation; rather the similarities suggest that Josephus was moderating common Judaism. In fact, Olitzki's, Goldenberg's and Riskin's studies of Josephus relationship to the rabbinic tradition can be used to support Goodman's hypothesis since they show that many rabbinic ideas and concepts written down in the third-century C.E. Galilee, were already in practice/common in first-century Judea. Simultaneously, Goodman's view may even help explain Josephus' apparent lack of sect affiliation. Indeed, we noted that not only is Josephus' identification as a Pharisee in doubt but there is no indication that he affiliated openly with any of the other sects either. Adopting Goodman's argument, Josephus' views may only reflect his own viewpoint, that is, the outlook of an elite priest from first-century Jerusalem, or the views of common Judaism.

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[79] Neusner, *The Mishnah*, 44.
[80] Harold Attridge, *The Interpretation of Biblical History in the 'Antiquitates Judaicae' of Flavius Josephus* (HTR 7; Missoula, Mont.: Scholars, 1976), 179, n. 1.
[81] Goodman, *Judaism in the Roman World*, 44.

Other than noting its connection to the later rabbinic writings, or perhaps common Judaism, we have failed to identify the standard by which Josephus evaluates the Herodians' practice of Judaism. That said, we know that Josephus frequently views the royal Jews' connection to Judaism negatively. Even if we cannot more closely define Josephus' allegiance within the Second Temple world, is it possible to say anything concrete about the boundaries of acceptable Jewish practice in the first-century?

4.4 Jewish Law in the First Century

The issue of identifying licit Jewish practices prior to the redaction of the Mishnah, the first compilation of post-biblical Jewish law, has been particularly contentious among scholars.[82] While we cannot provide much in the way of positive statements about the scope and stipulations of Jewish law in the first century, we can offer some hypotheses about what the law was not.

First, Jewish law was not uniform, that is to say, it did not mean the same thing to all Jews in antiquity, a fact which sometimes led to fierce debates. For example, the *Halakhic Letter* (*4QMMT*) shows that Jewish law was a contested issue by its listing of the Qumran group's disagreements with the Jerusalem based leadership. Likewise, the New Testament outlines some of the points of controversy between the Sadducees and Pharisees (Acts 23:6-10). Moreover, a significant portion of the Tannaitic corpus records disagreements between various members of the rabbinic class.

Second, given the diverse forms of late Second Temple Judaism, it should be clear that just because a member of one of the groups in Judea, perhaps an elite group of

[82] Cotton, "The Rabbis and the Documents," 171-172.

pious priests, finds the Herodians to have been in violation of Jewish law, it does not follow that all Jews necessarily would have assessed the royal Jews' behavior similarly. This caution is important because, wherever it is that the royal family fit in the Jewish spectrum of their day, there is no indication that they affiliated with any of the named groups.[83] For example, the Herodians were not Pharisees. If the behavior of the members of the Jewish royal family is enough to suggest they were not Pharisaic, then references from the New Testament make it explicit.[84] On two separate occasions, the Herodians are identified as having joined forces with the Pharisees (Mark 3:6; 12:13). However, each time the Herodians and Pharisees are mentioned in the same context, Mark clearly identifies the two as distinct groups, "some Pharisees and some Herodians" (τινας τῶν Φαρισαίων καὶ τῶν Ἡρῳδιανῶν in Mark 12:13). Moreover, there is no evidence that the Herodians affiliated with any of the other named sects, such as the Sadducees or the Qumran group.[85] At times, the royal Jews appear to make concessions to the Pharisees, and at other times they align themselves with the Sadducees and Essenes; on the whole, Josephus presents all of the sects as being in conflict with the Herodians (Josephus, *Ant.* 15.368-379).[86]

Third, despite some of Josephus' statements to the contrary, there is no solid evidence to support the view that the Jewish masses were forced to heed the views of the Pharisees or any other known sects. On the contrary, only voluntary commitments

[83] Richardson, *King of the Jews,* 254-256.
[84] Mark 3:6 reads: "The Pharisees went out and immediately conspired with the Herodians against him, how to destroy him." The text of Mark 12:13 similarly states: "Then they sent to him some Pharisees and some Herodians to trap him in what he said." Also, see Richardson, *King of the Jews,* 259-260.
[85] Richardson and Avi-Yonah do not think that the term "Herodians" refers to the royal family in its narrow sense, but rather a party of the Herodian family's supporters (Richardson, *King of the Jews,* 259-260 and Avi-Yonah, *The Herodian Period,* 114). However, since these supporters would have been advocating the Herodians' views, Richardson and Avi-Yonah's argument does not nullify the argument above.
[86] Alon, *Jews,* 47 and Richardson, *King of the Jews,* 249-261.

"obligated" one to conform to a particular group's interpretations.[87] Given the above, some of the Herodians' interpreters, such as Ilan, suggest reconsidering Josephus' appraisal of the Herodians. Instead of automatically accepting Josephus' view that the Herodians' behavior was outside of the pale of Jewish observance, it is possible that the Herodians' actions were within the parameters of Jewish law; they were just not in agreement with Josephus' particular interpretation of the law.[88] For example, Ilan, who accepts the traditional identification of Josephus as a Pharisee, suggests that the Herodians may have been in compliance with the legal advice they received from non-Pharisaic Jewish teachers.[89]

Fourth, even though we cannot definitively describe the parameters of licit Jewish interpretations given the multiplicity of first century positions on this matter, it is possible to define its outermost limit—that is, generally Jews in antiquity avoided a direct contradiction of biblical law. In addition to the many citations in late Second Temple writings indicating that Jews understood the Torah's precepts to be of divine origin and thus inviolable, the Mishnah makes this point explicit (Josephus, *Ant.* 3.223; *Ag. Ap.* 1.42-43, 2.82, 149, 176-178, 227-228, 232-235, 272-273; *War* 1.111-114; Philo, *Embassy* 210-211; *Moses* 2.37-38; Rom 9:30, 10:4).[90] In the midst of a series of rabbinic disputes between Hillel and Shammai about marriage practices, the Mishnah relays: "If this is Halakah [which thou hast received] we receive it; but if it is but an inference [of thine own] a counter-inference may rebut it" (*m. Yev.* 8.3).[91] That is, the literal meaning of

[87] Sanders, *Practice and Belief*, 451.
[88] Ilan, "Intermarriage," 15.
[89] *Ibid.*, 15.
[90] Barclay, *Jews in the Mediterranean Diaspora*, 426.
[91]. אם הלכה—נקבל, ואם לדין-- יש תשובה

biblical law is not up for debate; interpretations of the law, however, can be challenged and debated.

Now that we have some sense of Josephus' vantage point as well as a better understanding of the diversity of first century law and its outer limits of permissible behavior, we see how these factors help us better understand Josephus' views on another defining feature of the Herodian family's practice of Judaism, namely, the strong influence of Hellenism in their lives.

4.5 Hellenism and the Herodians

Even if one questions whether all late Second Temple Jews would have agreed with the accuracy of Josephus' statements that the Herodian family regularly transgressed Jewish law/custom, one still might want to brand the Herodians as impious Jews given their entanglements with Hellenism. Some have argued that Hellenism, not Judaism, was the primary factor in determining the Herodian family's behavior.[92] Indeed, many of the Herodian princes were sent to Rome for extended periods of time for both educational and dynastic concerns (Josephus, *Ant.* 15.342-343; 16.86-87; 17:20-21, 52-53). Moreover, one hardly associates hobnobbing with the Roman elite, the adoption of gentile names, and the custom of celebrating birthdays, not to mention the building of and attendance at the theater and amphitheater, with traditional Jewish piety in the late

[92] For the view that Hellenism not Judaism was the determinative force in the Herodians' behavior, see Rabello, "Divorce of Jews," 93; Murphy, *Early Judaism*, 249; Schürer, *History of the Jewish People*, 43 and Kokkinos, *Herodian Dynasty*, 342. The attempt to discount the Herodians' Jewish identity on account of their connection to Hellenism is in many ways a misreading of the evidence. The conflict with Hellenism did not first arise in the Herodians era, nor in Maccabean times. In fact, the evidence suggests that the encounter with Hellenism preceded even Alexander the Great's conquest of the Near East in 323 B.C.E. (Feldman, *Judaism and Hellenism*, 1). Indeed, it is clear that Judaism was never a static entity but was always incorporating new concepts (J. Collins, *Jewish Cult*, 4-8).

Second Temple era (Josephus, *Ant.* 15.259-291; 16.179-291; 17.151; 18.143-44, 164-165; *War* 1.648-655).[93]

There are, however, three major problems with discounting the Herodians' connections to Judaism because their actions seem inappropriate for good Jews. First, this approach is based on the assumption that Josephus' opinion that the Herodians were lackluster Jews was correct. Second, any evaluation of the Herodians' piety relies on the supposition that we know how a pious Jew in Roman Palestine would have behaved. Third, and most important, this approach depends on the further conjecture that pious Jews would have adopted a narrow, introverted orientation to the Hellenistic world.

To some extent, we do know what would have constituted acceptable Jewish behavior in antiquity. After all, much of the interest in defining common Judaism is an attempt to answer just this question. The problem with defining acceptable Jewish behavior in antiquity and using common Judaism as the yardstick by which one makes this judgment is the assumption that there is only one possible answer to this query. Moreover, while common Judaism is a useful tool for understanding Jewish practice and belief in antiquity, its usefulness is limited. Precisely because scholars who strive to define common Judaism are interested in the behaviors that were standard across the Jewish world, they do not help us to define the outer boundaries of acceptable Jewish behavior, where the Herodian family likely hovered.[94] Even more significant than the problem of defining acceptable Jewish behavior in antiquity is the presumption that Hellenism was necessarily in conflict with Judaism.

[93] John E. Stambaugh and David L. Balch, *The New Testament in Its Social Environment* (Philadelphia: Westminster, 1986), 84 and Chancey, *Greco-Roman Culture.*
[94] Ilan, "Intermarriage," 14.

4.6 Judaism's Encounter with Hellenism: Conflict or Confluence?[95]

Earlier studies, as well as some contemporary ones, describe the encounter between Hellenism and Judaism as one of conflict. That is, one could either remain loyal to Jewish teachings or adopt Hellenistic culture. This absolutist position *vis-à-vis* Hellenism and Judaism has become outmoded as integrationist models gain currency. These newer approaches allow for the possibility of adopting some aspects of Hellenism without discarding one's Jewish connection.[96] They also recognize that Judaism was never a static entity, but regularly adapted and incorporated outside elements.[97] These conclusions are drawn from the same bodies of evidence used by advocates of the conflict model to support their position, namely, the writings of Josephus and the rabbis, as well as material culture.

Advocates of the "conflict" position point to late Second Temple coins and artistic works. These largely adhere to the prohibition against figurative art and consequently speak to the existence of a Jewish community steadfastly holding on to their own traditions in the face of the competing artistic ideals espoused by Hellenism.[98] Supporters of the "conflict" stance also have at their disposal any number of rabbinic statements transcribed in the early third century but which possibly describe the latter

[95] Lee Levine's book from 1998 is titled: *Judaism and Hellenism in Antiquity: Conflict or Confluence.*
[96] E. Meyers, "Jewish Culture," 174 and Erich S. Gruen, "Hellenistic Judaism," in *Cultures of the Jews: A New History* (ed. David Biale; New York: Schocken, 2002), 94.
[97] J. Collins, *Jewish Cult*, 4-8.
[98] The prohibition on images was enforced with particular vigor during the reigns of the Hasmoneans and the Herodians. See Eric M. Meyers, "Jewish Art in the Greco-Roman Period: Were the Hasmoneans and Herodians Aniconic?" in *"Up to Ekron": Essays on the Archaeology and History of the Eastern Mediterranen in Honor of Seymour Gitin* (ed. Sidnie White Crawford, Amnon Ben-Tor, et al; Jerusalem: Israel Exploration Society, 2007), 240-248. The importance of the prohibition on images is underscored by Josephus' retelling of the athletic games Herod staged in Jerusalem. Condemned criminals were thrown to wild beasts in the amphitheater during the games. Despite Herod's staging of this most inhumane act, what bothered the Jews the most about the games, according to Josephus, was the trophies that were installed in one of the public buildings (Josephus, *Ant.* 15.267-276, esp. 273-276).

days of the Second Temple period as well. These rabbinic sayings, calling on Jews to keep their distance from Roman culture, include statements such as, "Love work; despise lordliness; and do not become overly familiar with the government," ascribed to the first-century sage Shemaya (*m. Abot* 1.10). *Sifra*, the Tannaitic commentary on Leviticus, universalizes Lev 8:3's prohibition on following the practices of Egypt and applies it to the Roman era (9.8; 13.9).[99] Other statements in the rabbinic corpus similarly suggest that Jews should keep their distance from Rome and its culture by avoiding certain hairstyles, clothing choices, and cultural institutions, such as circuses (*Sifre* 81*; t. Avod. Zarah* 2.5-7).[100] Lastly, the Mishnah even records a prohibition on teaching Greek (*m. Sotah* 9.14).[101]

While the tendency towards advocating separation from foreign influences is found in Jewish texts and gains support from archaeological finds, evidence for the "integrationist" position is perhaps even more readily available. Feldman cites many sages who offer positive appraisals of Rome and thereby demonstrate their openness to the Hellenistic world.[102] For example, Hanina, a deputy high priest who lived in the second half of the first century, proclaimed, "Pray for the wellbeing of the government [Rome]" (*m. Avot* 3.2).[103] Similarly, selections from *Leviticus Rabbah* cite third-century sages who praised Rome rule for improving security in the land of Israel and the emperors for remitting taxes during difficult times (*Lev. Rab.* 30.7, 35.5).[104] However, the most compelling piece of evidence for the "integration" position is not what is

[99] Levine, *Conflict or Confluence?*, 125.
[100] *Ibid.*, 125-126.
[101] *Ibid.*, 125.
[102] For theories on the source of the rabbis' enthusiasm towards Rome see Feldman, "Some Observations," 62-67 and Feldman, *Judaism and Hellenism*, 769.
[103] Translation mine.
[104] Feldman, "Some Observations," 65.

explicitly stated but rather that which is implicit; such clues indicate that the rabbis were part and parcel of the Greco-Roman world and provide a far more compelling argument for integration than any of the more contrived statements attributed to the rabbis reviewed above.

The rabbis' knowledge of the Greek language as well as their familiarity with Roman law and culture indicates a measure of integration.[105] For example, Shaye Cohen suggests that the rabbinic adoption of the matrilineal principle occurred simultaneously with the development of this legal concept in Roman legal codes.[106] Likewise, Lee Levine argues that even the redaction and publication of the Mishnah follows parallel developments in the Greco-Roman world, such as the compilation of Roman law codes by Gaius, Ulpianus, and others.[107] Levine also points to the rabbinic adoption of Greco-Roman practices as examples of the willingness of Jews to engage with the Hellenistic world. For example, the rabbis modify Greco-Roman rules for interpreting the Greek classics to make them relevant to their interpretations of Torah.[108] They also adopt the Greco-Roman practice of symposiums, which they transform for their own purposes into the Passover seder.[109]

Many non-rabbinic texts share this integrationist viewpoint. For example, the *Wisdom of Solomon* from the turn-of-the-millennium deemphasizes laws that highlight Jewish particularity in favor of focusing on more universal elements, a pattern that Collins finds replicated in many Jewish Hellenistic writings.[110] Consequently, the

[105] *Ibid.*, 64; *m. Yad*. 4:6; *m. Ned*. 2.1; *m. Abad. Zar*. 2:3; and Feldman, *Judaism and Hellenism*, 8.
[106] Levine, *Conflict or Confluence?,* 134 and S. Cohen, "Matrilineal Principle," 19-53.
[107] Levine, *Conflict or Confluence?,* 134-5.
[108] *Ibid.*, 124 and 113-116.
[109] *Ibid.*, 121-123.
[110] J. Collins, *Between Athens and Jerusalem*, 199.

Wisdom of Solomon contains no references to circumcision, dietary laws or Sabbath observance.[111] Another Jewish text, this one from the mid-first century, employs a different tack; Fourth Maccabees uses Hellenistic concepts to justify Jewish particularity. [112] Thus, 4 Maccabees dialogues with ideas in Greek philosophy, such as the virtue of the control of passions, in its defense of Judaism.[113] Similarly, Judaism is presented as a moral philosophy.[114] The level of 4 Maccabees' integration with the Hellenistic world is underscored by the fact that it does not think it odd to use Greek language, rhetoric, and philosophical terms to advocate strict observance of the Torah.[115] Lastly, Pseudo-Aristeas from the second century B.C.E. portrays Jewish sages who are well versed in Hellenisitic ideas. Collins interprets this to mean that Pseudo-Aristeas espouses the ultimate integrationist view, that the "Torah, to be properly appreciated, must be complemented by Greek culture."[116]

Sometimes sages even took an active stance towards integrating themselves into the Greco-Roman world.[117] For example, the rabbis adopted changes to allow some level of accommodation to the Greco-Roman world even in rendering legal decisions. Taking an example from marriage and divorce law, one sees that the sages deemed it acceptable to include dates associated with the reigns of gentile monarchs on their marriage certificates in order to pacify foreign overlords. Indeed, the trope "for the sake of peace" (דרכי שלום) regularly appears in the rabbinic corpus, suggesting a clear preference for

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[111] *Ibid.*, 200.
[112] *Ibid.*, 209.
[113] *Ibid.*, 207.
[114] *Ibid.*, 208.
[115] Nickelsburg, *Jewish Literature,* 226 and J. Collins, *Between Athens and Jerusalem,* 207-209.
[116] *Ibid.*, 194.
[117] In addition to the example offered above, another example of the sages' acceptance of Hellenism may be their sanctioning of the holiness of the Greek translation of the Bible—contested though it was (*m. Meg*. 1.8; *y. Sabb*. 16.15; *m. Abod Zar. 3:4* and Feldman, *Judaism and Hellenism,* 8).

integration over conflict (*m. Git.* 5:8). That is, the rabbis were willing to make compromises as long as the core remained intact. While not willing to become like gentiles in totality, they tolerated small changes to mollify the gentiles among whom they lived.

The most famous case illustrating the rabbis' willingness to make accommodations to the Greco-Roman world without becoming subsumed by it is the tale of Rabban Gamaliel's visit to a bathhouse associated with Aphrodite (*m. Avod. Zar.* 3.4). The Mishnah relates that a son of a pagan philosopher reacted with surprise to see Gamaliel in the bathhouse, which housed a statue of the pagan goddess. Rabban Gamaliel responded that there was no reason for him to avoid the bathhouse since the presence of the pagan statue was merely ornamental and incidental to the function of the bathhouse itself. Moreover, Gamaliel argued, the bath's visitors clearly did not view the statue as a god, since people regularly undressed and urinated in its presence.[118] Consequently, scholars infer that Gamaliel (or some later sages describing his life) found it acceptable to enjoy Greco-Roman institutions and cultural life as long as one stayed clear of actual pagan worship.[119]

Material culture also indicates that Hellenism and Judaism were not necessarily competing ideologies. While the eras of the Hasmonean and Herodian families' rules are known as a time when the prohibition on images was most strictly enforced, even then

[118] In a recent interpretation of this passage, Seth Schwartz suggests that the surface meaning of the story of Rabban Gamaliel's visit to the bath of Aphrodite, namely, the conflict-free encounter of the Greco-Roman world with Judaism, is enhanced by the argument that underlies Gamaliel's exchange with the pagan. That is, Gamaliel's argument assumes a solid understanding of pagan philosophy. See Seth Schwartz, "Gamaliel in Aphrodite's Bath: Palestinian Judaism and Urban Culture in the Third and Fourth Centuries," in *The Talmud Yerushalmi and Graeco Roman Culture* (TSAJ 71; ed. Peter Schäfer; Tübingen: Mohr [Siebeck], 1998), 203-217.

[119] It becomes common among Jews to limit the definition of idolatrous institutions to pagan temples themselves in order to allow full participate in the larger societies in which they lived. See Feldman, *Judaism and Hellenism*, 7; E. Meyers, "Jewish Art," 240-248 and Levine, *Conflict and Confluence?*, 107.

Roman symbols such as the cornucopia and anchor appeared on coins and in mosaics in private homes.[120] Moreover, although the Herodians may have increased the number of Hellenistic institutions in Jerusalem, the holy city boasted a gymnasium even prior to the Maccabean revolt of 165 B.C.E (1 Macc 1:14-15).[121] Skipping ahead to the second century C.E. and beyond, the necropolis at Beth She'arim attests to the seamless integration of Judaism with elements of Hellenism. The cemetery, which contains sarcophagi with reliefs of the deceased, also housed ossuaries decorated with imagery from Greco-Roman myths, even as the cemetery became the preferred burial spot for the emerging rabbinic class.[122] A similar example from late antiquity is the adoption of Greco-Roman themes one assumes would be antithetical to Judaism, such as the zodiac and images of the Greek gods, on the mosaic floors of Galilean synagogues.[123] The integration of Hellenism and Judaism was so complete by late antiquity that the adoption of Greco-Roman art forms even in the synagogues was not viewed as threatening to one's connection to Judaism. On the contrary, these art forms were accepted since they reflected trends that affected the daily lives of Jews—that is, the ready influence of Greco-Roman ideas on them. Thus, for many Jews the integration of Hellenism into their lives does not seem to have precluded a deep and meaningful connection to Judaism.

[120] Herod's golden eagle is the notable exception to the rule that figurative images of people and animals were not in use during his reign. Agrippa I's coins minted in Caesarea had images, whereas those minted in Jerusalem did not (Schwartz, *Agrippa I*, 131). See E. Meyers' critique of the incident of the golden eagle and his argument against stark aniconism in the days of Herodian rule (Eric M. Meyers, "Jewish Art," 240-248, esp. 243-246).
[121] Richardson, *King of the Jews*, 186.
[122] E. Meyers, "Jewish Culture," 171.
[123] Levine, *The Ancient Synagogue*, 208-213, 434-435, and 572-579.

4.6.1 Philo's Hellenistic Judaism

Josephus is not the only Jewish intellectual figure whose life and work attests to the possibility of living as a committed Jew while adapting and assimilating to the Hellenistic world. His older contemporary, Philo, exhibits an even more complete integration of Hellenism. A Diaspora Jew living in Alexandria, Philo's opportunities to assimilate Hellenistic influences into his worldview may have been greater than those open to Josephus, who was born and raised in Jerusalem.[124] Philo's status as an insider to the Hellenistic world is illustrated by the fact that he uses terms and concepts common to Greco-Roman philosophy to describe Judaism.[125] In fact, his knowledge of Greco-Roman literature, culture, and philosophy is so thorough that it seems likely that he was educated in the gymnasium.[126] He also employs realistic sports and theater imagery to convey concepts to his readers indicating that he often attended such cultural events (Philo, *Agriculture* 113-119; *Flaccus* 73-77, 84-85, 95-96; *Contempl. Life* 40-63).[127] Moreover, he mingled with the gentile elite and his family had relationships to the imperial house (Josephus, *War* 5.205; *Ant.* 18.159-160, 259; 19.276-277).[128]

Despite his immersion in Hellenistic culture, Philo's sincere connections to Judaism and the Jewish people are unquestionable.[129] For example, Philo's vast knowledge of Greco-Roman cultural life is matched by his solid Jewish education (Philo,

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[124] J. Collins, *Jewish Cult*, 40-43.
[125] Philo was an "insider" by virtue of the fact that he had an intimate understanding of the Hellenistic world and willingly partook of its offerings. See Erwin R. Goodenough, *By Light, Light: The Mystic Gospel of Hellenistic Judaism* (Amsterdam: Philo Press, 1969), 6-7; Emil Schürer, *Literature of the Jewish People: In the Age of Jesus* (ed. Nahum N. Glatzer; trans. Peter Christie and Sophia Taylor; New York: Schocken, 1972), 363-365 and Barclay, *Jews in the Mediterranean Diaspora*, 91, 160.
[126] *Ibid.*, 160-1.
[127] *Ibid.*, 114 and 159-160.
[128] *Ibid.*, 160.
[129] *Ibid.*, 91 and 114 and David T. Runia, "Philo of Alexandria," *REP* 7:357-361.

Spec. Laws 1.314).[130] In fact, his treatises on Jewish thought reveal much more than a superficial understanding of Torah; they evidence extensive knowledge of first-century interpretation and practice (Philo, *Moses* 1.4).[131] Moreover, Philo advocates strict observance of the letter of the Law and looks askance at those who would be less than punctilious in their observance of it (Philo, *Embassy* 31, 210; *Migration* 90-93; *Joseph* 28).[132]

There is no sense that Philo understands Hellenism and Judaism to be two competing facets of his identity. On the contrary, Philo views Judaism and Hellenism as being in a complementary relationship to one another.[133] As such, Philo's knowledge of Greco-Roman ideas informs how he thinks about Judaism and his connection to Judaism affects his view of Hellenism. Philo's use of allegory perhaps best demonstrates this integration.[134]

Barclay notes that the translation of the Torah to which Philo had access, namely the Septuagint, is very literal.[135] While Philo recognizes the value of the literal meaning for the masses (Philo, *Abraham* 147, 217, 236; *Planting* 36; *Unchangeable* 133), he is bothered by the Torah's many similarities to Greco-Roman myths and the base nature of many of the Torah's passages.[136] He also knows that both gentiles and Jews criticize the Torah on these grounds (Philo, *Confusion* 2; *Planting* 69-72; *Abraham* 178-183).[137] For these reasons, Philo appeals to allegory or the Hellenistic concept that gives symbolic meaning to the literal meaning of a narrative (Philo, *Joseph* 28; *Abraham* 147, 236;

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[130] Barclay, *Jews in the Mediterranean Diaspora,* 161.
[131] *Ibid.*, 161.
[132] *Ibid.*, 91, 110, and 114.
[133] *Ibid.*, 161, 172-173.
[134] *Ibid.*, 180.
[135] *Ibid.*, 165-166.
[136] *Ibid.*, 166, 168
[137] *Ibid.*, 169.

Contempl. Life 78; *Sobriety* 31-33).[138] Thus, Philo explains that the biblical patriarchs are allegories for certain philosophical concepts (Philo, *Abraham* 52-55, 68). Circumcision, the heavens, and physical perfection are likewise given allegorical meanings (Philo, *Spec. Laws* 1.8-11, 13-20, 80-81. A consequence of Philo's use of allegory is that he universalizes Judaism and thereby deJudaizes it.[139] However, despite his belief that all of the Torah is an allegory, Philo is aghast that some Jews would thereby decide to forgo observing the commandments (Philo, *Embassy* 31, 210; *Migration* 90-93; *Joseph* 28).[140]

Despite the fact that Philo is at home in the Hellenistic world, his involvement with Hellenism does not impinge upon his commitment to Judaism and the Jewish people. Philo's successful effort to blend Jewish piety with strong Hellenistic leanings suggests, more than any other evidence, that ardent Hellenists were not necessarily written off as impious Jews.[141] Indeed, his commitment to Judaism and the Jewish people was so strong that when conflicts arose between the Jewish and gentile inhabitants of Alexandria, he took on the task of leading the embassy to Gaius Caligula—a dangerous proposition since the emperor was famous for his instability and lackluster commitment to justice (Philo, *Embassy* 184, 346).[142]

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[138] *Ibid.*, 168-169.
[139] *Ibid.*, 170-171.
[140] *Ibid.*, 177.
[141] This is not to say his interactions with the Hellenistic world were not without their problems. In fact, the Jewish acceptance of Hellenism necessarily meant that certain aspects of Hellenism were refused. For example, Roman citizens were expected to participate in the imperial cults. For the minority of Jews who held citizenship this expectation was problematic. Both Apion and Philo discussed the fact that Jews abstained from emperor worship (Josephus, *Ag. Ap*, 2.65 and Philo, *Flaccus*). Jews responded to the criticism directed at them for their failure to participate in the pagan sacrifices in a creative way. For example, some Jews instead made offerings *in honor* of the emperor in the Jerusalem Temple as a means of fulfilling their loyalty obligations to the emperor (Collins, *Jewish Cult*, 16). See 4.16 for the particularities of Jewish citizenship.
[142] Barclay, *Jews in the Mediterranean Diaspora*, 55.

4.6.2 Josephus' Appraisal of Agrippa I

The most pertinent evidence for the position that involvement with Hellenism did not necessarily diminish one's commitment to Judaism comes from Josephus' description of Agrippa I, Herod's son and successor.[143] Josephus lauded Agrippa I for his commitment to Jewish traditions and esteemed him as a pillar of piety in comparison to his father, whom Josephus views negatively. Moreover, Josephus' portrayal of Agrippa I is not tarnished by what follows, namely, a description of Agrippa I's extensive involvement with Hellenistic culture, including his financial patronage of the establishment of Greco-Roman cultural institutions. Because Josephus' description of Agrippa I is so important to the argument made in this study, his comments are cited fully below:

> Now King Agrippa was by nature generous in his gifts. . . He took pleasure in conferring favours and rejoiced in popularity, thus being in no way similar in character to Herod, who was king before him. The latter had an evil nature, relentless in punishment and unsparing in action against the objects of his hatred. It was generally admitted that he [Herod] was on more friendly terms with Greeks than Jews. For instance, he [Herod] adorned the cities of foreigners by giving them money, building baths and theatres, erecting temples in some and porticoes in others, whereas threre was not a single city of the Jews on which he deigned to bestow even minor restoration or any gift worth mentioning. Agrippa, on the contrary, had a gentle disposition and he was a benefactor to all alike. He was benevolent to those of other nations and exhibited his generosity to them also; but to his compatriots he was proportionally more generous and more compassionate. He enjoyed residing in Jerusalem and did so constantly; and he scrupulously observed the traditions of his people. He neglected no rite of purification, and no day passed for him without the prescribed sacrifice. . . He erected many buildings. . . a theatre surpassing many others in its costly beauty; he also built an amphitheatre at great expense, besides baths and porticoes. . . in the theatre he exhibited spectacles introducing every kind of music. . . while in the amphitheatre he showed his noble generosity by the number of gladiators provided. (Josephus, *Ant.* 19.328-331, 335-337

[143] *Ibid.*, 328 and 293-294.

[Thackeray, LCL])

> Ἐπεφύκει δ᾽ ὁ βασιλεὺς οὗτος εὐεργετικὸς εἶναι ἐν δωρεαῖς…κατ᾽ οὐδὲν Ἡρώδῃ τῷ πρὸ ἑαυτοῦ βασιλεῖ τὸν τρόπον συμφερόμενος ἐκείνῳ γὰρ πονηρὸν ἦν ἦθος ἐπὶ τιμωρίαν ἀπότομον καὶ κατὰ τῶν ἀπηχθημένων ἀταμίευτον Ἕλλησι πλέον ἢ Ἰουδαίοις οἰκείως ἔχειν ὁμολογούμενος ἀλλοφύλων γέ τοι πόλεις ἐσέμνυνεν δόσει χρημάτων βαλανείων θεάτρων τε ἄλλοτε κατασκευαῖς ἔστιν αἷς ναοὺς ἀνέστησε στοὰς ἄλλαις ἀλλὰ Ἰουδαίων οὐδεμίαν πόλιν οὐδ᾽ ὀλίγης ἐπισκευῆς ἠξίωσεν οὐδὲ δόσεως ἀξίας μνημονευθῆναι πραΰς δ᾽ ὁ τρόπος Ἀγρίππᾳ καὶ πρὸς πάντας τὸ εὐεργετικὸν ὅμοιον τοῖς ἀλλοεθνέσιν ἦν φιλάνθρωπος κἀκείνοις ἐνδεικνύμενος τὸ φιλόδωρον τοῖς ὁμοφύλοις ἀναλόγως χρηστὸς καὶ συμπαθὴς μᾶλλον ἡδεῖα γοῦν αὐτῷ δίαιτα καὶ συνεχὴς ἐν τοῖς Ἱεροσολύμοις ἦν καὶ τὰ πάτρια καθαρῶς ἐτήρει διὰ πάσης γοῦν αὐτὸν ἦγεν ἁγνείας οὐδ᾽ ἡμέρα τις παρώδευεν αὐτῷ τὰ νόμιμα χηρεύουσα θυσίας.

Agrippa I is portrayed as having followed in his father's footsteps in other ways as well. He arranged for 700 gladiators to fight wild beasts to their death, removed high priests from office at will, was liberal with his honorifics for Caesar, and regularly attended the theater and other Greco-Roman institutions (Josephus, *Ant.* 19.337-338, 342-344). Josephus' assessment of Agrippa I's reign is curious because he questioned Herod's connection to Judaism on account of his involvement with the Greco-Roman world but praised Agrippa I's religiosity despite the fact that Agrippa I was similarly engaged (Josephus, *Ant.* 15.267).[144] Indeed, short of building pagan temples for the gentile regions in his kingdom, Agrippa I's behavior largely mirrored that of his father. Given the above, it is possible that Josephus' negative view of Herod's piety is not a result of Herod's involvement with Hellenism and, more generally, that Josephus did not necessarily find overt engagement with Hellenism problematic to one's Jewish

[144] Agrippa's rule was not entirely above criticism. Indeed, Josephus interprets Agrippa I's untimely death as divine retribution for some of his problematic behaviors (Josephus, *Ant.* 19.343-353).

identity.[145] Instead, Josephus' conflicting comments on Herod and Agrippa I reveal that, at least in his less self-conscious moments, he was able to admit that such deep engagement with the Hellenistic world did not necessarily preclude a strong connection to Judaism.

4.6.3 The Integration of Hellenistic Elements into Judaism

Literary and archaeological remains from antiquity can be used to support both approaches to Judaism and Hellenism, namely, that they were in conflict and that they could be integrated with one another. But the evidence tips towards the position that Jews found ways to integrate Hellenism with their loyalties to Judaism; this is especially true as we move forward in time. While disagreements may have surfaced from time to time over the extent to which it was acceptable to adopt Hellenistic elements, the adoption of Hellenism itself was not in dispute.

Where does this discussion of the meeting of Judaism and Hellenism leave us in terms of our assessment of the Herodian family's behavior? First, Hellenism heavily influenced the royal family; to deny this would be folly. Second, both writings and material culture demonstrate that it was not exceptional to integrate elements of Hellenism into one's Jewish identity. For example, Josephus, despite the circumstances of the latter half of his life, remained a loyal and observant Jew. Similarly, Philo, who was at least as involved in Hellenistic culture as were the Herodians, lived as a committed

[145] Josephus' reticence to criticize Agrippa I may have to do with his friendship with Agrippa II, the son of Agrippa I (D. Schwartz, *Agrippa I*, 158).

Jew. Even Herod's son Agrippa I, who was known as a benefactor of Hellenistic cultural institutions, scrupulously observed the traditions of his people.[146]

Josephus' remarks suggest that the Herodians' level of integration into the Greco-Roman world was indeed unusual. That said, given their vast wealth and political connections, the Herodians also had many opportunities, unlike those of any other Jews in Roman Palestine for involvement in the Hellenistic world. Given the uniqueness of the Herodians' situation, they would have had few models for how such a life should look, although the behavior of the Hasmoneans and other elites may have provided some clues. Acting without many set guidelines, the Herodians had to balance their commitment to Judaism with their interest in Hellenism. Other times, however, the Herodians navigated their dual loyalties with less skill. Aware of the fact that their motivation to practice a Judaism deeply influenced by Hellenism was restricted by limits imposed upon them by their and the public's understanding of acceptable Jewish behavior, the Herodian family had to make decisions about when to adopt elements of Hellenistic culture and when it was more prudent to forgo the foreign influences.[147] In order to understand how and when the Herodians decided to put limits on their embrace of Hellenism, it is necessary to study the categories of piety and pragmatism; these categories may better explain the Herodian family's Jewish choices than the Hellenism *versus* Judaism dialectic discussed above.

[146] Goodenough, *By Light, Light*, 6-7; Schürer, *Literature of the Jewish People*, 363-365; and Barclay, *Jews in the Mediterranean Diaspora*, 85-86.
[147] J. Collins, *Jewish Cult*, 21-33 and Barclay, *Jews in the Mediterranean Diaspora*, 85-86.

4.7 Piety and Pragmatism

The Herodians clearly exhibited traits shared by committed Jews. Herod's most memorable accomplishment, the renovation and expansion of the Temple, can be understood as a pious act (Josephus, *Ant.* 15.387).[148] Indeed, the costly and cumbersome measures that Herod employed in building the Temple to ensure that the strictest standards of purity were maintained throughout the building process may reflect his piety (Josephus, *Ant.* 15.421). Similarly, the fact that neither the private nor the public areas of the Herodian palace complexes exhibited figurative art speaks to the royal Jews' commitment to Roman-era Jewish traditions.[149] The Herodians' aniconism, in particular, underscores their piety, since even the homes of the Jerusalem-based priestly elite in the first centuries B.C.E. and C.E. did not eschew figurative art with the same fervor.[150]

Other indications of the Herodians' piety are found in the presence of synagogues and rituals baths at all of their palaces, no matter how costly to build or how remote the location of the palace.[151] One might be able to write off Herod's involvement in the renovation of the Temple as an act motivated by pragmatic concerns, as it could be viewed as an act to endear his subjects to him and increase the prestige of Judea. But the synagogues and, in particular, the many private ritual baths, or *mikvaot*, uncovered in his palace compounds cannot be similarly explained. Although one could argue that the architectural features of his palaces located in populated areas would have been well known, the remoteness of other of his palaces would have provided fewer opportunities to tout the presence of synagogues and *mikvaot* as public markers of his commitment to

[148] Josephus notes that Herod intended his Temple-building campaign as a pious act (Josephus, *Ant.* 15.387).
[149] Richardson, *King of the Jews*, 183.
[150] *Ibid.*, 183.
[151] *Ibid.*, 183 and 214.

Judaism. Furthermore, Josephus relates that Agrippa I, at least, regularly immersed himself for purity (*Ant.* 19.331).

The Herodians demonstrated their commitment to Judaism outside of their building practices as well. For example, many family members interfered with the emperors when the rights of Diaspora Jews to live by their ancestral traditions were threatened (Josephus, *Ant.* 15.380-425). Other indications of the family's commitment to Judaism include one Herodian princess' fulfillment of a Nazirite vow and the frequency with which other members of the family made pilgrimage to Jerusalem on the festival days in order to offer sacrifices (Josephus, *War* 1.433; 2.322; *Ant.* 19.331-332).

Even though many of the Herodians' decisions may have been informed by their connection to Judaism, their decisions were not always determined by their Jewish loyalties. Pragmatic concerns often determined their behavior. Indeed, social controls may have been every bit as strong an influence on their decisions as piety was. The concept of civil rights did not yet exist in the world of the Herodians. Although a commoner might not have had the legal standing to seek redress for abuses of the rulers through the courts or other recognized channels, this does not mean that leaders could act as they desired. On the contrary, even the rulers of ancient dictatorial states were checked by social controls that demanded that that they conform to some level of accepted practice.[152] Leaders who acted unreasonably too frequently might be confronted

[152] The Herodians were not the only ones who had to relent in the face of widespread protests. Upset at the idea that a statue of a Roman emperor was to be installed in the Temple in Jerusalem, a great number of Jews gathered at Caesarea to protest the matter. The Roman governor residing at Caesarea granted a temporary reprieve as he was moved by the multitude of Jews willing to sacrifice their own lives rather than see the Temple desecrated (Josephus, *War* 2.169-174; *Ant.* 18.55-59).

with mass public protests. Because these public demonstrations could become violent and end dramatically, many groups in antiquity outlawed public gatherings altogether.[153]

The Jewish royals were also subject to these moderating forces. For example, mass protests erupted when Herod installed trophies in a theater in Jerusalem (Josephus, *Ant.* 15.272-279). Instead of attempting to quash the rebellion with force, Herod took the concerns of the masses seriously. He invited the leading members of the community to go with him to view the offending trophies and pass judgment on them (Josephus, *Ant.* 15.278-279).[154] Likewise, rumors that Herod disguised himself as a commoner in order to walk about with his subjects and hear popular opinion about his reign indicate his concern for public opinion (Josephus, *Ant.* 15.367). The Herodians' custom of establishing courts of their advisors and friends prior to making any controversial decisions also suggests that they generally had to behave in ways that would be approved by their subjects.[155] For example, Herod convened a court to hear his decision to have his sons, Aristobolus and Hyrcanus, put to death (Josephus, *War* 1.538-543).

Although there were certainly times when the Herodians transgressed Jewish norms, their public behavior was consistently in the range of normative Jewish practice. In particular, we note that the Herodians avoided transgressing Pentateuchal law. For example, we will see in chapter six that marriage proposals that were very desirable from the Herodians' point of view were turned down if the potential marriage partners were gentile (Josephus, *Ant.* 16.224-227; 20.139-147). Similarly, Herod refrained from

[153] For example, the Romans outlawed public gatherings. One of the special privileges given to the Jews of the Roman Empire was an exemption from this general prohibition (Josephus, *Ant.* 14.214-216, 227, 235, and 257-260).
[154] The protest concerned the trophies in the theater; the theater itself was not a matter of dispute.
[155] This is not to say that these courts were not kangaroo courts, as they clearly often were. Nonetheless, the Herodians did not always want to be perceived as unilateral players. Instead, they convened like-minded bodies made up of their friends and supporters to publicly rubberstamp their more controversial policies (D. Schwartz, *Agrippa I*, 134).

coupling with the daughter of Boethus the high priest when he desired her. Worried about the pragmatic concern of how the public would react, Herod instead sought to marry her legally (Josephus, *Ant.* 15.321-322).[156]

Although popularly understood as an example of Herod's excessive involvement with Hellenism, even the controversial incident of the golden eagle can be viewed as an example of the Herodian attempt to walk the line between piety and pragmatism (Josephus, *Ant.* 15.380-425).[157] Late in his reign, Herod erected a golden eagle, the symbol of Rome, over an entrance gate to the Temple. The public response was not subtle. Protesters filled the streets and threats were made if the offending eagle, which the masses believed to have been in defiance of the biblical injunction against the creation of images, were not removed. Herod, uncharacteristically, did not back down and severely punished those who attempted to remove it. Many scholars have sought to tie Herod's behavior in this incident to his old age and delicate emotional health.[158] Whether senility and mental instability were to blame for the fact that he did not relent, his behavior is difficult to understand because it was so out of character with his normal approach. Indeed, this is one of the rare instances where Herod takes a hard-line approach and refuses to alter his position in the face of widespread criticism. While the Herodians were by no means subject to democratic forces that could compel them to take certain actions, the case of the golden eagle is important because it is rare. The pragmatic

[156] It is rumored that one Herodian princess, Berenice, was partner to a relationship that would not have been viewed favorably by Jewish law. Tellingly, Berenice's long-term intimate relationship to a gentile man, Titus, was never made official through marriage. Thus, she avoided publicly flouting Jewish law. If she was the partner in the relationship that eschewed marriage, her decision may best encapsulate the Herodian family's approach to Jewish observance. While they may have strayed from acceptable Jewish norms from time to time in their private lives, their public personas largely complied with Jewish norms. In fact, it seems clear that the Herodian family understood that it was important for the public to view their behavior as being in accord with widely accepted Jewish norms.
[157] Richardson, *Herod,* 15-18.
[158] Ilan, "Intermarriage," 12.

Herodians, when challenged by the masses, usually altered their behavior to be more in line with general social norms.

Richardson offers another explanation of Herod's pragmatism in this event. He suggests that Rome ordered Herod to install a golden eagle over the Temple.[159] Given that Herod's claim to the throne was entirely based on his relationship to Rome, he was in no position to dismiss the order.[160] Nonetheless, Herod knew that the installation of the eagle, which was considered in violation of the biblical prohibition against images, would cause considerable turmoil among his subjects. Consquently, Herod had the eagle installed, however, he had it placed over the least used entrance to the Temple, the gateway from the wealthy upper city.[161] The entryway that was chosen served as the ceremonial entrance to the Temple and would be used by Roman officials who visited the shrine.[162] The main group that entered from the upper city entrance, however, were Jerusalem's most wealthy and Hellenisitically-involved, that is, those least likely to take offense at the eagle. That said, if Jews wanted to avoid coming into contact with the eagle, they could have easily entered through one of the Temple's other gates.[163]

Perhaps the best illustration of the fact that pragmatic concerns sometimes determined the Herodians' behavior is found in the story of Herod's presence at a pagan ceremony involving sacrifice. Josephus reveals that Herod was escorted out of the senate flanked by Caesar and Antony immediately after kingship had been conferred on him (Josephus, *Ant.* 14.388). Caesar and Antony then proceeded to offer sacrifices to mark the auspicious occasion. While Josephus depicts Herod as present at the scene, he does

[159] Richardson, *King of the Jews,* .
[160] *Ibid.*,
[161] *Ibid.*,
[162] *Ibid.*,
[163] *Ibid.*,

not intimate that Herod also offered up victims in celebration. Here again, a Herodian seems to have drawn a boundary between fidelity to Judaism and pragmatism. While ancestral custom may have led many Jews to eschew attendance at a pagan rite, Herod's pragmatic concerns led him to adopt a compromise position towards the rite. He was present at the pagan sacrifice in order to show due honor to Rome, but as a spectator rather than an active participant. Although Herod's pious contemporaries may not have been satisfied by this compromise position, Herod himself may have viewed his role at the sacrifice as ingenious compromise since it enabled him to maintain an appropriate balance between his connection to Judaism and his involvement in the Hellenistic world.[164]

4.8 Herodians as Citizens

The evaluation of the connection to Judaism of some Jews in Roman Palestine involves assessing their complex relationship to Judaism and Hellenism. For the Herodians, however, another factor comes into play in evaluating their behavior, namely, their status as Roman citizens. Citizenship, which according to Josephus was granted to the family patriarch Antipater and would have been passed down through the generations, would have made the Herodians sunique among Judeans (Josephus, *Ant.* 14.137; *War* 1.194).[165] Indeed, until at least the third century C.E., citizenship was a privileged social status that was not available to all.[166] Generally, citizenship gave one the right to vote, serve in government, contract a legal marriage, have a legal trial, and be exempt from

[164] See Barclay's discussion of the various ways that Jews could be engaged in pagan worship, without actually offering sacrifices (Barclay, *Jews in the Mediterranean Diaspora,* 90).
[165] Schürer, *History of Jewish People,* 316-317.
[166] Everett Ferguson, *Backgrounds of Early Christianity* (3d ed.; Grand Rapids: Eerdmans, 2003), 62.

certain taxes (Acts 22:25-26:32).[167] A frequent requirement of citizenship was service in the Roman legion.[168]

Jewish status in and of itself was not a disqualification for citizenship. For example, Vespasian granted Josephus citizenship along with other honors (Josephus, Life 423).[169] Moreover, Philo's writings suggest that many of the Jews of Rome as well as a significant minority of Alexandrian Jews, were citizens (Philo, *Embassy* 155, 157; *Flaccus* 47, 52). Citizenship would have been granted to many provincial elites as well in return for favors or in honor of their high status (Josephus, *Ag. Ap.* 40-41; *War* 2.308).[170] Furthermore, Acts' retelling of Paul's encounter with the Judean legal system proves that some Diaspora Jews were also citizens. While visiting Jerusalem, Paul was imprisoned for allegedly bringing a gentile into an area of the Temple restricted for the use of Jews alone (Acts 21:28-30). In order to avoiding flogging at the hands of his captors, Paul asserted his status as a Roman citizen; a factor that is referred to many times throughout his subsequent trials (Acts 22:25-29). Paul's declaration that he was born a citizen indicates the permissibility of Jewish citizenship;however, the fact that his captors did not inquire about it may suggest that only a minority of Jews in Judea were citizens (Acts 16:37; 21:39).

Although Jewish status did not disqualify one from citizenship, it often altered its terms since the Romans granted Jewish citizens exemptions allowing them to maintain their ancestral customs; a factor which led to resentment among gentile citizens

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[167] *Ibid.*, 63.
[168] *Ibid.*, 63.
[169] Josephus received a number of benefits from Roman emperors in addition to the bestowal of citizenship. Josephus received a stipend, housing in Rome, an arranged marriage, land in Judea, tax relief and protection from accusers. Mason describes the scope of privileges that a Roman emperor could bestow and declares Josephus' privileges to be comparatively modest (Mason, *Life*, 168).
[170] *Ibid.*, 169.

(Josephus, *Ant.* 12.125-126).[171] For example, they were freed from civic duties on the Sabbath and holidays, such as the duty to appear in court (Josephus, *Ant.* 14.228-240).[172] Augustus even made an alternate arrangement for Jews to collect their monthly corn dole in Rome should the appointed day fall on the Sabbath (Philo, *Embassy* 157-158). Another way that Jewish citizenship differed was that Jews were exempted from the duty to participate in emperor worship and military service. These two exemptions in particular bothered gentile citizens (Philo, *Embassy*, 265; Josephus, *Ant.* 12.125-126; *Ag. Ap.* 76-77; *War* 2.197).

Citizenship does not just differentiate the Herodians from most of their subjects; it also complicates their legal status. Roman imperial practices, which did not uproot the ancestral laws of the people whom they conquered, affected legal jurisdiction. Because Roman law recognized foreign legal codes as long as they did not harm the empire's interests, namely, peace reigned and taxes were paid, these codes were allow to stand. Consequently, two or more legal codes could have jurisdiction over the same areas. For example, Jewish citizens in Judea could appeal to either the Roman or Jewish legal systems to adjudicate disputes. This is apparently what happens when Paul is arrested in Acts. When Paul asserts his status as a citizen, his case is transferred from the Jewish court system to the Roman one (Acts 16:37; 21:39). Similarly, the Herodians' status as citizens increased their legal options.

[171] Feldman, *Judaism and Hellenism*, 159 and 163.
[172] Mason, *Life*, 271.

4.9 Conclusion

The Herodians defy easy classification. On the one hand, they clearly are the calculated Hellenists that scholars often make them out to be. On the other hand, they exhibit traits shared by committed Jews. How these seemingly disparate loyalties fit together is not always clear. The combination of piety with more earthly concerns described above bothers many students of the Herodian family, since they want the Herodians to be consistently either pious or impious. The view of the Herodians advocated here—as being motivated by a mix of piety and pragmatism—is itself a compromise position, since it recognizes that their critics are not wrong in defining the royal Jews by their intimate connection to Hellenism. Indeed, Herod and his family clearly were deeply entrenched in the Hellenistic culture of their day and they admired and adopted elements of Hellenism with ease. At the same time, however, it is clear that the royal Jews' piety moderated their involvement in the Hellenistic world.

Definitive proof of the exceptionality or ordinariness of the Herodians' behavior is wanting, given the limitations of the textual corpus from antiquity.[173] Yet, Josephus' treatment of the Herodians leads to the conclusion that their behavior was usually within the bounds of what one would expect from Jews in Roman Palestine. Given the reaction of the masses to certain events, as Josephus describes them, most of the time the behavior of the Herodian family seems to have been accepted by their fellow Jews. For example, the Herodians' subjects were sometimes ruffled by their rule yet criticisms tend to focus on their perceived cruelty not their impiety. Like other Jews, their actions occasionally may have fallen outside the parameters of acceptable practices in their time. For

[173] Ilan "Intermarriage," 1-15, esp. 14.

example, the Herodian family's level of involvement in the broader political landscape made them unusual among their Jewish contemporaries.[174] But in general, the public behavior of the Herodian family was purposefully modeled to be within respectable limits. Indeed, the ability of Herodian line to preserve its position of leadership in the land of Israel so long without serious interference suggests a good deal of acceptance of their practices.

The fact that Josephus could praise Agrippa I for his commitment to Judaism in spite of his sponsorship of Greco-Roman institutions, combined with the examples provided by the personal histories of Josephus and Philo, both of whom lived as proud, observant Jews while maintaining deep connections to the Hellenistic gentile world, speaks to the fact that if Judaism ever was so neatly bifurcated from the surrounding cultures as some would like us to believe, this was certainly no longer the case in the late Second Temple period. The Herodians, as products of both the Jewish and Hellenistic worlds, took advantage of this development and were able to live as serious Jews at the same time that they gladly took part in and sponsored aspects of Hellenistic culture. In Roman Palestine, the Herodian family, influenced both by the traditions of Judaism and the norms of the Hellenistic world, manifested a Jewish identity that would be impossible to imagine had not Judaism always been adapting under the influence of foreign cultures and ideas. Moreover, the presence of the various contending Jewish parties and sects in the Herodians' own lifetime further underscored the point that Judaism did not have to be isolationist and monolithic to be authentic.

[174] *Ibid.,* 15.

5. Marriage and the Herodians: Motivations and Protocol

The members of the Herodian family did not shy away from marriage. Of the seventy-eight Herodians named in Josephus' multi-generational epic of the royal family, only five males and one female remained unmarried throughout their lives, according to Hanson's counting.[1] In contrast, among the forty-eight Herodians of determined marital status, some fourteen, or 29 percent, were married more than once (See Appendix 1: The Herodian Marriages).[2] Moreover, because of the selective nature of Josephus' histories, it is certain that many more Herodians married and remarried than Hanson's figures suggest. Given the propensity of the royal Jews to marry and remarry, most of the remaining twenty-three Herodians mentioned in Josephus' writings whose marital status is unspecified may be accounted for by death prior to the age of majority.[3] Alternatively, Josephus might have lacked knowledge of their domestic histories.[4]

The Herodian family members not only married often, but arrangements for their marriages were made early as well. In most cases, the family patriarch matched the Jewish princes and princesses to their future marital partners when they were still young children (Josephus, *War* 1.557; *Ant.* 17.13-22; 18:130-142; 19.354).[5] In the event of childhood betrothal, the time of marriage generally coincided with the future wife's sexual maturation (Josephus, *Ant.* 17.13; 18.134; 20.140). For example, while Herod

[1] Hanson, "Marriage and Divorce," 147. The only Herodian woman that Josephus' specifies as having remained single throughout her life is Jotape the deaf-mute daughter of Aristobulus and Jotape (Josephus, *Ant.* 18.135). While it may be the case that women were more likely to marry than men, this is not an inference that one can make from the 5:1 ratio of unmarried men to women described above. The skewed ratio of the marriage rates between men and women in Josephus' writings is likely a reflection of the fact that, as in all ancient histories, there are far more named men in Josephus' works than women.
[2] Hanson, "Marriage and Divorce," 144-146.
[3] *Ibid.*, 147, 150.
[4] *Ibid.*, 144-147.
[5] Kokkinos, *Herodian Dynasty,* 211. The later *tannaitic* literature also encourages childhood betrothals in many of its narratives, suggesting that these types of marital arrangements were not limited to royal families (Satlow, *Jewish Marriage,* 104-105 and 107).

betrothed Mariamme when she was a minor, the pair did not unite in marriage until she reached the age of majority (Josephus, *War* 1.241, 264, 344).[6] Similarly, describing the marriages of two orphan Herodian princes, whom Herod had betrothed as young children, Josephus writes: "*When they reached adolescence*, Herod, the brother of Agrippa, married Mariamme, the daughter of Olympias…The other brother of Agrippa, Aristobulus, married Jotape" (ἡβήσαντες δ᾽ ἄγονται) (Josephus, *Ant.* 18.134-135 [Feldman, LCL]; emphasis mine).[7] The age of sexual maturity was presumably several years later than in the modern era, but exact dates or definitions for adolescence are lacking.

While there is no strong data for age of first marriage among Jews in the Second Temple era outside of the Herodian court, circumstantial evidence suggests that the Herodians married earlier than non-royal, elite Jews.[8] For example, although *Joseph and Aseneth,* written in the first century B.C.E. or C.E., does not relay the ages of the eponymous bride and groom, Aseneth's active role in deciding her marital plans may indicate that she was no longer a minor.[9] Philo suggests that men should marry between ages 28 and 35 and Josephus' autobiography reveals that he was around 30 years old at the time of his first marriage (Philo, *Creation* 103; Josephus, *Life* 415-416).[10]

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[6] Stambaugh, *New Testament in Its Social Environment,* 121-122.

[7] While Josephus does not relay if Berenice, one of Herod's great grandchildren, was betrothed as a young girl, her marriage history also evidences the pattern of early age upon first marriage. She was between thirteen and fifteen when she first married (she would eventually marry three times), since by age sixteen she had already been widowed and remarried (Josephus, *Ant.* 19.276-277, 354 and Kraemer, "Typical and Atypical," 134 and 143-144).

[8] Satlow, *Jewish Marriage,* 107; Kraemer, "Typical and Atypical," 140-141; and Schremer, *Male and Female,* 85-86, 89-91.

[9] Aseneth is a virgin who is sought after by many potential grooms, including Pharoah's son (*Jos. Asen.* 1:4-9). Aseneth, however, prefers to remain unmarried (*Jos. Asen.* 2:1). Initially, Aseneth refuses to accept her father's plan to marry her to Joseph, but once she sees him she changes her mind (*Jos. Asen.* 4:1-6:8 and Nickelsburg, *Jewish Literature,* 263).

[10] According to *Life* 5, Josephus was born in 37 or 38 C.E. His first marriage took place at the behest of Vespasian during the war with Rome around the year 70 C.E. when Josephus was in his thirties (Josephus,

The Roman evidence for the bride or groom's age upon first marriage is stronger. Evidence from ancient authors and historians suggests that some elite Romans outside of the imperial house married in their mid to late teens with the men on average some five to ten years older than the women, in agreement with the viewponts of Philo and Josephus.[11] Members of the Roman imperial household, however, married earlier, that is to say, at ages similar to the Herodians (Nepos, *Atticus* 19.20).[12] The reasons for earlier marriage doubtless have to do with the economic and social importance of imperial families.

Although the Herodians married early and remarried often, it does not follow that they accorded little importance to the selection of marriage partners.[13] The fact that Josephus describes scenes where various members of the royal family gathered to weigh the marital options available to them and their near family members conveys the seriousness with which the royal Jews viewed the matchmaking process (Josephus, *War* 1.553-567; *Ant.* 17.13-22).[14] While many factors may have contributed to the Herodians' interest in early marriage and frequent remarriage, we first turn to the Jewish tradition to understand how it may have influenced their marital decisions.

Life 415-416). Often elite Jewish males, like Josephus, married in their thirties since they first dedicated themselves to learning philosophy, such as Josephus recounts in his autobiography (Josephus, *Life* 9-12 and Satlow, *Jewish Marriage*, 30 and Schremer, *Male and Female*, 89). Josephus does not tell us the age of his bride. Kraemer argues she would have been rather young since Josephus describes her as a παρθένος (Kraemer, "Typical and Atypical," 141-142).

[11] For the Jewish evidence culled from narrative accounts, epitaphs, and rabbinic writings, see Satlow, *Jewish Marriage*, 106-109. For the Roman evidence see, Judith Grubbs, *Law and Family in Late Antiquity* (Oxford: Clarendon, 1995), 140-141 and Mary Harlow and Ray Laurence, *Growing Up and Growing Old in Ancient Rome* (New York: Routledge, 2002), 80-81 and 95.

[12] *Ibid.*, 58-60 and 81.

[13] For a fuller discussion of the high rate of remarriage in antiquity, see, Satlow, *Jewish Marriage*, 182-183.

[14] Hanson, "Kinship," 188.

5.1 Marriage in the Authoritative Jewish Sources

The Torah is a problematic source for right conduct in daily life in general and marital practices in particular because it contains little or no information about many common life situations. For example, the Torah never discusses marriage or divorce law in any comprehensive fashion. Moreover, although many texts from the Torah imply that marriage was expected, no biblical verse indicates that marriage was incumbent upon all.[15] In fact, Gen 2:24 ("Therefore a man leaves his father and his mother and clings to his wife, and they become one flesh" עַל־כֵּן֙ יַֽעֲזָב־אִ֣ישׁ אֶת־אָבִ֔יו וְאֶת־אִמּ֖וֹ וְדָבַ֣ק בְּאִשְׁתּ֑וֹ וְהָי֥וּ לְבָשָׂ֖ר אֶחָֽד׃) is as close as the Bible comes to offering a foundational statement on marriage.[16] Jews in antiquity sought to deal with this paucity of biblical guidelines on marriage by extrapolating from the scattered citations in the Torah.

According to Satlow, Jews first began to use material from the Torah to justify marriage during Second Temple times.[17] A number of these Second Temple biblical interpretations argue that marriage was not only essential but also the ideal state.[18] Hence, Tobit, written sometime between the second to third century B.C.E., points to the coupling of Adam and Eve as in being in accord with the divine will in his prayer on his wedding night, and Philo's theological excursus on Genesis describes marriage as part of a man's duty to state and God (Tobit 8:6-7; Philo, *QG* 1.26).[19]

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[15] Satlow, *Jewish Marriage*, 11.
[16] *Ibid.*, 11 and 57-67.
[17] *Ibid.*, 60. For example, the Qumran community used interpretations from the texts of Gen 1:27, 7:9, and Deut 17:17 in their argument against polygyny (Satlow, *Jewish Marriage*, 60 and Aharon Shemesh, "4Q271.3: A Key to Sectarian Matrimonial Law." *JJS* 69 (1998): 244-263).
[18] *Ibid.*, 3-12 and 16-17.
[19] Sanders, *Practice and Belief*, 148 and Nickelsburg, *Jewish Literature*, 35. Ephesians 5:31 also echoes Gen 2:24.

Other Second Temple references to the importance and good of marriage are clearly rooted in understandings gained through the biblical text, although they are not necessarily presented as biblical interpretations. For example, Philo considered marriage so important that he advocated it even though he noted that marriage and the responsibilities of family life infringed upon one's ability to study wisdom, a position with which the Cynics agreed (Philo, *Giants* 29).[20] Similarly, the fact that the Dead Sea Scrolls do not prohibit marriage, even though the sectarian literature from Qumran tends to be negative towards women and expresses a preference for celibacy, speaks to the importance of marriage in the Jewish tradition (Josephus, *War* 2.120-121, 160-161).[21]

The later rabbinic ideas, some of which might reflect earlier times, confirm and expand upon the Second Temple views on marriage. Indeed, rabbinic declarations such as "no man without a wife, neither a woman without a husband, nor both of them without God" make the rabbinic view of marriage unambiguous (*Gen. Rab*. 8.9). Other rabbinic sayings that promote marriage include: "God waits impatiently for man to marry" (*b. Kidd.* 29b); "One who does not marry dwells without blessing, without goodness…without peace" (*b. Yebam.* 62b) and "He who has no wife cannot be considered whole" (*b. Pesach.* 113a). Indeed, marriage was considered so important that even the rabbis of the Babylon-based community, who saw themselves primarily as a

[20] Satlow, *Jewish Marriage*, 15.
[21] *Ibid.*, 11 and Hillel Newman, *Proximity to Power and Jewish Sectarian Groups of the Ancient Period: A Review of the Lifestyle, Values, and Halakhah in the Pharisees, Sadducces, Essenes, and Qumran* (BRLJ 25; ed. Ruth Ludlam; Leiden: Brill, 2006), 169-176. Excavation of the burial grounds at Qumran uncovered a small percentage of female bodies suggesting that the group's negative view of women was not absolute. Moreover, although Josephus initially describes the Essenes as group that practiced continence (Josephus, *War* 2.120-121), later he notes that another division of the group married and bore children (Josephus, *War* 2.160).

class of scholars and consequently lamented the time and energy that marital life drained from one's energy for study, advocated marriage (*b. Kid.* 29b; *b. Yev.* 63b; *t. Yev.* 8:7).[22]

Although the evidence suggests that Jews in antiquity considered marriage essential, they disagreed about the proper motivation for marriage, likely due to the absence of guidance on this topic in the biblical texts.[23] Some Second Temple texts advocate marriage to properly channel sexual desire or establish an *oikos* (1 Cor. 7:1-9, 36-37; Sira 26:16; Philo, *QG* .26; *Jos.* 38). Most texts, however, suggest that procreation is the reason to marry (Gen 1:28; Josephus, *Ag. Ap.* 2.100, 199-204; *Ant.* 3.274; *War* 2.160-161; Philo, *Spec. Laws* 3:35-36; *Dec.* 121-131; *Ps.-Phoc.* 175-176). By identifying childbearing as the impetus to marry, a link is created between marriage, which has no biblical mandate, and the first biblical commandment in traditional Jewish counting, that is, to "be fruitful and multiply, and fill the earth (פְּרוּ וּרְבוּ וּמִלְאוּ אֶת־הָאָרֶץ)" (Gen 1:28).[24] Consequently, by linking procreation to marriage, the context in which post-biblical Jews thought that childbearing was best fulfilled, a circuitous justification of marriage was gained.[25] For example, Pseudo-Phocylides, who wrote around the turn of the first millennium, made the connection between marriage and childbearing explicit.[26] He writes, "Do not remain unmarried, lest you die nameless. Give nature her due, you also, beget in your turn as you were begotten" (*Ps.-Phoc.* 175-176 [Van der Horst, OTP]).

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[22] Satlow, *Jewish Marriage*, 30-34.
[23] Also, see Satlow, *Jewish Marriage*, 3-21, 26-30, 39, and 105.
[24] *Ibid.*, 11, 15-18, esp. 17 and Instone-Brewer, *Divorce and Remarriage*, 91-92. Although Gen 1:28 is a blessing in its biblical context, by the late Second Temple period it was viewed as a commandment (Satlow, *Jewish Marriage*, 17-18).
[25] *Ibid.*, 11. In a discussion about the number of children that a Jewish male was required to produce, the rabbis seamlessly turn the exchange to discussion about marriage, once again evidencing the link between the biblical command to procreate and justification for marriage (*b. Yev.* 61b-64a).
[26] Pieter W. Van der Horst, "Pseudo-Phocylides: A New Translation and Introduction" in *The Old Testament Pseudepigrapha* (ed. James Charlesworth; 2 vols.; New York: Doubleday, 1985): 2:565-582.

Josephus attributes the same position to the "marrying" Essenes when he writes, "Their motive in marrying is not self-indulgence but the procreation of children" (Josephus, *War* 2.161 [Thackeray, LCL]). Indeed, the Essenes were so focused on fulfilling the biblical commandment of childbearing (as opposed to marriage) that they required their wives to demonstrate their fertility before they married (Josephus, *War* 2.160-161). Similarly, Philo, meditating on the importance of procreation to marriage, enjoined men married to infertile women to divorce them and remarry, in the hope of fathering children (Philo, *Spec. Laws* 3.35).[27]

In theoretical discussions of the motivations for marriage, Josephus agrees with other Second Temple authors, such as Philo and Pseudo-Phocylides, that childbearing is the goal (Josephus, *Ag. Ap.* 2.199-203; *War* 2.160; *Ant.* 4.259). For example, in *Apion* he connects marriage to childbearing: "What are our marriage laws? The Law recognizes no sexual connexions, except the natural union of man and wife, and that only for the procreation of children" (Τίνες δ᾽ οἱ περὶ γάμων νόμοι μῖξιν μόνην οἶδεν ὁ νόμος τὴν κατὰ φύσιν τὴν πρὸς γυναῖκα καὶ ταύτην εἰ μέλλοι τέκνων ἕνεκα γίνεσθαι) (Josephus, *Ag. Ap.* 2.199 [Thackeray, LCL]). When Josephus describes the actual marriages of the Herodians, however, he offers no hint that the bearing of children was *the* goal or even *a* goal of the unions. Since Josephus notes the connection between marriage and childbearing in theoretical discussions of marriage, and since the idea of childbearing as a goal of marriage was shared across Jewish antiquity (most of the Herodians' contemporaries would have agreed with this viewpoint), it would be folly to

[27] Nonetheless, Philo advocated forgiveness for couples who did not want to part from one another; see Satlow, *Jewish Marriage*, 92-93.

read much into this.[28] Nonetheless, it is notable that throughout his writings Josephus highlights the importance of marriage in terms of a much more immediate side effect than procreation: in lieu of the need to bear children, Josephus mentions the creation of an alliance at least a dozen times in connection with news of a betrothal or marriage. Moreover, in a number of instances, he explicitly states that a union took place specifically to create an alliance (Josephus, *War* 1.180-182, 240-241, 243-244, 441, 508-510, 552-553; *Ant.* 11.303; 12.154; 13.80-83, 109-116, 120; 16.220-228, 263-4; 17.13-22).

5.2 The Alliance or Kinship System

Josephus assumes that his readers are well versed in both the motivations behind and meaning of the alliance system. Consequently, he never systematically relates the advantages of alliance marriages, although he does provide some details on alliances in the context of other discussions (Josephus, *War* 1.180-182, 241-244, 441). Philo, on the other hand, provides more information about the contours of the alliance system in his writings. In fact, it is from Philo that we get our best information about the strengths and

[28] Moreover, given the high rates of infertility in antiquity due to untreated sexually transmitted diseases, malnutrition and the like, children were not a certain outcome of marriage. Indeed, in an extended listing of Herodian unions Josephus notes a number of royal Jews who died childless (Josephus, *Ant.* 18.130-142). Both the marriages of Alexandra, the daughter of Salampsio, to Timius of Cyprus (18.131) and Salome, the daughter of Herodias, to Philip, Herod's son and tetrarch of Trachonitis (18.137) are noted as childless. Other Herodians who Josephus identifies as having died childless, include Herod and Alexander, the brothers of Anipater (18.138) and Tigranes, who was king of Armenia and the son of Alexander, Herod's son (18.141). Moreover, of Herod's nine wives (excluding Mariamme who had already been executed), only seven of them bore Herod children. Josephus writes, "Two of his wives, one a cousin, the other a niece, were childless (Josephus, *War* 1.562). Josephus further relates that, "the other daughters of King Herod, it turned out, died childless" (Josephus, *Ant.* 18.141 [Feldman, LCL]). It is unclear who these other daughters were as all the standard representations of Herod's family identify him as having three daughters, namely, Salampsio, Cypros, and Olympias. Salampsio bore five children and Cypros and Olympias one each.

limitations of the bond created between unrelated families through alliance marriages. In *Embassy,* Philo writes:

> He [the father-in-law] was under a ridiculous delusion thinking that a father-in-law had the same influence over a son-in-law as a real father has over his son, though, indeed, in private life fathers whose sons have obtained high offices and post of authority waive their claims and are content to take the second place. However, this silly man even though he had ceased to be a father-in-law extended his activities beyond his sphere and did not understand that the death of his daughter carried with it the death of matrimonial affinity. For intermarriage is a lien between unconnected households bringing the status of stranger into one of affinity, and if this be broken the community of interest is broken also, particularly if the break is caused by an irretrievable event, the death of her whose admission to a house not her own rested on her marriage. (Philo, *Embassy* 71-72 [Colson, LCL])[29]
>
> ὀχλεύης ἄξιον ὁ Σιλανὸς ἔπαθεν οἰηθεὶς πενθερὸν τοσοῦτον παρὰ γαμβρῷ δύνασθαι ὅσον πατέρα γνήσιον παρ᾽ υἱῷ καίτοι πατέρες ἰδιῶται γενομένων ἐν ἀρχαῖς μεγάλαις καὶ ἐξουσίαις υἱῶν ὑποστέλλουσιν ἀγαπητῶς φερόμενοι δευτερεῖα. ὁ δὲ ἠλίθιος οὐδὲ πενθερὸς ὢν ἔτι τὰ μὴ καθ᾽ ἑαυτὸν προσπεριειργάζετο μὴ συνιείς, ὅτι θανάτῳ τῆς θυγατρὸς συνετεθνήκει καὶ ἡ κατ᾽ ἐπιγαμίαν οἰκειότης· δεσμὸς γὰρ οἴκων ὀθνείων αἱ ἐπιγαμίαι τὴν ἀλλοτριότητα εἰς οἰκειότητα συνάγων οὗ λυθέντος λέλυται καὶ τὰ τῆς κοινωνίας καὶ μάλιστα ὅταν ἀνεπανορθώτῳ πράγματι λυθῇ τελευτῇ τῆς εἰς ἀλλότριον οἶκον δεδομένης ἐπὶ γάμῳ.

Philo's comments indicate that marriage was a tool to develop alliances or relationships between two unrelated families. He also notes that the bonds created through marriage were not eternal; rather they lasted only as long as the marriages themselves endured. Moreover, Philo's remarks indicate that bonds created through marriage were not as strong as direct biological ties.

Generally, the scope of an alliance included terms that provided benefits and obligations to both the bride's and groom's clan, such as Philo describes above (Philo, *Embassy* 71-73). On rare occasions, though, alliances were conceived more broadly. For

[29] Elsewhere Philo notes, "…[I]ntermarriage is kinship in the second degree. Sons-in-law are sons to their fathers-in-law, and the latter are fathers to the former" (Philo, *Spec. Laws* 1.111 [Colson, LCL]).

example, Herod's marriage to Mariamme the Hasmonean is represented as a bid to placate the skeptics among his Jewish subjects. Suspicion of Herod's claim to the throne given his Idumeaen background, combined with the Jews' loyalty to the Hasmonean dynasty that the Herodians replaced, led Herod's subjects to resent their new king. Consequently, Herod married Mariamme, the daughter of Hyrcanus, to attach himself to the Hasmonean line and thereby present himself as a continuation of a proud tradition rather than a new interloper (Josephus, *Ant.* 20.248; *War* 1.240-241). Josephus reveals that Herod achieved his goal, reporting that he "…returned to Jerusalem, where his success won him all men's hearts. Even those who had hitherto stood aloof were now reconciled by his marriage into the family of Hyrcanus" (ὑπέστρεψεν εἰς Ἱεροσόλυμα πᾶσιν ἀγαπητὸς ὢν ἐπὶ τῷ κατορθώματι καὶ γὰρ οἱ μὴ προσέχοντες πάλαι τότε ὠκείωντο διὰ τὴν πρὸς Ὑρκανὸν ἐπιγαμίαν αὐτῷ) (Josephus, *War* 1.240 [Thackeray, LCL]).

Josephus records one more case of a wished-for alliance between an individual, or more accurately a clan, and an entire nation. Around 331 B.C.E., Sanaballetes, a Persian sent to Samaria as a satrap by Darius, proposed that his daughter Nikaso marry Manasses, the brother of the high priest (Neh 13:28).[30] This marriage had a particularly ambitious goal:

> Sanaballetēs…knowing that Jerusalem was a famous city and that its kings had given much trouble to the Assyrians and the inhabitants of Coele-Syria, gladly gave him [Manassēs] his daughter, called Nikasō, in marriage, for he [Sanaballetēs] believed that this alliance by marriage would be a pledge of his securing the goodwill of the entire Jewish nation. (Josephus, *Ant.* 11.302-303 [Marcus, LCL])

[30] Josephus relates that Manasses was actually "sharing the high priesthood" with his brother Jaddus.

> εἰδὼς λαμπρὰν οὖσαν τὴν πόλιν Ἱεροσόλυμα καὶ πολλὰ τοῖς Ἀσσυρίοις καὶ τοῖς ἐν τῇ κοίλῃ Συρίᾳ κατοικοῦσιν τοὺς ἐν αὐτῇ βασιλεῖς πράγματα παρασχόντας ἀσμένως συνῴκισεν τὴν αὐτοῦ θυγατέρα Νικασὼ καλουμένην οἰόμενος τὴν ἐπιγαμίαν ὅμηρον αὐτῷ γενήσεσθαι πρὸς τὴν ἀπὸ τοῦ τῶν Ἰουδαίων ἔθνους παντὸς εὔνοιαν.

Although the marriage of Nikaso and Manasses took place, the alliance did not achieve its larger goal. It was unsuccessful because Sanaballetes did not understand that the marriage of a gentile woman into the family of the Jewish high priest would engender ill will towards the woman and her people, instead of "securing the goodwill of the entire Jewish nation."[31] The fact that the alliance was doomed from the beginning is not as important as the fact that the architect of this marriage believed that the alliance *could* achieve its lofty goal, in this particular case the conciliation of an entire people, the Jews. While this alliance may be at the extreme end of the spectrum, the proposed marriage of these two non-Herodian aristocrats is important to this study because it illustrates the concept of the alliance system at its most exaggerated.

The centrality of alliances and the secondary importance of marriages is revealed by a series of marriages with comparatively more modest alliances at stake. The backdrop of these marriages in the 160's B.C.E. is the ongoing rivalry between the Ptolemy and Seleucid rulers over control of certain territories, including Syria-Palestine. In this particular case, the Egyptian king Ptolemy Philometor weighs which of the two rivals to the Seleucid throne to back, wondering whether his support of Alexander Balas or Demetrius II is more likely lead to his control of Syria-Palestine.[32] Ptolemy initially backs Alexander and formalizes his support by giving his daughter to Alexander as his bride (Josephus, *Ant.* 13.80-82; 1 Macc 10:51-58). Due to Alexander's failure to govern

[31] *Antiquities* 11.306-312 details the public's reaction to the marriage of Manasses and Nikaso.
[32] The same events are described in 1 Macc 10:1-14:15.

effectively and a suspected assassination plot, Ptolemy breaks his alliance and retrieves his daughter (Josephus, *Ant.* 13.106-110, 116; 1 Macc11:8-12). Ptolemy then pins his hope on Alexander's rival, Demetrius. He formalizes his change of loyalty (i.e., the alliance) by giving Demetrius his daughter in marriage (Josephus, *Ant.* 13.109-111; 1 Macc 11:10-12). As if to underscore his change of heart, Ptolemy also goes to war against his former son-in-law, Alexander (Josephus, *Ant.* 13.115-119; 1 Macc 11:15).

The language that Josephus uses to describe Ptolemy's role in his daughter's marriages illustrates that the alliances were central and the marriages secondary. Josephus writes:

> Ptolemy…dissolved the connexion with him [Alexander]; and having taken his daughter from him, he promptly sent to Demetrius, proposing a friendly alliance, and promising to give him his daughter to wife, and to restore to him his father's throne. Thereupon Demetrius, being pleased with the offer made through his envoys, accepted the alliance and marriage… Meanwhile Alexander, who had set out from Cilicia for Syria with a large Army and a great supply of arms, burned and plundered the territory of the Antiocheans, whereupon Ptolemy marched against him with his son-in-law Demetrius—for he had already given him his daughter in marriage—and they defeated Alexander and put him to flight. (Josephus, *Ant.* 13.110, 116 [Marcus, LCL])

> ἀποσπάσας γὰρ τὴν θυγατέρα πέμπει πρὸς Δημήτριον εὐθὺς περὶ συμμαχίας καὶ φιλίας συντιθέμενος τήν τε θυγατέρα δώσειν αὐτῷ ὑπισχνούμενος γυναῖκα καὶ καταστήσειν αὐτὸν εἰς τὴν πατρῴαν ἀρχήν ὁ δὲ Δημήτριος ἡσθεὶς τοῖς πεπρεσβευμένοις δέχεται τὴν συμμαχίαν καὶ τὸν γάμον.. Τοῦ δ᾽ Ἀλεξάνδρου σὺν στρατεύματι πολλῷ καὶ μεγάλῃ παρασκευῇ ὁρμήσαντος ἐκ τῆς Κιλικίας εἰς τὴν Συρίαν καὶ τὴν Ἀντιοχέων γῆν ἐμπρήσαντος καὶ διαρπάσαντος Πτολεμαῖος ἐπ᾽ αὐτὸν ἐξεστράτευσεν μετὰ τοῦ γαμβροῦ Δημητρίου ἤδη γὰρ αὐτῷ πρὸς γάμον ἐδεδώκει τὴν θυγατέρα καὶ νικήσαντες εἰς φυγὴν ἐτρέψαντο τὸν Ἀλέξανδρον.

Josephus twice emphasizes the acceptance of the alliance between Ptolemy and Demetrius before he notes the impending marriage. For example, Ptolemy wrote to Demetrius "proposing a friendly alliance, *and* promising to give him his daughter to

wife" (Josephus, *Ant.* 13.110 [Marcus, LCL]; emphasis mine). We also see the same emphasis in Josephus' presentation of Demetrius' acceptance of Ptolemy's alliance: "Demetrius, being pleased with the offer…accepted the alliance *and* marriage" (τὴν συμμαχίαν καὶ τὸν γάμον) (Josephus, *Ant.* 13.110 [Marcus, LCL]; emphasis mine). One notes that both of these references to the marriages are inextricably linked to the alliances the unions seek to confirm.

More clues suggesting the centrality of the alliances and the role that marriage could play in ratifying those agreements are found in Josephus' failure to offer any insight into Ptolemy's daughter's feelings about the rapid interchanging of her family's rivals and her spouses.[33] Indeed, Josephus does not even bother to relay Ptolemy's daughter's name, although he clearly knows it since she is named earlier in his writings (Josephus, *Ant.* 13.82). Both of these factors, in turn, suggest that the daughter herself is not critical to the events that transpire. On the contrary, Ptolemy's political ambitions for control of Syria-Palestine drive the narrative. His daughter is only important inasmuch as she can be used to help further her father's agenda.[34]

Ptolemy takes the usage of marriage for alliance to its logical extreme. The only hint of Josephus' appraisal of Ptolemy's single-minded ambition for power comes from his description of the king's reaction to news of Alexander's death. Josephus describes Ptolemy's "callous reaction" to the report of his ex-son-in-law's death and the sight of his

[33] On the other hand, the absence of the woman's perspective, which is common in descriptions of alliance marriages may also relate to the nature of the sources themselves—i.e., they were written by men and for men.

[34] Cleopatra, the daughter of Ptolemy Philometor, should not be dismissed entirely. Even though her father used her as a pawn in her first two marriages, later she became a significant player in Mediterranean politics (Hanson, "Economics," 13). After her second husband Demetrius was captured in war, *she* proposed marriage to her husband's brother, Antiochus VII (Josephus, *Ant.* 13.221-222). Later she wielded enormous influence helping to decide which one of her sons would rule. Three of them would eventually get the opportunity (Hanson, "Economics," 13).

severed head, namely that it was one of the "most pleasant things to hear and see" (Josephus, *Ant.* 13.118-199 [Marcus, LCL]). Because Josephus does not comment directly on Ptolemy's use of marriage to advance his political agenda, we cannot be sure if Ptolemy's actions were abnormal or otherwise controversial. However, narratives in gentile Hellenistic and Roman works suggest that this particular type of marital interference was not unique to Ptolemy (*Digest* 24.1.32.19-20; 43.30.1.5; *CJ* 5.17.5, 10).[35] Moreover, Josephus himself describes at least one other similar incident where a father uses his daughter as a pawn in this openly calculated way; this final example involves a member of the Herodian family.

According to Josephus, the Cappadocian king Archelaus threatened to remove his daughter from a happy marriage with Herod's son, Alexander (Josephus, *War* 1.508-510; *Ant.* 16.263-264).[36] The background to the threat is a series of intra-Herodian family conflicts that only tangentially relate to Archelaus. Indeed, the incident is precipitated by Herod's suspicions that his son Alexander is plotting an assassination attempt against him (Josephus, *Ant.* 16.249, 253). Alexander refuses to deny the charges and instead seeks to demonstrate the danger of rumors (Josephus, *Ant.* 16.254-256). Fearing for the safety of his daughter and Alexander (and likely more importantly, his alliance with Herod), Archelaus involves himself in the palace intrigue (Josephus, *Ant.* 16.261; *War* 1.499). In a bid to reconcile Alexander with his father, Archelaus feigns anger at his son-in-law and threatens to take his daughter back to Cappadocia with him (Josephus, *Ant.* 16.263-264;

[35] Indirect evidence in the form of changes preserved in various Hellenistic and later Roman legal codes both forbidding and limiting this type of marital interference in favor of protecting marriages from the ephemeral decisions of calculating fathers suggests that while viewed negatively, this type of marital interference persisted as a problem over many centuries (Treggiari, *Roman Marriage*, 460, 465).

[36] The use of women as pawns in power struggles between various men is commonplace throughout Josephus' histories. Indeed, both Jews and gentiles appear to have thought it acceptable to use women in this way. Most of the cases described by Josephus, however, are less blatant than those of Ptolemy and Archelaus.

War 1.500-501). Herod, moved by Archelaus' perceived loyalty to him and overcome with emotion, begs Archelaus to leave the marriage intact (*War* 1.509-512).

The language of the description of this incident in Josephus' *Jewish War* demonstrates the centrality of the alliance over all other concerns. For example, even though Alexander was "deeply attached to his wife," there is no sense that the happiness of the marriage should figure into any discussion of the union's future (Josephus, *War* 1.509 [Thackeray, LCL]). On the contrary, Archelaus' only concern is his alliance with Herod. Indeed, Archelaus confesses that he gave his daughter to Alexander "out of regard for your [Herod's] exalted rank" (Josephus, *War* 1.501 [Thackeray, LCL]). Moreover, even though Archelaus threatens that *he* would divorce his daughter from Alexander, he is not actually willing to forgo his alliance with Herod. Quite the opposite; Archelaus asks Herod to remarry his daughter off to any other Herodian prince (other than Alexander) since "his dearest desire was to maintain the marriage ties which linked him to Herod" (Josephus, *War* 1.508-509 [Thackeray, LCL]).

This case is interesting because the background to the threat is wholly unrelated to the "threatened" marriage and only tangentially connected to Archelaus. Instead, Archelaus uses an apparently known social convention, that of removing a daughter from a marriage, to repair relationships within the Herodian family. Threats like those made by Archelaus—and actually carried out in Ptolemy's case—must have been somewhat common, since Herod evidently took Archelaus' threat very seriously. In fact, Herod considered Archelaus' threat to be so grave that, when Archelaus relented and allowed

the marriage to remain intact, Herod sent him away with seventy talents of gold, among other spoils (Josephus, *War* 1.511-512).[37]

The importance of family alliances to royal marriages is best illustrated by the fact that marriages not based on alliance are almost entirely unknown among the Herodians. Josephus presents only two examples of individuals who regularly buck the alliance system: Herod and his brother Pheroras. Other family members criticize the brothers for their choices. Josephus records that "…she [Glaphyra] was constantly taunting with their low birth Herod's sister and his wives, all of whom had been chosen for their beauty and not for their family" (Josephus, *War* 1.431-432, 475-478 [Thackeray, LCL]). Josephus himself condemns Herod's matrimonial choices elsewhere when he states, "…his ill-fated career originated with a woman to whom he was passionately attached...[I]t was she [Mariamme] who brought into his house the discord" (Josephus, *War* 1.431-432 [Thackeray, LCL]).

Pheroras is likewise criticized for his marriage choices. The particular offense leveled against him is that he had undue affection for his wife and considered his relationship with her to be more important than cultivating relationships and loyalties with his blood relatives. In turning down a royal marriage to his niece, Herod's daughter, in favor of marriage to a slave-girl, Pheroras is widely condemned for loving his wife even more than his own life (Josephus, *War* 1.483-484, 572, 578). Josephus reveals that Pheroras' preference for his wife over his blood relations—that is to say affection over alliance and family—was thought incomprehensible by his contemporaries, a view that

[37] This incident also reveals the importance of this alliance to both parties, that is, Herod and Archelaus. First, Archelaus has so much confidence in the strength of his alliance with Herod that he is not afraid to threaten to end it to achieve his ends even though he is not interest in ending his relationship with Herod. Second, the fact that the ever-paranoid Herod withdraws his suspicions of his son Alexander and welcomes him again as a child in good standing also highlights the importance of this alliance to the Jewish king.

would have been shared by many in antiquity and among royal families in particular.[38] For example, in defense of a charge of disloyalty against his brother Herod, Pheroras was able to successfully ward off punishment by claiming himself to be suffering both from "mental derangement and madness, which he attributed to his passion for his wife" (Josephus, *War* 1.506-507 [Thackeray, LCL]).

Because alliances were so effective, it is not surprising that they were an important factor in arranging marriages. Indeed, the evidence shows that Jews, gentiles, royals, and commoners contracted marriages within the context of an alliance system throughout antiquity. Jewish texts starting with the Bible show awareness that marriage was a tool for formalizing alliances. Solomon may have married so many foreign women to secure his throne, and David's many unions with wives and concubines may have served a similar purpose (1 Kgs 1:3; 2 Sam 3:3).[39] Nehemiah also alludes to marriage alliances (Neh 6:17-19, 13:28).[40] Marriage alliances were practiced over an extended period of time and were not restricted to a particular geographic area as is illustrated by examples of alliance marriages reported by Philo of Alexandria as well as by writers based in Rome (Philo, *Embassy* 71-73; Cicero, *Quintilian* 2.6.2).[41]

5.3 Kinship and Marriage

If Josephus had had at his disposal the tools of modern social science, he might not have stopped at describing the Herodian marriages as the means to achieve alliances. Noticing that the alliance system was not limited to the royal family or even Jews but, in

[38] Harlow, *Growing Up*, 59.
[39] Hanson, "Genealogy and Descent," 81.
[40] Harlow, *Growing Up*, 58, 92-103, esp., 93 and Satlow, *Jewish Marriage*, 137-141.
[41] Harlow, *Growing Up*, 58, 92-103, esp., 93.

fact, played a role in arranging marriages across the Mediterranean, Josephus might have classified the motivation for marriage instead by the larger social force at work in arranging unions, namely, kinship.[42] Kinship is **"**a pattern of social norms regulating those relationships that are directly based on the facts of birth and the birth cycle," although it can be supplemented with fictive kinships, as we will see is the case with Jews in antiquity.[43] Scholars identify traditional societies, such as the ones of the ancient Mediterranean, as having a particularly strong interest in kinship.[44] Societies organized by kinship, a social phenomenon that is not based on a legal framework, focus on loyalty to the family or kin group and obedience to family leaders as the most important values.[45] Indeed, the pervasive influence of the complementary codes of honor and shame promote fidelity to one's extended family in these kinship-based societies.[46]

Moreover, since a person's status derives from his or her family in cultures defined by kinship, the concept of the individual independent of a kin unit is almost unknown in these traditional cultures.[47] Indeed, it is difficult to separate the individual from his or her larger family unit, as Josephus' account of the attempted assassination of Herod shows (Josephus, *Ant.* 15.280-291). In this account, the attempted assassins were not the only ones punished for their failed plot. On the contrary, Herod also punished their families, since it would be unthinkable to separate the actions of the plotters from

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[42] Hanson, "Genealogy and Descent," 76 and Pilch and Malina, *Biblical Social Values*, 70. Pilch and Malina prefer the term "belongingness" as opposed to "kinship" to describe the preeminent value of Mediterranean society. They describe the overarching concept as belongingness and point to kinship as one of the subcategories within the larger rubric of "belongingness." The terms and their organization of them may differ, but Hanson, Pilch, and Malina are clearly describing the same phenomenon (Malina, *Windows on the World of Jesus*, 1).
[43] Hanson, "Genealogy and Descent," 75.
[44] *Ibid.*, 75 and "Kinship," 184-185 and 188.
[45] Harlow, *Growing Up*, 92.
[46] Halvor Moxnes, "Honor and Shame" *BTB* 23 (1993): 168; Pilch and Malina, *Biblical Social Values*, 70; and Satlow, *Jewish Marriage*, 102-104.
[47] Moxnes, "Honor and Shame," 168 and 172.

their clans (Josephus, *Ant.* 15.290).[48] Similarly, individuals were not rewarded for their assistance or loyalty; instead their entire family or clan would be recognized.[49] For example, Julius Caesar rewarded Jews worldwide for the loyalty of a small group of Jews from the land of Israel since the Jewish people as a whole were often considered as one family (Josephus, *Ant.* 14.202-210).

The concept of kinship directly figures into discussions of ancient marriage, since individuals beholden to the goals of kinship-based societies do not marry as individuals but rather as family members.[50] We see that marriage took place on a family-to-family level in Josephus' discussion of Herod's marriage to Mariamme. Josephus does not write that Herod married Mariamme. Rather he states that Herod made a marriage contract with *her family* (τὴν πρὸς Ὑρκανὸν ἐπιγαμίαν αὐτῷ) (Josephus, *War* 1.241; emphasis mine). In fact, Josephus mentions Mariamme's name as an afterthought when he describes the formation of the alliance and even then, her identity is limited to the importance accorded to her based on her family ties. He writes:

> Herod returned to Jerusalem, where his success won him all men's hearts. Even those who had hitherto stood aloof were not reconciled by *his marriage into the family of Hyrcanus*. His first wife was a Jewess of some standing, named Doris, by whom he had a son, Antipater; but now he married Mariamme, daughter of Alexander, the son of Aristobolus, and grand-daughter of Hyrcanus, and thus became kinsman of the king. (Josephus, *War* 1.240-241 [Thackeray, LCL]; emphasis mine)
>
> ὑπέστρεψεν εἰς Ἱεροσόλυμα πᾶσιν ἀγαπητὸς ὢν ἐπὶ τῷ κατορθώματι καὶ γὰρ οἱ μὴ προσέχοντες πάλαι τότε ᾠκείωντο διὰ τὴν πρὸς Ὑρκανὸν ἐπιγαμίαν αὐτῷ πρότερον μὲν γὰρ ἦκτο γυναῖκα τῶν ἐπιχωρίων οὐκ ἄσημον Δωρὶς ἐκαλεῖτο ἐξ ἧς ἐγέννησεν Ἀντίπατρον

[48] Hanson, "Genealogy and Descent," 81-82 and Pilch and Malina, *Biblical Social Values,* 70-71.
[49] *Ibid.,* 70-71.
[50]Hanson, "Genealogy and Descent," 31.

> τότε δὲ γήμας τὴν Ἀλεξάνδρου τοῦ Ἀριστοβούλου θυγατέρα θυγατριδῆν δὲ Ὑρκανοῦ Μαριάμην οἰκεῖος τῷ βασιλεῖ γίνεται.

By marrying in this way, clans had the ability to extend kinship ties to families or clans with whom it would be beneficial to have a connection.[51]

Although kinship and the betterment of the family unit rather than sentiment drove marriages among the elite, over time spouses might develop affection for one another.[52] For example, although Philo thought that Jewish law required infertile couples to divorce, he recognized that for many couples this would be difficult to carry out in practice due to emotional bonds that had developed (Philo, *Spec. Laws* 3.35).[53] Herod, though an extreme case given that he was an abusive husband, nonetheless provides another example of the role that feelings may have played in nurturing marriages. Herod was so taken with his wife Mariamme that, unable to bear the thought that she might outlive him and go on to marry another, he planned to have her killed if he should predecease her (Josephus, *Ant.* 15.65-67). Similarly, Pheroras' love for his slave-wife inhibited him from making marital decisions that would have increased his family's (and his own) worth in the kinship system (Josephus, *War* 1.483-484, 506-507, 572, 578).

Philo's comments, Herod's infatuation with Mariamme, and Pheroras' affection for his slave-wife notwithstanding, the absence of affection did not hinder a marriage nor did it serve to mark a union as unsuccessful. The development of affection may actually have been seen as a liability, since marriage was a tool for furthering the family's interests and not for the development of an individual's personal goals. Indeed, since marriages could be terminated at any time without regard for the feelings of the spouses,

[51] Harlow, *Growing Up*, 92.
[52] Pilch and Malina, *Biblical Social Values*, 156 and Harlow, *Growing Up*, 58-59.
[53] *Ibid.*, 92-93. The later rabbis also sanction infertility as a reason to seek divorce (*m. Ned.* 11:12).

spousal affection may have been considered a hindrance to a necessary divorce. On the other hand, personal happiness could develop from a profitable union. The happy marriages of Ptolemy's daughter to Alexander as well as the union of Herod's son Alexander with Archelaus' daughter reflect just such circumstances (Josephus, *Ant.* 13.80-82, 106-119; 16.263-264; *War* 1.508-510).

The fact that affection was subordinate to kinship as a factor in making marital decisions helps us understand why a woman's connection to her natal family was stronger than any bond created with her spouse.[54] Josephus' descriptions of marriage disagree with the standard view of the effect of marriage on a woman's status, namely that marriage transferred the authority over a woman from her father to her husband.[55] At least among the elite about whom he wrote, the natal family's influence over women endured post-marriage.[56] For example, the marriages described above of Ptolemy's daughter's marriage to Alexander Balas and Archelaus of Cappadocia's daughter to Alexander suggests that, as long as the father was alive, the relationship of a daughter to her husband continued only with the goodwill of her father (Josephus, *War* 1.499-512; *Ant.* 16.249-264).

Similarly, Salome's interference in her daughter's marriage to Aristobolus, another of Herod's sons from his marriage to Mariamme the Hasmonean, demonstrates the strength of biological ties over matrimonial ones. Indeed, Salome demands that her daughter refrain from showing "any wifely affection" to Aristobolus and report "anything

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[54] Satlow, *Jewish Marriage*, xxi.

[55] Hanson, "Economics," 11 and *m. Ket.* 4.4. One might even include biblical examples here. For example, Exod 20:17 mentions a wife in the context of a listing of a man's possessions.

[56] The Mishnah implicitly confirms that the idea of father-to-husband transfer is at the heart of its understanding of a woman's status. *Ketuboth* 4.5 expresses this idea explicitly: "She continues to be under the control of the father until she enters into the control of her husband at marriage" (Danby). *Ketuboth* 4.2 likewise states: "After her father has given her in marriage he has no claim on her" (Danby).
Hanson, "Marriage and Divorce," 147; Satlow, *Jewish Marriage*, 78, 172; and Hanson, "Kinship," 189.

which he might say to her privately"; both demands were fulfilled by Salome's daughter, according to Josephus (Josephus, *Ant.* 16.201-202 [Marcus and Wikgren, LCL]).[57] Given the above examples, one could say that marriage created a bond between the patriarchs of the spouses' families, or the persons temporarily filling these roles, as opposed to the view of marriage as a union of husband and wife. Marriage did not serve to subsume a woman's identity into that of her husband, nor did it appear to result in the severing of bonds between a woman and her biological family. On the contrary, the blood ties connecting daughter and father (and her other blood relations) appear to have been much stronger than those developed between husband and wife—a reality also confirmed by the Roman sources reviewed below.[58]

The concept of kinship also helps explain the high rate of remarriage among the upper class. For example, both the archives from Elephantine and the documents from the Judean Desert hint at a high incidence of remarriage after first marriages ended by either divorce or death.[59] Moreover, at least 29 percent of Herodians married more than once.[60] Given the low average age of mortality in antiquity, combined with the selective nature of Josephus' histories, the effective rate of remarriage was undoubtedly much higher than the statistics gleaned from Josephus' writings suggest. Salome, Berenice, and Glaphyra, for example, married three times, and Herod married no fewer than ten times.

It is certain that the propensity of influential men to marry off their daughters so frequently is an outgrowth of the kinship system. Women of marriageable age were

[57] Both Salome's daughter, Berenice II, and her husband Aristobolus belong to the same family. They were first cousins. Nonetheless, Berenice II's loyalty to her mother was stronger than the ties connecting her to her more distant family members, such as her cousin-husband.
[58] Satlow, *Jewish Marriage*, xxi and Grubbs, *Woman in the Law*, 21.
[59] Satlow, *Jewish Marriage*, 182-183.
[60] Hanson, "Marriage and Divorce," 144-146

assets which their families sought to maximize.[61] As a result, women of the elite class were frequently recycled from one marriage to another when political considerations warranted such action (Josephus, *War* 2.114-116; *Ant.* 17.349-353). Indeed, although Josephus criticizes Glaphyra, the daughter of the Cappadocian king, for her excessive number of marriages (two of her marriages were to Herodian princes), it would have been unreasonable to expect a woman with her family connections to remain a divorcée or widow long (Josephus, *War* 1.475-478; *Ant.* 17.349-353).

The marital history of Herod's sister Salome also evidences the desirability of women from elite families as marriage partners. Salome was a highly sought-after bride despite her supposed involvement in a number of palace intrigues. Indeed, both foreign rulers and local elites lobbied for her hand in marriage (Josephus, *War* 1.441, 566; *Ant.* 15.254-255; 16.275; 17.9-10). Salome's attractiveness as a bride did not relate to her own qualities but to the accomplishments of her brother, the family's patriarch.[62] A skilled statesman, his reputation made him a very desirable person with whom to contract an alliance. It is therefore not surprising that many suitors considered his sister a desirable marriage partner. By marrying a close relative of Herod, one gained for oneself the talents and energies of the patriarch of the most influential Judean family.

Similarly, it is likely that Berenice's three marriages were motivated by dynastic concerns.[63] Indeed, all of her marriages increased the family's power and prestige. Initially, Berenice's father, Agrippa I, arranged for her to marry to a wealthy and well-connected businessman, Marcus Julius Alexander, the son of Alexander the alabarch of Alexandria (Josephus, *Ant.* 19.276). Her first marriage was probably motivated by the

[61] Hanson, "Genealogy and Descent," 83.
[62] Harlow, *Growing Up, 93.*
[63] Ilan, *Integrating Women*, 95.

Herodian family's relationship to Claudius. Marcus' father, Alexander, was newly released from prison by Claudius prior to his marriage to Berenice. Claudius freed Alexander since he had a debt of gratitude to the alabarch for his role as the guardian for his mother, Antonia (Josephus, *Ant.* 19.276). As beneficiaries of Claudius' generosity, the Herodians may have sought to pacify him by marrying into the family of a man in favor with the emperor. In doing so, they helped solidify their relationship to their patron. The fact that Marcus Julius Alexander was a successful businessman could not have hurt either. Berenice's marriage to Marcus did not last long. He died shortly after their marriage. Berenice's father wasted no time and quickly remarried the widow to his brother, Herod of Chalis in 43 or 44 C.E. (Josephus, *Ant.* 19.276-277). This marriage too may have been a means to solidify the family's hold on the territory of Chalis, since notice of Claudius' gifting the territory to Herod, who was either divorced or a widower, immediately precedes the announcement of the couple's marriage (Josephus, *Ant.* 19.276-277).[64] Later, in 48 C.E., Berenice married a foreign ruler, King Polemo of Cilia (Josephus, *Ant.* 20.139-147). Although Josephus contends that her third marriage was arranged to quell rumors of Berenice's illicit relationship with her brother Agrippa II, a connection to the ruler of Cilia would nevertheless have been desirable to the Herodians regardless (Josephus, *Ant.* 20.145-146).

5.4 Marriage Protocol

While the alliance system and kinship concerns clearly figured into the Herodians' choice of marriage partners, it is less certain that the Herodians were

[64] *Ibid.*, 143-144.

following Jewish practice in negotiating their marriages. There is, after all, little in biblical law that specifies proper marriage protocol. Incidental information in biblical narratives, however, hints at marriage procedures that were in place at various points during the biblical era. For example, narratives such as Gen 24:22, 28-30, 34-61; 28:1; 31:14-16; 34:8-12; 38:6; Exod 2:22; 22:15; Jud 1:12-15; 14:1-10 and I Kgs 9:16, suggest that fathers generally negotiated marriage proposals for their daughters. In the event of a father's prior death, a brother, mother, or other family member might fulfill the role of the chief negotiator (Gen 21:21; 24:33-58). Other biblical texts suggest that the groom's family paid a marriage fee (מוהר) to the bride's clan (Gen 30:20; 31:14-16; 1 Kgs 9:16) and that prospective brides and grooms were often joined by a binding betrothal agreement prior to their marriages (Gen 24:67; 29:15-21; Deut 20:7; 22:23; 28:30; 1 Sam 18:17-19; 2 Sam 3:14).[65]

The papyri collections from ancient Jewish communities confirm that some of these marriage customs described in the Bible were not just ideals but were in widespread practice among Jews. For example, the Elephantine papyri from the sixth century B.C.E. corroborate that fathers were generally responsible for arranging the terms of marriage and that the groom's family paid the bride's clan a marriage fee. Mibtahiah's father negotiated the marriage terms for her third union even though she was no longer young (P. Cowley 15). All the marriage contracts from Elephantine also show evidence of payments from the groom's family (P. Cowley 15; P. Kraeling 5). The Judean Desert papyri from the second century C.E. also evidence the role of the family patriarch in negotiating marriage terms and confirming payments to the bride's family as part of normative marriage protocol (P. XHev/Se 69; P. Yadin 10, 19).

[65] The term "mohar" only occurs three time in the Hebrew Bible (Gen 34:12; Exod 22:16; 1 Sam 18:25).

Similarly, Philo's remark that the sexual assault of a betrothed woman constitutes adultery suggests that Alexandrians Jews practiced the biblically-based binding form of betrothal (Philo, Spec. Laws 3.70). He also confirms the centrality of male prerogative in arranging marriages. For example, in *Special Laws* 3.67, Philo describes typical marriage procedure, characterized by the strong role of family members of the potential bride and groom in agreement with biblical models:

> But if you have, heart and soul, centred your affections on the girl, go to her parents, if they are alive, or, if not, to her brothers or guardians or others who have charge of her, lay bare before them the state of your affections, as a free man should, ask her hand in marriage and plead that you may not be thought unworthy of her.
> (Philo, *Special Laws* 3.67 [Colson, LCL])

> ἀλλ᾽ εἴπερ ἄρα τι τῇ ψυχῇ πέπονθας πρὸς τὴν παῖδα οἰκεῖον, ἴθι πρὸς τοὺς γονεῖς αὐτῆς, ἐὰν ζῶντες τυγχάνωσιν, εἰ δὲ μή, πρὸς τοὺς ἀδελφοὺς ἢ ἐπιτρόπους ἢ ἄλλους κυρίους, καὶ ἀπογυμνώσας τὸ σεαυτοῦ πάθος, ὡς χρὴ τὸν ἐλεύθερον, αἴτει πρὸς γάμον καὶ παρακάλει μὴ ἀνάξιος νομισθῆναι.

The later Mishnah also affirms aspects of biblical marriage practices. For example, the Mishnah assumes that the father of the bride is the agent charged with negotiating the terms of her marriage with the family of her husband-to-be (m. *Ket*. 1.2-5, 5.1, 4.2; 6.5): "The father has authority over his daughter regarding her betrothal whether effected by money or by a document or by sexual connection…" (האב זכאי בבתו בקדושיה בכסף בשטר ובביאה) (*Ket.* 4:4 [Danby]). If the bride-to-be's father passed away prior to her marriage, the young woman did not become a free agent. Instead, as some biblical narratives suggest, another prominent member of her family would assume the role of chief negotiator, generally the bride's brothers or mother (*m. Ket.* 6.6).

The Mishnah also mandates a marriage fee. For example, a well known rabbinic teaching defining proper marriage procedure indicates that the rabbis thought that the payment of a fee to the bride's family was *de rigeur* in their time too: "By three means is the woman acquired and by two means she acquires her freedom. *She is acquired by money* or by writ or by intercourse" (נקנית בכסף בשתר וביאה) (*m. Kid.* 1.1 [Danby]; emphasis mine).[66] Elsewhere the rabbis underscore the essentiality of the marriage payment by setting minimum amounts that could fulfill the obligation (*m. Kid.* 1.2-3; 5.1; 6.5). Lastly, the Mishnah agrees with the written Torah that betrothal was a stage in proper marriage protocol (*m. Kid.* 3.7-8; 4.9; 7.7).

However much the Herodians' marriage negotiations were focused on creating alliances, they generally did not deviate from the portrait of marriage found in the Torah. This does not necessarily mean that the Herodians were following Torah laws in contracting their marriages. Most Roman-era Jewish and gentile marriage practices would have been quite similar (see section 5.10). For example, in accordance with the normative situation in Second Temple times and across antiquity for contracting marriage, Josephus' histories generally present male members of the marrying couple's families arranging marriage terms (Tob 7:1-15; *Jos. Asen.* 20:8-10; *Spec. Laws* 3.67).[67] Thus, in his theoretical discussion of marriage, Josephus informs his readers that the proper protocol for marriage is "to sue from *him* who is authorized to give her away"

[66]. האישאה נקנית בשלוש דרכים וקונה אתא צמה בשתי דרכים נקנית בכסף בשתר וביאה An alternate translation of *Kiddushin* 1.1 is, "She is acquired by money, writ *and* intercourse" (*m. Kid.* 1.1; emphasis mine).
[67] Satlow, *Jewish Marriage*, 111, 120, 122. This does not necessarily indicate that the Herodians were attempting to behave in compliance with biblical norms since marriage negotiations by males would have been standard in antiquity. This same observation applies for most of the general protocols for marriage described below as well.

(Josephus, *Ag. Ap.* 2.198-199 [Thackeray, LCL]; emphasis mine).[68] And there are, in fact, numerous examples of just such engagements in Josephus' histories.[69]

While the most common pattern was for the father of the bride to negotiate terms with a male member of the groom's family, there are a number of references to other family members arranging marriages for women in their families. In some cases, grooms negotiated with their future father-in-law directly (Josephus, *Ant.* 20.139, 354; Tob 7:1-15; *Jos. Asen.* 20:8-10; Philo, *Special Laws* 3.67).[70] In other cases, brothers, uncles, and other more distant male relatives arranged marriages for their female kin.[71] For example, Philo notes that in the event that a girl's father is deceased, "brothers or guardians or others who have charge of her [the fatherless girl]" (τοὺς ἀδελφοὺς ἢ ἐπιτρόπους ἢ ἄλλους κυρίους) could arrange her marriages (Philo, *Special Laws* 3.67 [Colson, LCL]). In conformity with Philo's remark, brothers and uncles frequently negotiated marriage proposals for young Herodian princes and princesses (Josephus, *War* 1.557; *Ant.* 17.13-22; 18:130-142; 19.354). Herod, in particular, seems to have fancied himself a matchmaker.[72] Not only did he arrange marriages for his own children and grandchildren, but he also intervened in the marital arrangements of his sisters and

[68] Language confirms the emphasis on the expected role of males in negotiating and initiating marriages. Indeed, Josephus repeatedly uses terms that indicate the active male role in marriages, such as "leading away" and "taking a wife" (Mason, *Life,* 8).
[69] Josephus, *War* 1.483-484, 486-487, 501, 508-510, 557, 561-566; *Ant.* 12.186-191; 13.80-83, 109-116; 15.253, 319-323; 16.97-98, 194-205, 220-228; 17.9-11, 13-22, 322; 18.130-142; 19.354; 20.139-147.
[70] Satlow, *Jewish Marriage.,* 111-116. Also, see *b. Kid.* 30a; 45a; 59a; 71b.
[71] Satlow, *Jewish Marriage,* 120.
[72] Josephus credits Herod with having arranged the following unions: Salome and Costobarus, Antipater III and Mariamme III, Antipater III's son and Pheroras' daughter, Cypros II and Antipater IV, Salampsio and Phaselus II, Aristobulus I and Berenice I, Alexander II and Glaphyra, Pheroras and Alexander I's daughter, Salome I and Alexas, and Salome I's daughter and Alexas's son (Josephus, *War* 1.483-4, 486-7, 557, 561-566; *Ant.* 15.253; 16.97-98, 220-228; 17.9-11, 13-22, 322; 18.109-11 and Richardson, *Herod, King of the Jews,* 44).

nieces, and even involved himself in the marriages of various members of his in-laws' families.[73]

Herod's involvement with the marriages of his adult sister Salome illustrates male control of marital arrangements. Salome heeded his wishes when it came to her marital status, even when his desires were diametrically opposed to her own. After her second marriage ended in divorce (incidentally, also a marriage that Herod arranged), she wanted to marry Syllaeus, an Arab ruler (Josephus, *War* 1.486-487; *Ant.* 15.253; 16.220-228). Herod objected to her proposed match with Syllaeus and "forced her to become the wife of Alexas…for Herod had sworn that he would not be on good terms with Salome if she did not accept marriage with Alexas" (βιάζεται τῷ Ἀλεξᾷ συνοικεῖν) (Josephus, *Ant.* 17.9-11 [Marcus and Wikgren, LCL]). In another version of this same incident recorded in *War*, Herod informed Salome that he would regard her as his "bitterest enemy if she did not renounce this passion; and, in the end, he married her, against her will, to one of his friends, named Alexas" (Josephus, *War* 1.561-66 [Thackeray, LCL]).

Further evidence that negotiations for marriage were in the domain of senior men, whether they were fathers of the proposed brides and grooms or not, comes from a section of *War* where Josephus places side by side two stories of individuals displeased with marital choices made by a family patriarch (Josephus, *War* 1.556-567). He first relates how Herod's son, Antipater, unhappy with a series of marriages that his father had arranged, asked Herod to reconsider the proposed matches. After some contemplation, Herod altered the marital arrangements for his grandchildren—neither of whom were Antipater's offspring—in accordance with Antipater's wishes (Josephus, *War* 1.565).

[73] Herod had ten wives, nine of them simultaneously, hence the use of the term "in-*laws'* families."

Herod's willingness to agree to Antipater's suggested changes is surprising given that Antipater was not in favor with his father. In fact, Herod suspected Antipater of participating in a plot that led Herod to sentence two of his sons (Antipater's half-brothers) to death unjustly for their supposed insurrectionist tendencies.

Immediately following this story of successful outside intervention in marital arrangements, Josephus relays the outcome of Salome's request that Herod reconsider allowing her to marry Syllaeus. Josephus' language, "…although she was Herod's sister and had recourse to the intercession of Empress Livia to plead with him," suggests that Salome was in a better position than Pheroras to negotiate this request (ἐκ τοῦ Σαλώμην ἐν ὁμοίοις ἀποτυχεῖν ταύτην γὰρ δὴ καίπερ οὖσαν ἀδελφὴν καὶ πολλὰ διὰ Λιουίας τῆς γυναικὸς Καίσαρος) Josephus, *War* 1.566 [Thackeray, LCL]). Despite Salome's apparent advantages over Antipater, Herod did not agree to Salome's request.

Josephus wants to make precisely this point about Salome's inability to determine her marital future versus Antipater's ability to control marital arrangements for others by placing these stories back-to-back. Indeed, the language that Josephus uses to connect these two stories underscores the disparity in the two figures' authority to steer marital arrangements. Josephus writes: "How powerful was the effect of Antipater's adulation on this occasion may be gauged from Salome's ill success in a similar suit" (Καταμάθοι δ᾽ ἄν τις ὅσον ἴσχυσεν ἐν τούτοις κολακεύων Ἀντίπατρος ἐκ τοῦ Σαλώμην ἐν ὁμοίοις ἀποτυχεῖν ταύτην) (Josephus, *War* 1.566 [Thackeray, LCL]).

A closer look at some of the unions that Herod proposed, however, helps clarify the power and limitations of males to arrange marriages for their family members.[74] One sees that in arranging marriages for both minors and women, Herod's authority, whether by law or social convention, appears to have been nearly absolute. This is not surprising given the evidence that fathers had absolute authority over their minor children in Roman Palestine.[75] Thus, if Herod called for a marriage to take place involving a minor or a woman who was somehow even tangentially under his aegis, there were two responses to his demand. In the majority of cases, the marriage took place in accordance with Herod's wishes (Josephus, *War* 1.486-487, 557; *Ant.* 13.253; 16.97-98, 226-228; 17.13-22, 322). In the minority of cases, however, some of the players in the union came to Herod and pleaded for him to alter his intended matches. Occasionally he relented and modified his demands to satisfy his petitioners' wishes (Josephus, *War* 1.561-566). Nonetheless, the fact that the marriages took place as Herod originally envisioned, if he did not agree to alter engagements in accordance with his petitioners' requests, underscores Herod's authority to arrange marriages for women and minors (Josephus, *War* 1.557, 561-566; *Ant.* 17.9-11).

Marriage in antiquity was a high stakes proposition. As we have discussed above, marriage did not just involve two individuals but had material and political significance for a whole cohort of extended family members. Given the far-ranging consequences of marital decisions, it is not surprising that, at least on a formal level, both Jews and

[74] See Hanson's comments on the "authority" to arrange marriages versus individual "liberty" (Hanson, "Marriage and Divorce," 147).
[75] For example, when Herod wanted to execute two of his sons for insubordination, even the emperor refused to intervene since he felt that it was not proper "to deprive the father of his authority over his sons" (Josephus, *War* 1.536-537).

gentiles deemed it unsuitable for these types of decisions to be made at the discretion of women, children, or even junior males.[76]

5.5 Marriage Protocol: Women as Negotiators

Above we have described normative marriage protocol in Josephus' writings. Now it is time to turn to atypical expressions of this protocol. The most obvious example of marriage protocol deviating from standard practice concerns the identity of the marriage negotiator. Protocol inferred from biblical texts combined with social and familial expectations of the kinship system called for marriages to be arranged (at least formally) through extended families. In particular, it was the duty of the marrying couple's fathers or family patriarchs to make these arrangements. On occasion, however, women subverted the usual pattern and arranged their own marriages—a reality confirmed by Josephus' histories and attested to in number of the later rabbinic texts as well (*b. Kid.* 5b; 6b-7a).[77] For example, Herodias and Berenice each negotiated one of their marriages and Salome attempted to arrange her own marriage and successfully divorced her second husband without any familial input (Josephus, *Ant.* 18.109-115; 20.145; *War* 1.486-487; *Ant.* 15.259-260).

Clearly, Herodias', Berenice's, and Salome's actions contravened social convention; however, the question remains whether their active roles in deciding their marital fates were also in violation of law, whether Jewish or otherwise. In one respect, it matters little if a father's (or family patriarch's) authority over the marital decisions of his

[76] Satlow, *Jewish Marriage*, 111-112, 114, 120 and Victor Hamilton, "Marriage (OT and ANE)," *ABD* 4:559-569, esp. 562-563.
[77] Satlow, *Jewish Marriage*, 107 and Kraemer, "Typical and Atypical," 24-25. Rabbinic sources also hint that women were sometimes actively involved in steering their personal affairs. See Judith Hauptman, *Rereading the Rabbis: A Woman's Voice* (Boulder: Westview Press, 1998), 72-74.

daughters was merely a product of social and familial pressures if the outcome was effectively to render the proposed bride without the choice to act otherwise. Nonetheless, attempting to distinguish whether law or social convention sanctioned a male guardian's authority over the marital status of women in their clan will help us understand the relationship of the Herodian family's behavior to Jewish custom and Roman conceptions of proper marriage protocol.[78] In order to determine the nature of the royal family's control over the marital decisions of the Herodian princesses, we need to take a closer look at the three cases of Herodian women making their own marital choices.

In *Antiquities,* Josephus tells the story of Herodias' acceptance of Herod Antipas' marriage proposal (Josephus, *Ant.* 18.109-115). Herodias' first marriage to Herod, the son of Herod and Mariamme the daughter of Simon the high priest, took place in 1 or 2 C.E. (Josephus, *Ant.* 18.109).[79] In 23 C.E., Herod Antipas, the son of Herod and Malthace, visited the home of his half-brother, Herod and his wife Herodias. While there, Herod Antipas fell in love with his half-brother's wife, Herodias, and he "brazenly broached to her the subject of marriage." Herodias, whose father had died some sixteen years earlier, promptly "accepted and pledged herself to make the transfer to him," if he agreed to divorce his current wife (Josephus, *Ant.* 18.109-115 [Feldman, LCL]).

Although Herod Antipas' act of proposing marriage to Herodias without first going through a male member of her family might not have been the socially preferred way to propose, the "brazen" aspect of the proposal appears unrelated to the atypical marriage protocol. Instead, Josephus is bothered by the fact that Herod Antipas was

[78] For the Roman evidence see Yarbrough, "Paul, Marriage, and Divorce," 407.
[79] New Testament manuscripts exhibit some confusion over the name of Herodias' first husband. He is named Philip in some of the manuscripts. Josephus, on the other hand, identifies him as Herod (Josephus, *Ant.* 18.109).

proposing marriage to his half-brother's current wife, a relationship that many Jews considered in violation of the Torah's laws of prohibited relationships (Lev 18:16, 20:21). Moreover, the grave reaction of Herod Antipas' wife to the news of her husband's agreement with Herodias suggests that women still had the legal authority to negotiate their own marriages.[80] Indeed, upon uncovering the plot, Herod Antipas' wife staged an elaborate ruse to return to her father, Aretas king of Petra, and inform him of her husband's plan to marry Herodias. She had to get him to intervene precisely because a marriage negotiated by a woman was legal, at least when the bride's father was no longer living.

Berenice similarly arranged one of her marriages. Her father and brother respectively arranged her first two marriages.[81] As was related above, Berenice's first marriage was to Marcus Julius Alexander, the son of Alexander the alabarch of Alexandria and her second marriage was to her uncle, Herod of Chalis (Josephus, *Ant.* 19.276-277). After her second husband's death and notably her father's death as well—he died in 44 C.E.—Berenice negotiated her own third marriage. In 48 C.E., Berenice married King Polemo of Cilia (Josephus, *Ant.* 20.139-147). Josephus describes the circumstances surrounding her third and final marriage as follows:

> After the death of Herod, who had been her uncle and husband, Berenice lived for a long time as a widow. But when a report gained currency that she had an liaison with her brother, *she* induced Polemo, king of Cilicia, to be circumcised and take her in marriage… (Josephus, *Ant.* 20.145-146 [Feldman, LCL]; emphasis mine).

[80] Ilan would place restrictions on the observation that women had the authority to arrange their own marriages. Ilan argues that women only gain the right to negotiate their own marriages after their fathers and the family patriarch had died. According to this view, Salome was unable to negotiate marriage with Syllaeus because Herod, the family's patriarch, was still alive. After Herod's death, however, his other sister, Berenice, was able to arrange her marriage to Polemo (Ilan, *Jewish Women,* 80 and Kraemer, "Typical and Atypical," 144). Although Ilan's argument accurately describes the Herodian princesses' marriages, it does not hold for the princesses' divorces (see 8.2)

[81] Ilan, *Integrating Women,* 95.

> Βερενίκη δὲ μετὰ τὴν Ἡρώδου τελευτήν ὃς αὐτῆς ἀνὴρ καὶ θεῖος ἐγεγόνει πολὺν χρόνον ἐπιχηρεύσασα φήμης ἐπισχούσης ὅτι τἀδελφῷ συνείη πείθει Πολέμωνα Κιλικίας δὲ ἦν οὗτος βασιλεύς περιτεμόμενον ἀγαγέσθαι πρὸς γάμον αὐτήν οὕτως.

Nothing in Josephus' description of this union suggests that it was legally problematic in any way. Unfortunately, because of the terseness of his description, Josephus does not reveal if Berenice's legal authority to arrange her own marriage would have applied universally or only came into effect upon her father's death.[82] The social impropriety of this marriage proposal is more easily understood. Indeed, Josephus' negative view of this union is confirmed by his description of its unraveling.[83] Josephus recounts: "The marriage did not, however, last long, for Berenice, out of licentiousness…deserted Polemo" (Josephus, *Ant.* 20.147 [Feldman, LCL]); the charge of sexual impropriety is commonly levied against women whose behavior subverts social conventions.

At times, Salome also took her marital fate into her own hands. In one case, Salome's brother Pheroras accused her of signing her own marriage contract. Josephus relates:

> Even Salome herself did not escape calumny: she was accused by her brother Pheroras of signing a contract to marry Syllaeus, the procurator of Obadas, king of Arabia, and Herod's bitterest enemy. However, though convicted of this and of everything else of which she was accused by Pheroras, she was pardoned. (Josephus, *War* 1.487 [Thackeray, LCL])

> ἦν δ᾽ ἐλευθέρα διαβολῆς οὐδὲ Σαλώμη καὶ γὰρ αὐτῆς Φερώρας ἀδελφὸς κατηγόρει συνθήκας περὶ γάμου πρὸς Συλλαῖον τὸν Ὀβαίδα τοῦ Ἀράβων βασιλέως ἐπίτροπον ὃς ἦν ἐχθρότατος Ἡρώδῃ διελεγχθεῖσα δὲ καὶ τοῦτο καὶ πάνθ᾽ ὅσα Φερώρας ἐνεκάλει συγγινώσκεται.

[82] *Ibid.*, 80 and Kraemer, "Typical and Atypical," 144.
[83] Kraemer, "Typical and Atypical," 144 and 153.

Whether Salome actually signed a contract to marry the Arabian king or whether Pheroras invented the charge against his rival is unknown. Given Herod's swift and stern reaction to the charge, however, it is likely that Salome could have negotiated the terms of her marriage by herself. Indeed, her actions probably would not have been threatening had there not been any legal or political significance to her actions.

More information about the acceptability of Salome's behavior in this incident comes from the larger context in which the story is relayed (Josephus, *War* 1.485-511). The theme of Josephus' account is the numerous treasonable plots hatched against Herod by members of his own family. Given the background of the passage describing Salome's marriage negotiation with Syllaeus, it is likely that Herod's problem with his sister's proposed marriage to Syllaeus—namely, why she was accused and in need of a pardon—was simply that her husband-to-be was one of Herod's chief rivals. Thus, the fact that Salome attempted to negotiate her own marriage without her brother's input may not have been the point of contention between the siblings.

Josephus' account of the ending of this incident further indicates that women had at least some control over their marital choices. In the version of their courtship in *Antiquities* 16, Herod was favorable to Syllaeus' proposal of marriage (Josephus, *Ant.* 16.220-228). Although palace gossip had already suggested to Herod that Salome had been actively pursuing Syllaeus and had discussed the possibility of marriage with him, Herod nonetheless approached Salome with the terms of Syllaeus' proposal and asked her consent to proceed with the marriage (Josephus, *Ant.* 16.225). Josephus writes, "When Herod brought this proposal to his sister and *inquired whether she was ready for this marriage*, Salome quickly agreed" (τοῦ δὲ Ἡρώδου τὸν λόγον ἀναφέροντος καὶ

πυνθανομένου τῆς ἀδελφῆς εἰ πρὸς τὸν γάμον ἑτοίμως ἔχει ταχέως) (Josephus, *Ant.* 16.225 [Marcus and Wikgren, LCL]; emphasis mine). Given the wording of Herod's query to Salome, it is likely that Herod desired her consent in this case because she was recently widowed and he was not certain if she was ready for remarriage. Consequently, we do not know if it was standard practice to seek a woman's consent; this is especially so given that Salome's proposed marriage to Syllaeus is the only union that Josephus describes where he records the importance of establishing the woman's consent to marry. Indeed, even in his summary of the biblical story of Rebecca's betrothal to Isaac in *Antiquities,* Josephus omits the detail of establishing Rebecca's consent, a detail that is prominent in the Genesis story itself (Gen 24:58: Josephus, *Ant.* 1.252-255).[84] On the other hand, both first century Roman law and the later Tannaitic literature require the free consent of both parties (and their respective *paterfamiliae*) for lawful marriage (*Digest* 23.1.7.1; 2.19; *b. Kidd.* 2a-2b).[85] Although the story of establishing Salome's consent is anomalous among the Herodian marriages, it does tell us that at least in certain circumstances women had the right to influence their marital choices.

Thus far, Josephus' descriptions of the Herodian princesses' arranging their own marriages indicate that the women had the legal right to do so. More support for the position that custom rather than law demanded that senior males arrange the marriages of female members of the family can be gleaned from the Bible; although biblical narratives generally portray males as the ones who arrange marriages, no law mandates this

[84] It is possible that Josephus' omission of this detail is simply an oversight. On the other hand, it might suggest that he was not comfortable with the idea of asking for a woman's consent.
[85] Harlow, *Growing Up,* 60; Hanson, "Marriage and Divorce," 147; and Kraemer, "Typical and Atypical," 24. Satlow explains the tension of male control of marital decisions with the individual desires of the marrying partners by the "veneer of patriarchal control" that served to conceal the aspirations of the marrying couple (Satlow, *Jewish Marriage,* xvii).

arrangement.[86] Roman sources and the later rabbinic writings also preserve examples of women who successfully arranged their own matches (*b. Kid.* 5b; 6b-7a).[87] Despite the ample evidence supporting the princesses' right to negotiate their own marriages, both Josephus' account of the reasons behind the ending of Berenice's second marriage and Salome's family's reaction to her attempted marriage to Syllaeus indicate some negativity towards their initiatives, thereby suggesting that their actions contravened social norms (Josephus, *Ant.* 16.220-228; 20.139-147; *War* 1.486-487).[88] A closer look at the story of Salome's attempted engagement to Syllaeus illustrates that while the law may have been on Salome's side, social conventions wielded a heavy hand in arranging marriages.[89]

Salome and Syllaeus themselves initiated their relationship through very public flirting at a series of banquets that Herod held in honor of the *de facto* ruler of Arabia (Josephus, *Ant.* 16.220-228). Syllaeus spoke directly to Salome about his feelings for her and their exchange of knowing glances was so blatant that the women of the court upbraided Salome for her behavior. Nonetheless, when the time came to propose marriage, Syllaeus' first point of contact was not Salome but Herod. Although Salome and Syllaeus had apparently already made their intentions clear to one another, Syllaeus approached Herod when it came time for the formal proposal to ask for permission to marry. The reality that Syllaeus thought it was necessary to approach Herod to finalize marital arrangements for Salome is even more surprising given that Salome had been married twice previously and was at least forty-seven years old at the time of her

[86] Hamilton, "Marriage," 559-569, esp. 562
[87] Ilan, *Jewish Women*, 81
[88] Kraemer, "Typical and Atypical," 144 and 153.
[89] Hanson, "Economics," 19.

attempted engagement to Syllaeus. This is especially so since Josephus does not present the proposed union of Salome and Syllaeus as being motivated by political concerns, but rather by mutual attraction, or as Josephus terms it, "he [Syllaeus] saw Salome and set his heart on having her" (καὶ τὸν νοῦν ἔσχεν πρὸς αὐτήν) and elsewhere Pheroras relates that the two had "passion" for one another (τῆς ὁρμῆς) (Josephus, *Ant.* 16.221, 223 [Marcus and Wikgren, LCL]).

Another case in which Salome took her marital fate into her own hands clearly illustrates the tension between a woman's ability to make her own marital decisions and the social pressures for a woman to comply with the preferences of her family patriarch. Prior to Salome's involvement with Syllaeus, she sent her second husband, Costobarus, a divorce document. Josephus opines, "Salome, however, did not choose to follow her country's laws but acted on her *own authority* and repudiated her marriage" (οὐ μὴν ἡ Σαλώμη τὸν ἐγγενῆ νόμον ἀλλὰ τὸν ἀπ᾽ ἐξουσίας ἑλομένη τήν τε συμβίωσιν προαπηγόρευσεν) (Josephus, *Ant.* 15.260 [Marcus and Wikgren]; emphasis mine). Josephus' description of the divorce credits Salome with successfully initiating the divorce of her husband. What immediately follows, however, suggests the social restrictions to which Salome was still subject. Josephus continues by informing us that Salome divorced Costobarus, "telling her brother Herod that she had separated from her husband out of loyalty to Herod himself" (καὶ πρὸς τὸν ἀδελφὸν Ἡρώδην ἔλεγεν ὑπὸ τῆς εἰς ἐκεῖνον εὐνοίας ἀποστῆναι τἀνδρός) (Josephus, *Ant.* 15.259-260 [Marcus and Wikgren]).

What is significant about Salome's ability to act on her own was that her autonomy was not limitless but very much restricted. Indeed, Salome felt compelled to

frame her choices in such a way as to suggest that she justified her actions—in this case the divorce of Costobarus—by the fact that she was doing what her brother, Herod, would have wanted. Even if Herod did not order the actual divorce, Salome claimed that, had Herod known the stakes involved, he certainly would have demanded that she divorce (Josephus, *Ant.* 15.259-260).

In this incident as well as the two others described above, Herodian women avoided the "proper" behavior in favor of steering their own course. Herodias' and Salome's control of their personal affairs in these instances reinforces the idea that social constraints, not legal disabilities, restrained women from managing their own marital affairs. Nonetheless, it is certain that social pressures were strong, particularly so in the case of the Herodian princesses since their marriages could be used as vehicles to enhance the family's power and prestige.

It is important to note that the controls on women's marital decisions were not in effect, or at least were not as uniformly effective, for males of majority age.[90] By comparing how Salome responded to Herod's plans for her marital life to Pheroras' reactions, one can see the different levels of freedom granted to men and women in arranging their own marriages. Pheroras, half-brother of both Herod and Salome, accepted Herod's initial proposal that he marry his sister-in-law, a Hasmonean princess. However, after the princess's death, Pheroras rejected Herod's offer of his eldest daughter as his next wife. Instead, Pheroras chose to partner with a slave-girl with whom he was enamored. Herod understandably felt slighted by Pheroras' decision, but over time forgave his brother (Josephus, *War* 1.483-484). Later, Herod offered a second

[90] Seth Daniel Kunin, *The Logic of Incest: A Structuralist Analysis of Hebrew Mythology* (JSOTSup 185; Sheffield: Sheffield Academic Press, 1995), 53-54.

daughter of his to Pheroras. Pheroras initially agreed to marry her and leave his slave-girl wife, but he returned to the slave-girl at the eleventh hour and forsook his plan to marry his niece (Josephus, *Ant.* 16.194-200). Twice spurned, Herod grew angry and devoted considerable attention to a campaign to get Pheroras to divorce the slave-girl. Having no authority over the slave-girl or, apparently, his brother in this situation, Herod "could devise no means of punishing her, until finally, in extreme indignation, he banished both her and her husband from the realm" (Josephus, *War* 1.572-578 [Thackeray, LCL]).

Herod's involvement with Pheroras' marital status contrasts with the treatment that Salome experienced. Through Josephus' retelling of Herod's intercession in Pheroras' affairs, we learn that while Herod's power appears to have been absolute in regard to arranging marriages for women and minors under his aegis, his authority to insist upon certain marital arrangements for adult men with whom he was connected was not.[91] Herod could and did use his power and personality to persuade men to consider certain marriage proposals, but he could not require grown men to heed his wishes. Instead, he could only hope that the power of his influence was strong enough to sway his male relatives to agree to his plans. Precisely because his authority as Pheroras' older brother (and *paterfamilias*) was not sufficient to manage Pheroras' marital choices, Herod used his power as a regent to "solve" the problem of Pheroras' relationship to the slave-girl by exiling the couple.

Herod's true motivation for banishing Pheroras might have been more complex than Pheroras' refusal to leave his slave-girl wife and marry Herod's daughter. By flouting Herod's instructions, Pheroras not only openly defied his brother but also defied

[91] Herod's authority to steer marital decisions did not extend over individuals, whether minors or adult women and men, who were not in some way under his authority. For example, Herod had no way to force Pheroras' slave-girl to end her relationship with his brother, Pheroras (Josephus, *War* 1.572-578).

the clan's paterfamilias. Thus, Pheroras' behavior compromised the authority structure of the entire Herodian family. This interpretation is further strengthen by the fact that immediately prior to relaying this story of Pheroras' defiance of Herod, Josephus relates that Pheroras shared with Herod all honors except the crown itself (Josephus, *War* 1.483). Consequently, Pheroras' exile might have been motivated more by his overt jockeying for family headship rather than his marital decisions. Nonetheless, the original contention stands: Pheroras did not feel compelled to bend to Herod's wishes while Salome did.

In some ways, it is surprising that Pheroras was able to oppose Herod's influence so effectively while Salome was not. Salome was, after all, the subject and initiator of numerous palace intrigues. She was so effective at this that Herod's own sons feared her as they considered her both "formidable and dangerous" (Josephus, *War* 1.483). Her strength is further underscored by the fact that Salome's chief enemy, her brother Antipater, arranged for Salome's daughter to marry another well-connected Herodian specifically in order to conciliate Salome (Josephus, *War* 1.552-555). Because Salome wielded so much power in other realms of her life, her apparent inability to settle her own marital affairs is puzzling. However, given Salome's value as an asset in the alliance system, it is possible that her marital decisions were simply too important to be left up to herself.

To complete the argument that women were subject to a higher degree of social pressure to comply with their families' plans for their marital decisions than men, one need only return to Pheroras' reaction to Herod's plans for his marriages.[92] One never hears of Pheroras framing his marital decisions based on Herod's best interests. Nor did

[92] Hanson, "Marriage and Divorce," 147.

Pheroras feel compelled to consent to Herod's matchmaking services when Herod's desires did not line up with his own wishes, as Salome did in the case of surrendering her plan to marry Syllaeus and instead marrying Alexas in accord with Herod's orders. On the contrary, Pheroras seems to relish openly opposing Herod's marital plans for him.[93]

The question remains, however, was Herod's steering of the marital affairs of women and minors a widespread phenomenon among Jews in antiquity? Or was it restricted to the Herodian family, for whom marriage was not simply a personal issue but also a matter of state? We are unable to answer this question based on the Josephus material alone, since almost all of his descriptions of marriages and divorces relate to the Jewish royals. Moreover, Josephus' terse description of his own domestic history does not add anything to this discussion. However, when we examine the Roman legislation regarding marriage, we will see that the marital behaviors of the Herodians were not restricted to the royal family itself or even Jews, but were, in fact, part of a larger cultural phenomenon.

5.6 The "Missing" Marriage Documents

While our discussion of Jewish marriage arrangements has touched on a number of facets of marital protocol that would be expected, such as betrothal and the role of the family in negotiating marriage, one aspect is glaringly absent from the standpoint of the history of Jewish marriage—the *ketubah*. Even though the marriage contract lacks a clear biblical basis, in the earliest layer of rabbinic literature—the Tannaitic stratum—the

[93] It is possible that Salome, unlike Pheroras, acquiesced to Herod's wishes because she was clever. Salome may have further exended her authority in the family hierarchy by subsuming her own personal desires. Nonetheless, the question remains, why did Salome feel that her marital decisions had to conform to the family patriarch's wishes to remain in favor while Pheroras did not?

very idea of Jewish marriage becomes synonymous with the *ketubah*, or marriage contract (*m. Ket.)*.[94] Moreover, the continuum of Jewish marital history from the sixth century B.C.E. Elephantine archive to the second century C.E. Bar Kokhba collection and beyond testifies to the enduring importance of the *ketubah* to Jewish marriage. Tobit, from the second century B.C.E., notes the writing of a marriage contract establishing Tobias and Sarah's marriage "according to the decree of the law of Moses" (Tob 7:13).[95] Philo testifies that marriage documents were in use in Alexandria in the first century C.E. (Philo, *Spec. Laws* 3.72). Given the *ketubah*'s prominence in both theoretical discussions, such as in Philo's writings and rabbinic literature, and personal documents from the extant Jewish archives from antiquity, it is striking that Josephus' extensive writings only contain one reference to a marriage document (Josephus, *War* 1.486-487).

Although it is not identified as a *ketubah* but rather an unspecified marriage deed, Josephus mentions a marriage contract in the context of an accusation of treason (συνθήκας περὶ γάμου) (Josephus, *War* 1.487).[96] Pheroras charged his sister Salome with insurrection against their common brother, Herod. The specific charge against Salome was that she had signed a marriage document testifying to her desire to form a union with Herod's arch-nemesis, Syllaeus (Josephus, *War* 1.486-487). Disregarding the irony that this charge was brought by Pheroras, who had hardly used his marital decisions to ingratiate himself with Herod, the only reference to the document that would become synonymous with Jewish marriage itself occurs in a description of a proposed exogamous

[94] Hanson, "Economics," 15.
[95] Instone-Brewer, *Divorce and Remarriage*, 80-81.
[96] There is no reference to a *ketubah* neither in Josephus' theoretical discussions of marriage nor in his biblical summaries. With the exception of Salome's proposed marriage to Syllaeus, there is only one other reference to a written instrument in connection with marriage in Josephus' writings. In emphasizing the purity of the priestly line, Josephus relates that when a priest wishes to contract a marriage he sends a document outlining the genealogy of the proposed bride to Jerusalem so that her suitability for marriage into the priestly caste can be verified (Josephus, *Ag. Ap.* 1.30-36).

marriage between a Jewish princess and a gentile king. In addition, the *ketubah*'s near total omission from Josephus' divorce-rife retelling of the history of the Herodian family is all the more noteworthy, in light of the fact that at least one later Jewish source explicitly states that the *ketubah* was instituted in order to make divorce more difficult (*b. Ket.* 11a, 39b).[97]

Because of the *ketubah*'s role as the *sine qua non* of Jewish marriage and the role of marriage contracts in ancient Mesopotamia more generally, the absence of references to the *ketubah* in Josephus' other descriptions of the Herodian marriages or even his own marriages may be nothing other than happenstance.[98] Indeed, no one claims that Josephus' treatment of the topic of marriage—or almost any other topic—is exhaustive. Thus, his failure to mention the *ketubah* in the same breath where he refers to the other preliminaries to marriage, such as the giving of the dowry and the negotiations between the bride's and groom's representatives, should not automatically preclude the possibility that a *ketubah* was part of the process. Indeed, Hanson thinks that Josephus neglects marriage contracts because by the first-century the amount of money stipulated in the contract was a token amount and therefore did not warrant mention.[99] In the event of divorce or death, the husband added to the token sum paid at betrothal, resulting in a significant payout to the divorced or widowed wife. Moreover, since the primary purpose of the *ketubah* was to regulate the financial aspects of marriage and to delineate the terms should the marriage end in divorce or death, it is difficult to imagine that wealthy

[97] Mendell Lewittes, *Jewish Marriage: Rabbinic Law, Legend, and Custom* (Northvale, N.J.: Aronson, 1994), 54.
[98] The use of a marriage document was not restricted to Jewish circles but was, in fact, common across the ancient Near East; see Karen Rhea Nemat-Nejat, *Daily Life in Ancient Mesopotamia* (DLHS: Westport, Conn.: Greenwoods, 1998), 132-140; Lipiński, "The Wife's Right to Divorce," 14-17; and Daniela Piatelli, "The Marriage Contract and Bill of Divorce in Ancient Hebrew Law," in *The Jewish Law Annual* (ed. Bernard Jackson; Leiden: Brill, 1981), 4.66-78, esp. 74.
[99] Hanson, "Economics," 15.

individuals who had much to lose monetarily would not have availed themselves of a legal tool to mitigate losses at a marriage's dissolution. None of this, however, takes away from the fact that there is only one certain reference to a marriage contract in Josephus' writings on the Herodians.

5.7 Where is the Wedding?

Biblical, Second Temple, and rabbinic sources describe the preliminaries to marriage to varying extents. The extant Jewish sources discuss the marital negotiations undertaken by both parties, including the financial terms of the marriage as well as the motivations of the two sides in bringing their respective family members together in marriage. There is, however, little discussion in Josephus' writings, and only modestly more in other ancient Jewish sources, of the existence of a marriage ceremony or any other ritual connected to the release of a bride from her natal family and her entry into the household of her new husband.

Indeed, Josephus only twice mentions something that could be termed a ritual of marriage, and only one of these incidents relates to the Herodian family. Josephus writes that Herod left his troops in the middle of his siege on Jerusalem and journeyed to Samaria where he married his bride, the Hasmonean princess Mariamme (Josephus, *War* 1.241, 264, 344). His second reference comes from his retelling of an Arab wedding procession in the days of the Maccabees. Josephus writes, "…they saw them conducting the maid and her bridegroom and a great company of friends, *as is usual at a wedding*" (Βερενίκη δὲ μετὰ τὴν Ἡρώδου τελευτήν ὃς αὐτῆς ἀνὴρ καὶ θεῖος ἐγεγόνει πολὺν χρόνον ἐπιχηρεύσασα φήμης ἐπισχούσης ὅτι τἀδελφῷ συνείη πείθει Πολέμωνα

Κιλικίας δὲ ἦν οὗτος βασιλεύς περιτεμόμενον ἀγαγέσθαι πρὸς γάμον αὐτήν οὕτως) (Josephus, *Ant.* 13.20 [Marcus, LCL]; emphasis mine).[100]

Wedding feasts, often lasting seven days, are noted in the Bible and some Second Temple texts, such as Tobit, *Joseph and Aseneth,* and Philo (Gen 29:27; Judg 14:12; Tob 8:20-9:6; 11:18; *Jos. Asen.* 21:6-7; Philo, *Spec. Leg.* 3.80). There are also a number of post-Second Temple references to wedding feasts in the New Testament and rabbinic literature including John's setting for the story of Jesus' miracle of turning water into wine, namely, a wedding feast in the village of Cana in the Galilee (John 2:1-11; *b. Mes.* 8.26; *m. Avod. Zar.* 1.3; *b. Shab.* 7.9; *b. Shab.* 156b).

Some texts indicate another wedding tradition, namely, a processional of the bride from the home of her birth to the home of the husband.[101] While Roman sources frequently refer to wedding processionals, the Second Temple Jewish sources are more reticent on this topic. Josephus' description of the Maccabean-era Arab wedding suggests that bridal processions were a common element of marriage celebrations (Josephus, *Ant.* 13.20).[102] Later rabbinic texts, such as *m. Ketuboth* 2:1 and *m. Sotah* 9:14, assume that wedding processionals were normative, since the texts assume that communal memory of a wedding processional was sufficient to prove that a woman had been married.[103]

Despite these scattered references to wedding rituals neither the Bible nor any other early Jewish source, whether from the Second Temple or the Tannaitic period, stipulate that any wedding ritual was necessary for the lawful establishment of a

[100] Also, 1 Macc 9:37-39.
[101] Satlow, *Jewish Marriage,* 170-171.
[102] Also, 1 Macc 9:37-39.
[103] There may be a connection between the processional and a woman's claim of virginity (Satlow, *Jewish Marriage,* 173).

marriage.[104] Tobit suggests that the signing of the marriage writ was the constitutive event and the later *Tannitic* corpus points to a writ, money, and intercourse as being the necessary elements; once again absent is any mention of a wedding ceremony (*m. Kid.* 1.1). Roman sources too never suggest that marriage rituals were essential to the establishment of the legality of unions (Cicero, *Quintilian* 2.6.2; Pliny, *Epistles* 1.9; *Digest* 23.2.5-6).[105] Even though wedding feasts and processionals had no constitutive force for unions, however, one should not necessarily assume that they were of little importance. On the contrary, these public celebrations were opportunities for clans to display their power, prestige and honor (Cicero, *Quintilian* 2.6.2).[106] Moreover, they helped cement newly formed kinship relationships.

Because standard Jewish wedding customs are largely unknown to us and Josephus provides so few references to wedding rituals, attempting to discern something about the Herodians' attachment to Jewish tradition or Roman custom based on wedding rituals is not possible**.** What we can say is that both the Roman and Jewish sources agree that wedding rituals were not essential to the establishment of legal marriage.

5.8 Synopsis of Jewish Marriage as Described by Josephus

The Herodian family's marriage practices underscore the importance of the alliance system and the concept of kinship to Second Temple society. Study of the biblical and rabbinic models for negotiating marriage has likewise helped clarify the royal Jews' marital choices. A final piece of evidence that can help us properly contextualize the Herodian family's marital decisions is a closer look at the marital

[104] *Ibid.*, 173-175.
[105] Harlow, *Growing Up*, 60-63.
[106] *Ibid.*, 60.

practices of the family's gentile peers. The elite Jews living in the land of Israel looked to Rome for both political governance and cultural norms. Thus, the Roman model of marriage provides the most fitting comparison to the Jewish one. Turning now to Roman ideas and legislation about marriage, the study of another culture's practices further clarifies the choices made by the royal Jews and serves to place their actions firmly within the bounds of the standard marriage practices of their times.

5.9 On Roman Marriage

Roman sources are unequivocal in stressing the importance of marriage.[107] Legal texts, references to customs and even examples from the arts confirm this viewpoint.[108] For example, although Roman law granted specific groups, such as the vestal virgins, exceptions, the legal codes were favorably skewed towards married citizens (Cassius Dio, *Roman History* 56.10). Similarly, Roman customs, which saw marriage as the entry point to adulthood and social respectability, confirm the society's pro-marriage standpoint (*Digest* 4.11.33; Arnobius, *Adversus Nationes* 2.4.13).[109] Lastly, the idealization of marriage and family life in the Ara Pacis sculptures from the first century B.C.E. underscores the empire's encouragement of marriage.[110]

Although Roman law and culture generally supported marriage, not all Romans internalized the imperial rhetoric on marriage. Like elite Jewish males who preferred a life of study and adventure to domesticity, some elite Romans sought to avoid marriage as long as possible. Hence, the first emperor Augustus, whose reign straddled our era of

[107] Harlow, *Growing Up,* 93.
[108] Satlow, *Jewish Marriage,* 42.
[109] Harlow, *Growing Up,* 61 and Satlow, *Jewish Marriage,* 12-13 and 16-17.
[110] Harlow, *Growing Up,* 38, 40.

interest, promulgated laws in both 18 B.C.E. and 9 C.E. encouraging marriage and childbearing.[111] This campaign to increase rates of marriage and childbirth was notably aimed at Roman citizens, to the exclusions of non-citizens. Most of these laws, modified somewhat over the years by later emperors, were in effect for several hundred years.[112] Although there is no comprehensive extant listing of the Augustan marriage legislation, many of the enactments are noted in various writings from the first centuries B.C.E. and C.E.[113]

Augustus' laws fined male citizens between the ages of twenty-five and sixty and female citizens between twenty and fifty who were not married (Cassius Dio, *Roman History* 54.16.1-2).[114] The legislation further stipulated that widows had a three-year window in which to remarry, whereas divorcées were to follow suit within eighteen months.[115] Although the Empire clearly promoted marriage among its citizens, childbearing, which created a steady stream of soliders for the Empire and ensured its power, was the real goal of Augustus' legislation (Cassius Dio, *Roman History* 54.16.1-2; Tacitus, *Annales* III.25).[116] Augustus' laws of inheritance, which clearly favored citizens who were married with children, underscore Rome's interest in expanding its citizen base through childbirth. For example, while married couples were not subject to the same onerous financial penalties that single adults suffered, the only group entirely freed from any financial levies was married couples with children (Tacitus, *Annales* III.25).[117] In fact, Augustus' legislation granted married couples with children a number of additional

[111] Grubbs, *Law and Family,* 84-85 and 104-105.
[112] *Ibid.*, 84.
[113] In most cases it is impossible to differentiate which laws were part of Augustus' original promulgation in 18 B.C.E. and which ones were established in 9 C.E. (Grubbs, *Law and Family,* 84-85).
[114] *Ibid.*, 83-84.
[115] *Ibid.*, 83-84.
[116] *Ibid.*, 81.
[117] *Ibid.*, 83-84.

privileges, such as favoritism in receiving governmental positions (Cassius Dio, *Roman History* 54.16.1-2, 56.10).[118] Furthermore, the laws rewarded some mothers for their service to the state in raising future citizens, by freeing them from the need to appoint a guardian to carry out certain legal transactions (Cassius Dio, *Roman History* 56.10).[119]

Augustus' laws encouraging marriage and childbirth were not merely *pro forma*. The public's very negative response to Augustus' legislation tells us that the laws were intended to bring about a real change in the behavior of upper class Romans (Suetonius, *The Deified Augustus*, 34; Tacitus, *Annales* III.28).[120] The laws did serve to change the marital practices of elite Roman men, but not always in the way that Augustus desired. Instead of marrying young and staying married, upper class men found all sorts of loopholes. For example, some men married in order to receive inheritances that were off limits to singles and, upon obtaining the inheritances, promptly divorced their spouses (Tacitus, *Annales* III.28).[121] The bigger issue, revealed through the public's reaction to the marriage laws, is that respectability and social and political promotion among elite Roman men did not always depend on being married or rearing children.

While marriage may not have been wildly popular among the elite young Roman men, social and familial pressures means they were likely not able to elude marriage long; and when they did seek to marry, they had to know something of marriage's more mundane aspects, such as its protocol and limitations. Males usually handled these preliminaries to marriage, although women frequently helped identify a suitable match (*Digest* 23.2.19; Pliny, *Epistles* 1.14; Livy 38.57.7-8). Since young Roman women from

[118] *Ibid.*, 83-84.
[119] *Ibid.*, 83-84.
[120] *Ibid*., 85 and 104-105.
[121] *Ibid.*, 86.

elite families were married at a young age, it is not surprising that marital negotiations were handled by their parents, in particular their fathers.[122] Because prospective grooms were often significantly older, at times they conducted their own negotiations. More frequently, however, regardless of the age or gender of the fiancees, fathers served as the chief negotiators (*Digest* 23.2.10-11, 20; *Cod. Just.* 5.4.1).[123]

Although the couples' fathers most frequently settled the negotiations between them, Roman law was stringent in its insistence that both husband and wife freely consent to the marriage (*Digest* 23.1.7.1; 23.2.2; 23.1.11-13; 23.2.21-22). The consent aspect was so crucial that in its absence neither sexual intercourse nor cohabitation was sufficient to establish marriage (*Digest* 50.17.30; 23.2.5; 24.1.32.13; *Cod. Just.* 5.4.13, 292-305).[124] While the Romans took the issue of consent seriously, it is unlikely that the importance of the consent of both parties actually meant that the prospective bride and groom had as much freedom as the law might seem to imply. On the contrary, in societies dominated by kinship, it is difficult to imagine that social pressures would have allowed brides and grooms to reject the marriages that their fathers or other relatives arranged for them.[125]

While selecting a partner was a significant step in arranging a marriage for a Roman couple, it was merely the first of a number of wedding preliminaries. After selecting a marriage partner, negotiations involving the details of betrothal and the terms of the dowry took center stage. Generally, elite marriages followed an extended betrothal

[122] *Ibid.*, 88 and Yarbrough, "Paul, Marriage, and Divorce," 404-407. Widows and divorced women, on the other hand, had more autonomy in marital decisions (Treggiari, *Roman Marriage,* 135).
[123] Harlow, *Growing Up and Growing Old*, 95-102.
[124] The Talmud also stresses the importance of the woman's consent to marriage. For example, see *Kid.* 2a-2b.
[125] Grubbs, *Women in the Law,* 89.

period that might last more than two years (*Digest* 23.1.4, 14, 17; 23.2.4). The giving of a dowry, which was the culmination of lengthy negotiations concerning the transfer of property between the soon-to-be-married couple and their families, was an essential component of Roman marriage (*Digest* 23.3.3; 23.4.12.1; *Sent. Pauli* 2.10.1; *Laudatio Turiae* 1.42, 46-48; Pliny, *Epistles* 2.4, 6.32).[126] While the dowry was central to contracting marriage, from our later standpoint it is striking that Roman legal texts reveal that no ceremony, whether religious or civil, was essential to contracting a legal marriage.[127] Although Romans certainly did mark betrothals and weddings with public celebrations, these events had no legal clout and are therefore absent from Roman legal codes (Cicero, *Quintilian* 2.6.2; Pliny, *Ep.* 1.9; Clausid Car. Min. 25.124-5).[128] It is also of note that, in opposition to many of the minority groups of the Empire, the Romans themselves did not hold that a document was necessary for a marriage's validity.[129] On the contrary, the legality of a marriage was solely dependent on the consent of both parties (*Digest* 23.2.2; 23.1.11-13; 23.2.21-22). Therefore, a written document was necessary neither to effect marriage nor as material evidence of the free consent of both parties (and their *paterfamilae*).[130] Even though written deeds did not affect the legality of marriage, they were sometimes used to protect the wife's right to the dowry her family had seeded the marriage with in the event of the husband's death or the couple's divorce from each other (Tacitus, *Annals* 11.30.4).[131]

[126] *Ibid.*, 103.
[127] Harlow, *Growing Up*, 60 and Yarbrough, "Paul, Marriage, and Divorce," 409.
[128] Harlow, *Growing Up*, 60 and 63 and Grubbs, *Women in the Law*, 82.
[129] *Ibid.*, 83.
[130] *Ibid.*, 83.
[131] *Ibid*., 62 and Tregiarri, *Roman Marriage*, 165.

Both men and women experienced a change of status when they married.[132] A new groom would finally gain social acceptance for the independence that his arrival to the age of majority legally provided (*Digest* 4.11.33).[133] A woman's status did not merely change in the eyes of others but actually underwent a legal change. While in earlier times a woman became subject to her husband's legal control when she married, by the first century B.C.E. these so-called *manus* marriages had mostly disappeared.[134] Instead, Roman women would remain under their father's *potestas*, or control, even though they had married and lived with their husbands.[135] Although the offspring of the marriage would continue under the *potestas* of their father (her husband), the wife continued to be under the power of her father and her family's inheritance structure until the death of her father, at which time she came into her own from a legal standpoint.[136]

5.10 Comparing Jewish and Roman Marriage: Motivations and Protocol

This brief and by no means comprehensive overview of Roman marriage practices demonstrates that Jewish and Roman concepts of marriage and the legal basis behind them were similar in many ways. Notable similarities include the importance of marriage as a supreme cultural value as well as the existence of protocols for arranging marriages. For example, the behavior of the Herodian family agrees with Roman as well as Jewish custom in that marriages were largely arranged by fathers, whether the bride

[132] Harlow, *Growing Up*, 58, 64.
[133] Technically a boy became a man once he reached puberty and stopped wearing the toga *praetexta* in favor of the toga *virilis* (Harlow, *Growing Up*, 61). Rabbinic texts confirm that marriage affected the status of Jewish males in a similar way that it did for gentile males (Satlow, *Jewish Marriage*, 12-13, 16-17).
[134] Grubbs, *Women in the Law*, 21.
[135] *Ibid.*, 21.
[136] *Ibid.*, 21.

and groom were minors or of age. In the event that the father was unable to negotiate the marriage terms, a woman's brothers or mother might assume the role of negotiator.[137] In both cultures a woman only rarely conducted her own marital negotiations.

Other similarities between Roman and Jewish ideas of marriage include the role of the alliance, or kinship, system in determining matches and the common understanding that a formal ceremony was not essential to the proper legal formulation of marriage.[138] For example, the absence of references to marriage rituals in Roman and biblical legal codes suggests that these celebrations had no legal force in the first century C.E. Likewise, the rabbis were adamant that a wedding ceremony was not essential to contracting marriage, even though they do refer to these types of customs.[139]

A final point of contact between elite Jewish and Roman customs is that they had similar approaches to a woman's status post-marriage. For both Jews and Romans, a woman's connection to her biological father was stronger than her connection to her husband. While the later evidence from the Mishnah seems to indicate that marriage changed a woman's loyalties from her natal family to those of the family of her husband (*m. Ket.* 4.2, 5), Josephus' narratives do not support the Mishnah's contention. Instead, they suggest that in agreement with the Roman ideal of *potestas*, the father (and the larger clan) had ongoing influence in the life of his now married daughter.[140] While among Romans, laws formalized the ongoing influence of the father over his daughter, in the Jewish context custom alone may have determined this relationship.

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[137] Lewittes, *Jewish Marriage, Rabbinic Law*, 19.
[138] The Jewish practice of giving dowry is generally viewed as an example of Jews adopting a practice common to Greco-Roman marriage (Satlow, *Jewish Marriage,* 201).
[139] Satlow, *Jewish Marriage,* 168-173, 178,esp. 180-181 and Marks, *Jewish Weddings,* 129-263.
[140] Satlow, *Jewish Marriage,* 15.

One of the few ways that scholars have demarcated Jewish marriage from its gentile counterpart in antiquity is by the marriage document. Jewish marriage deeds, or *ketubot*, while in largely similiar to the marriage contracts in use among gentiles, generally differed in one way or another from the gentile form of the marriage document. For example, the stipulation that a woman's male children were to inherit her marriage settlement and her daughters' maintenance was to come from the husband's estate is unique to Jewish documents.[141] There is, however, no way to know if the Herodians too differentiated themselves by using clauses such as this to establish their marriages, since there are no extant Herodian marriage contracts. Furthermore, the lack of a biblical law enjoining the use of such documents combined with Josephus' reticence on the writ may mean that late Second Temple Jews were not obligated to use such documents.

5.11 Conclusion

Our review of the basic structure of Jewish marriage in antiquity as described by Josephus contributes greatly towards understanding his portrayal of the unions and dissolutions described in his writings. We have learned that marriage was commonly expected of adults. Likewise, we have learned of the essential role that alliances played in contracting marriages as well as the superior strength of biological connections over those created through marriage. Our study of the protocol of marriage has exposed the strength of biblical or traditional structures in formalizing marriage arrangements, while we have also acknowledged that more innovative practices were open to those who chose

[141] This feature of the Jewish *ketubah* responds to biblical law, which prohibits daughters from inheriting when there are male heirs. Jews employed the legal stipulation that daughters were to be maintained from the proceeds of the *ketubah*, in turn, to overcome the bias against women in the biblical inheritance system (Satlow, *Jewish Marriage*, 84).

to use them. Although atypical marriage protocols were legally permissible, they were not always socially acceptable. Lastly, our review of Roman marital ideals and practices has further clarified how Jews in antiquity probably understood marriage. Given the many similarities between Jewish and Roman marriage practices cited above, there seems to be substantial truth to the assertion of Satlow and Marks' argument that Jewish marriage in antiquity was not unique, or even that there was nothing specifically *Jewish* about the marriage of Jews in antiquity.

Due to the dearth of clear-cut guidelines on the motivation and protocol for arranging marriages in biblical texts as well as the striking similarities with Roman practices when the Jewish texts do specify marriage protocol, it is not entirely clear to what extent the Herodian family viewed marriage negotiations as a realm in which to demonstrate their commitment—or lack thereof—to Jewish practice. Moreover, Josephus' descriptions of the Herodian royal marriages, when viewed in light of what we have learned about marriage practices, leave little reason to suspect their commitment to Jewish observance in their approach to arranging marriages.

Now that we have some understanding of marriage as it was conceptualized and practiced in elite Roman and Jewish circles, it is time to turn to examples of the Herodians making marital choices in clear violation of Jewish law, as well as to cases where the Herodians *did* distinguish their marital practices from those in vogue among their Roman contemporaries.

6. Ilicit Unions and the Herodians

Due to the absence of biblical guidelines on the topics of the proper motivation and protocol for marriage, our study of these two aspects of marriage has done little to further our understanding of the Herodian family's relationship to Jewish practice. The legal limitations of one's choice of marital partners, by contrast, can tell us something about the Herodians' compliance with Jewish practices since explicit biblical directives enumerate those disqualified to serve as potential spouses.

6.1 Endogamy vs. Exogamy

The Bible preserves numerous warnings against exogamous marriage, that is, marriage outside of a defined group as determined by biology or custom (Exod 34:11-17; Deut 7:1-4; Ezra 9:1-10:44). Exodus 34 and Deuteronomy 7 caution against marrying women and men from the tribes who were resident in Canaan at the time of the Israelite entry into the land because of the fear that these peoples would lead the Israelites to idolatry.[1] Ezra 9-10, recalling the prohibitions on marriage with outsiders in Exodus 34 and Deuteronomy 7, decries the many incidents of marriage with foreigners occurring

[1] A closer reading of the biblical texts that forbid exogamous marriages qualifies the general view that the Hebrew Bible is negative towards exogamous marriages. In fact, the biblical texts exhibit tension on this point. In general, the Bible forbids marriage with the indigenous residents of Canaan, that is, the various tribal subgroups of the Canaanites, as well as their near neighbors, such as the Moabites. However, the revelation of Deut 23:7-8 that it was permissible to marry an Edomite or Egyptian after three generations of living among Israelites suggests that the ban on intermarriage was not universal in biblical times (Victor Hamilton, "Marriage" *ABD* 4:559-569). There is no biblical pronouncement of a ban on marriage with more distant peoples (see Gen 41:45). This distinction appears to have been lost on Second Temple Jews who seem to have thought that their tradition maintained an outright ban on exogamous marriage (see 6.1). The later *taanitic* rabbis, however, will returned to a discussion of the specifics of the biblical ban on intermarriage at least once. In *Yevamoth*, the rabbis discuss the legality of Moabite women marrying Israelite (*m. Yev.* 8.3).

among the general Israelite population and in particular among the priests and Levites (Ezra 9-10, esp. 9:1-2).

Some Jews in the late Second Temple Jews seem to have understood these biblical restrictions against exogamy more broadly; namely, they read them as prohibiting marriage to all gentiles.[2] For example, The *Letter of Aristeas* and the book of Judith, both written in the third-second centuries B.C.E., inveigh against exogamy in both direct and indirect statements (*Let. Aris.* 139 and Jdt 8:2).[3] Likewise, Jubilees, written between 168 and 75 B.C.E., emphasizes the importance of taking marriage partners from within the Jewish people, and urges parents not to give "any of their daughters to the gentiles and not to take for their sons any of the daughters of the gentiles" (*Jub.* 30:12 [Wintermute, OTP]).[4]

The Dead Sea Scrolls, from the time of the turn of the millennium, also forbid exogamous marriage, basing the prohibition on another biblical concept, namely, the ban on the mixing of diverse kinds (*4QMMT* lines 75-82).[5] Written around the same time as 4QMMT, *Joseph and Aseneth* is an extended response to Gen 41:45's claim that Joseph married Aseneth the daughter of an Egyptian priest in opposition to Second Temple norms.[6] Philo also refers to the ban on exogamous marriage in a position that he ascribes to Moses, namely, "Do not enter into the partnership of marriage with a member of a foreign nation" (Philo, *Spec. Laws* 3.29 [Colson, LCL]). Pseudo-Philo, also from the first century C.E., has one of the strongest statements about the avoidance of union with

[2] Barclay, *Jews in the Mediterranean Diaspora,* 410 and S. Cohen, "The Prohibition of Intermarriage," 23-24
[3] Nickelsburg, *Jewish Literature,* 168.
[4] S. Cohen, "The Prohibition of Intermarriage," 26; Nickelsburg, *Jewish Literature,* 78; and Satlow, *Jewish Marriage,* 141. Also, see *Jubilees* 20:4; 22:16-22; 25:1-10; 27:10; 30:7-17.
[5] Satlow, *Jewish Marriage,* 142 and Elisha Qimron and John Strugnell, *Qumran Cave 4: Miqsat Ma'ase ha-Torah* (DJD X; Oxford: Clarendon, 1994), 55-*57*.
[6] Nickelsburg, *Jewish Literature,* 263.

gentiles.[7] In a midrash on the biblical story of Tamar and Judah, Pseudo-Philo has Tamar say, "It is better for me to die for having intercourse with my father-in-law than to have intercourse with gentiles" (Pseudo-Philo 9:5 [Harrington, OTP]).

A number of Josephus' insertions into his summaries of the biblical text stress the importance of avoiding exogamous marriage in accord with a prominent Second Temple position that such marriages were unlawful. In Josephus' retelling of the biblical story of Shechem's desire for Dinah, he informs us that Dinah's father Jacob "deemed it unlawful to marry his daughter to a foreigner" (Josephus, *Ant.* 1.338-339 [Thackeray, LCL]).[8] Josephus likewise broaches the issue in commenting on Esau's marriages. He writes, "These marriages he contracted on his own responsibility without consulting his father, for Isaac would never have permitted them, had his advice been sought, having no desire to form ties of affinity with the indigenous population" (Josephus, *Ant.* 1.265-266 [Thackeray, LCL]). In *Antiquities*, Josephus accuses Solomon of transgressing what Josephus believes to be the biblical commandment against marriage to foreign women. Josephus complains, "…not satisfied with the women of his own country alone, he married many from foreign nations as well…thereby transgressing the laws of Moses who forbade marriage with persons of other races" (Josephus, *Ant.* 8.191 [Marcus]). Further evidence of Josephus' view that exogamous marriages were unlawful comes from his description of marital regulations concerning the priestly class where he describes the

[7] *Ibid.*, 267-286.

[8] This is Josephus' summary of the following biblical statement: "We cannot do this thing, to give our sister to one who is uncircumcised, for that would be a disgrace to us. Only on this condition will we consent to you: that you will become as we are and every male among you be circumcised. Then we will give our daughters to you, and we will take your daughters for ourselves, and we will live among you and become one people" (Gen 34:14-16).

necessity of marrying "a woman of his own race" (Josephus, *Ag. Ap.* 1.30-36 [Thackeray, LCL]).[9]

Additional confirmation that the Jews practiced endogamy in late Second Temple times comes from Tacitcus, who mentions the practice and accuses Jews of misanthropy because of it.[10] In describing the Jewish preference for endogamy Tacitus writes, "[A]lthough as a race they are prone to lust, they abstain from intercourse with foreign women; yet among themselves nothing is unlawful" (Tacitus, *Histories* 5.5.2).[11]

6.2.1 Endogamy and Exogamy in the Roman and Jewish Contexts

Although the Jews might be the best-known group from antiquity that insisted upon marrying within a restricted pool of spouses, they were not alone in their preference for limiting, or at at least encouraging, marriage within a set subgroup. While the details may differ, many peoples across the ancient world imposed limits on one's choice of a marriage partner, whether based on law or culture. For example, the gentile inhabitants of the eastern provinces of the Roman Empire also chose their marriage partners from restricted pools. In particular, the Greeks expressed a clear preference for endogamous marriage from classical times through the Roman period, perhaps motivated in part by their inheritance laws which favored endogamy.[12]

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[9] Josephus condemns marriage with gentiles in the following texts as well: *Ant.* 1.276-278, 299-302; 5.286-287; 8.190-195; 11.70-71, 140-153, 306-312; 12.187. While some of Josephus' views on exogamous marriage might relate to his status as a priest, for whom issues of endogamous versus exogamous marriages were particularly strong, the view that all Jews should avoid exogamous marriage is common in Second Temple texts and found in his writings as well (see above).

[10] Louis Feldman, *Jew and Gentile in the Ancient World* (Princeton, N.J.: Princeton University Press, 1993), 12 and 141-142.

[11] Menachem Stern, ed., *Greek and Roman Authors on Jews and Judaism* (3 vols.; Jerusalem: Israel Academy of Sciences and Humanities, 1974-1984), 2:26.

[12] Satlow, *Jewish Marriage*, 143-144.

Although many groups practiced endogamous marriage, they often disagreed about who qualified as a partner for this type of marriage. Among gentiles, endogamous marriage generally involved marriage to partners within the biologically connected family, whether related by marriage or blood. While some groups considered cousin marriages ideal, other groups preferred uncles or aunts pairing with their nieces and nephews respectively, couplings that combined the various groups' interests in endogamy with their own cultural beliefs as to which relationships were incestuous. For example, the Greeks considered marriages between uncles and nieces to be ideal.[13] In the Egyptian *chora,* on the other hand, sibling marriage, condemned almost everywhere else in the ancient world, was widely practiced.[14]

In contrast to the Greeks, Egyptians, and Jews, the Romans historically did not seek out endogamous marriage partners.[15] Commenting on the Roman custom of avoiding endogamous marriage, Plutarch asks rhetorically: "Why do they [the Romans] not marry women who are closely akin to them?" (Plutarch, *Rom. Quest.* 108 [Babbitt, LCL]).[16] Indeed, compared to their Mediterranean neighbors, the Romans' adoption of the practice of endogamous marriage began rather late. In fact, Tacitus writes that it was not until the first century that the Romans began to marry in this way (Tacitus, *Annals* 12:6).[17] By the time of the reign of Claudius, in the mid-first century, marriage of

[13] Satlow, *Jewish Marriage*, 143 and Kokkinos, *Herodian Dynasty*, 354.
[14] Walter Scheidel, "Incest Revisited: Three notes on the demography of sibling marriage in Roman Egypt," *BASP* 32 (1995): 143, 150 and Kokkinos, *Herodian Dynasty*, 354. Josephus describes Helena of Adiabene's marriage to Monobazus as a first-century C.E. sibling marriage (Josephus, *Ant.* 20.17-18).
[15] Although the Romans did not practice endogamous marriage until the mid-first century, they allowed for the legality of marriages contracted by their subject people according to their own traditions (Grubbs, *Law and Family*, 98).
[16] Plutarch suggests that the Romans preferred exogamous marriage because they wanted to increase their kinship networks, avoid intra-family conflicts, and ensure that family members would be available to step in and help protect the married women from their clan if endangered.
[17] Hanson, "Marriage and Divorce," 143 and Kokkinos, *Herodian Dynasty*, 354.

cousins, which was previously unknown, became quite common (Tacitus, *Annals* 12:6).[18] Despite the seemingly quick acceptance of endogamous marriage among the Romans, it does not follow that they adopted the practice without controversy; Tacitus' description of the debate over the legality of Claudius' proposed marriage to his niece Agrippina tells us as much. This pairing was so contentious that it was debated on the floor of the Senate, precisely because many Romans believed that this type of union was incestuous. In the end, the Senate allowed the marriage to go forward because the union was found to violate only custom, not law (Tacitus, *Annals* 12:5-8).[19]

Although latecomers to the practice of endogamous marriage, the Romans' quick adoption of kin marriages was undoubtedly related to the benefits that this form of marriage had to the kinship system as a whole, a system to which the Romans were also committed. Indeed, endogamous marriage has the benefit of supporting the kinship system and its emphasis on loyalty to family and the bestowal of family wealth and honor on the next generation.[20] Endogamous marriage is especially beneficial to families who have the most money and status to protect, namely the elite, since this type of marriage ensures that the kin unit's wealth and honor remain intact, as that wealth and honor is redistributed within the family itself.[21] In accordance with the goals of the kinship system, endogamous marriage also helps strengthen the bonds to branches of the family that had become more distant over time.[22]

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[18] Tacitus writes: "Still, marriage with a brother's child, it might be said, was a novelty in Rome.—But it was normal in other courties, and prohibited by no law; while marriage with [cousins and] second cousins, so long unknown, had with the progress of time become frequent. Usage accommodated itself to the claims of utility, and this innovation too would be among the conventions of to-morrow" (Tacitus, *Annals* 12:6 [Jackson, LCL]).
[19] Hanson, "Marriage and Divorce," 143 and Satlow, *Jewish Marriage*, 133.
[20] Hanson, "Economics," 13.
[21] Hanson, "Kinship," 185.
[22] Richardson, *King of the Jews*, 289.

Jews also practiced marriage within the biological family and to a lesser extent with relatives created through marriage. Indeed, unions with biological and marital relatives were the most common type of marriage practiced by the Herodians. For example, Josephus describes six uncle-niece marriages and nine cousin marriages among the forty-nine Herodian marriages that he notes.[23] The Herodians' also demonstrated their interest in endogamous marriage by pursuing affinal marriages, that is unions with relatives through marriage. For example, Pheroras married the daughter of Alexander. This union paired a sister's husband's brother with a brother's wife's sister.[24] Five of the Herodians' marriages were between affinal relatives.[25]

Similarly, Tobit's insistence upon marriage with kinsmen from his own tribe indicates that non-royal Jews shared the Herodian family's interest in these type of marriages (Tob 4:12-13). The apocryphal book of Tobit, of unknown provenance and dated only to the third century B.C.E., displays a keen interest in selecting marital partners from within the family in its fanciful tale of the marriage of a son from a pious Diaspora Jewish family to one of his distant relatives (Tob 1:9; 3:15; 4:12-13; 6:18; 7:10-11).[26] The protagonist of Tobit tells his unmarried son:

> First of all, marry a woman from among the descendants of your ancestors; do not marry a foreign woman, who is not of your father's tribe… Remember…our ancestors of old, all took wives from among their kindred…. So now, my son, love your kindred, and in your heart do not disdain your kindred, the sons and daughters of your people, by refusing to take a wife for yourself from among them." (Tob 4:12-13)[27]

[23] Hanson, "Marriage and Divorce," 143-144.
[24] *Ibid.*, 144.
[25] *Ibid.*, 144.
[26] James C. VanderKam, *The Dead Sea Scrolls Today* (Grand Rapids: Eerdmans, 1994), 35.
[27] Other references from Tobit convey the same idea. Tobit 3:15 reads: "he [my father] has no close relative or other kindred for whom I should keep myself as wife." Also, see Tob 1:9 and 6:18.

Although both Jews and gentiles agreed that endogamous marriage was an important goal, they parted ways over their particular understandings of endogamy.

First, the most prominent Jewish definition of endogamy was much broader than that in practice by the contemporary gentiles. Whereas gentiles held that an endogamous union meant marriage to partners within the biologically connected family, whether related by marriage or blood, the Jews were less restrictive in identifying spouses with whom they could contract endogamous marriages. Indeed, the constraints of biology did not hamper them in identifying endogamous marriage partners. Instead, their wider definition of endogamy included the entire Jewish people since Jews worldwide considered one another part of the same extended family.[28] Moreover, Jews by conversion as well as Jews by birth qualified as legal marital partners.

Second, while endogamous marriages may have been the preferred model for marriage among gentiles, exogamous marriages were also allowed. Among Jews, conversely, endogamous marriage was the exclusive form of licit Jewish marriage. That is, any exogamous marriage (or marriage to a gentile partner) was unlawful (Josephus, *Ag. Ap.* 1.30-36; *Ant.* 18.345, 349; Tob 4:12; Philo, *Spec. Laws* 3.29; Ps.-Philo, 9:5; *Jos. Asen.* 8:1-7; *Jub.* 30:12). For example, describing the marriage of a Jewish man to a Parthian woman in the first century C.E., Josephus wrote, "[H]is actions were quite contrary to Hebraic custom and not consonant with their laws, in that he had taken a

[28] Kokkinos declares many of the Herodian family's marriages as in conflict with Jewish law because they did not conform to the narrow definition of endogamy, that is, they did not always marry within their own family (Kokkinos, *Herodian Dynasty,* 356). However, Josephus' descriptions of the royal Jews' marriages do not support Kokkinos' criticism. Indeed, there is no hint in Josephus that he or the ancestral law required marriage between members of the same biologically connected family. On the contrary, Josephus' only requires that Jews marry other Jews. In contrast to Kokkinos, Satlow exhibits a more common use of the term "endogamy" in the Jewish context. That is, any Jew qualifies as an endogamous marriage partner. Jews were not required to restrict their choice of spouses to biological or affinal relatives (Satlow, *Jewish Marriage,* 133-161).

gentile wife" [Feldman, LCL]. By 220 C.E., the requirement for endogamous marriage was established in law. Thus, the Mishnah accepts the validity of divorce documents that have the phrase "free to marry any *Jewish* man you want," in lieu of its standard formulation of the phrase, namely, "you are free to marry any man you want" since the addition of the word "Jewish" was not viewed as altering the original intent of the phrase (*m. Git.* 9.1-3; emphasis mine).[29]

6.2.2 Endogamy in Josephus' Histories

Turning to Josephus' evidence, we see that Second Temple Jews took the prohibition against exogamy seriously. Indeed, the very fact that Josephus' histories include references to only three clear post-biblical cases of exogamous marriage, where Jews were married to individuals of gentile background and where there was no conversion to Judaism, suggests that the ban on exogamy was widely upheld by Jews in antiquity.[30]

The first exogamous marriage described by Josephus took place some three hundred years before the time of Roman Palestine, in the days of Alexander the Great. Manasses, the brother of the high priest, married Nikaso daughter of Sanaballetes, the governor of Samaria. Manasses was widely criticized for his choice of a spouse. The elders of Jerusalem, in particular, were incensed at the marriage and rose up against him as "they considered this marriage to be a stepping-stone for those who might wish to transgress the laws about taking wives and that this would be the beginning of intercourse with foreigners" (Josephus, *Ant.* 11.303-312 [Marcus, LCL]). The elders voiced such

[29] Instone-Brewer, *Divorce and Remarriage*, 120-121.
[30] Barclay, *Jews in the Mediterranean Diaspora*, 411.

strong opposition to the marriage because they believed "that their former captivity and misfortunes had been caused by some who erred in marrying and taking wives who were not of their own country" (Josephus, *Ant.* 11.303-312 [Marcus, LCL]). The strong language used to condemn the marriage conveys how serious the charge was.[31] While the marriage in question may predate our era of interest and did not involve the Herodian family itself, Josephus' choice to retain—or perhaps to stress—such a dramatic and negative response to the marriage reveals a good deal about attitudes towards exogamy among Jews in the late Second Temple period.[32]

The second exogamous marriage that Josephus describes involves a Diaspora Jew. Anilaeus, who established a brigand state with his brother in a region in Parthia in the first century C.E., married the gentile wife of a Parthian commander. High-ranking members of the brigand state criticized Anilaeus, telling him "his actions were quite contrary to Hebraic custom and not consonant with their laws, in that he had taken a gentile wife" (Josephus, *Ant.* 18.344-352 [Feldman, LCL]). Moreover, his wife not only abstained from adopting Jewish observance but openly worshipped her ancestral idols in accordance with her national custom. This breach of tradition disturbed Anilaeus' Jewish colleagues greatly and they urged him to leave his wife. Eventually the call for Anilaeus to divorce his wife was so great that his Parthian wife resorted to poisoning the chief opponent of their marriage.

The third and final exogamous marriage mentioned in Josephus' writings relates to our more narrow focus on the Herodian family.[33] At about the same time as Anilaeus'

[31] Hadas-Lebel, "Les mariages," 398.
[32] Ilan, "Intermarriage," 1-15.
[33] The rarity of intermarriage is attested by the fact that the historical record does not preserve many examples of intermarriages outside of the three that Josephus relates. Indeed, the intermarriage of the

marriage to the wife of the Parthian commander (the first century C.E.), the Herodian princess Drusilla "was persuaded to transgress the ancestral laws and marry Felix," the Roman procurator of Judea (Josephus, *Ant.* 20.141-144 [Feldman, LCL]).[34] Josephus does not add much in the way of editorializing comments to his revelation that Drusilla married a gentile, nor is there any description of an angry public outcry against the union. In fact, his description of this marriage is surprisingly brief given its exceptionality, especially when one compares it to his fuller condemnation of the other two exogamous marriages detailed above. Josephus' failure to denounce the marriage with the same vigor that he approaches the other two examples of exogamous marriage in his histories is indeed odd.

Josephus' relatively taciturn criticism of the union is unexpected since he felt free to criticize the Herodians.[35] His reticence to disparage Felix and Drusilla might relate to the fact that Felix was not a figure from the distant past but rather a contemporary of the historian himself. Indeed, both Felix and Josephus lived in Rome at the same time and consequently they may have shared social contacts. Josephus' intimacy with the Roman elite, combined with his hesitancy to disparage Roman ways and people due to his status as a direct beneficiary of the emperor's patronage, meant that Josephus had to treat Drusilla's procurator husband gently. Furthermore, given his goal of eliciting Roman approval for the Jewish way of life, declaring unacceptable the marriage of a Jewish princess to a well-known and admired Roman citizen would not have been in his best

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parents of Timothy is the only other undisputed example of a mixed marriage from the Late Second Temple period that I know. Timothy, Paul's companion and assistant, was the son of a Jewish mother and a gentile father according to Acts 16:1-3.

[34] For Josephus' explanation of the impetus behind Drusilla's willingness to transgress the ancestral laws and marry Felix, see *Ant.* 20.139.

[35] See section 2.1.

interest.[36] As a result, here, unlike the other cases of exogamy, Josephus lets the phrase "transgress the ancestral laws" speak for itself.

However one explains Josephus' portrayal of the marriage between Drusilla and Felix, it is clear that one cannot attribute his relatively tempered portrayal of the union to the fact that exogamy was common in Josephus' day and consequently did not elicit as strong a reaction as when this type of marriage was rarer. Indeed, the harsh reactions that Josephus records to the marriages of both Anilaeus and Manasses, combined with the fact that Josephus only describes three post-biblical exogamous marriages among the many unions he refers to in his lengthy histories, suggests that endogamy prevailed in the Jewish community in accord with biblical and Second Temple prohibitions. Singling out the royal Jews, one notes that, of the forty-nine Herodian marriages described by Josephus, only one was between a Herodian and a gentile identified as not having converted to Judaism.[37] For most Jews living in the land of Israel, the pattern of avoiding marriage with gentiles does not tell us much about their desire to make decisions in accord with Jewish norms. Indeed, many Jews in the land of Israel lived among other Jews hence their opportunities for exogamous marriage would have been rare. For the Herodians, on the other hand, who were often educated in Rome and maintained contacts with gentile elites and foreign rulers throughout the ancient Mediterranean, avoidance of marriage with gentiles was a conscious choice and thereby an area in which to assert their loyalties.[38]

[36] Landau, *Out-Heroding,* 34.
[37] Hanson, "Genealogy and Descent," 78-81; Ilan, *Jewish Women,* 76; and Hadas-Lebel, "Les mariages," 403.
[38] Ilan, "Intermarriage," 15.

While circumstantial evidence suggests that the Herodians avoided exogamous marriage, Josephus' description of Salome's proposed union to Syllaeus makes this point explicit. Josephus' three references to this marriage proposal are garbled somewhat by conflicting details (Josephus, *Ant* 16:220-227; 17:10-11; *War* 1.566). The version of the courtship in *Antiquities* 16 is as follows:

> [H]e [Syllaeus] came again…and made proposals to Herod, asking that Salome be given him in marriage. This connexion, he said, would not be unprofitable to Herod through association with the government of Arabia, which was even now virtually in his (Syllaeus') hands and by rights should be more so. [W]hen they asked Syllaeus to be initiated into the customs of the Jews before the wedding—otherwise, they said, marriage would be impossible--, he would not submit to this but took his departure, saying that if he did submit, he would be stoned to death by the Arabs.

This case has the Herodians actively refusing to accept a marriage proposal since the potential gentile spouse refused to agree to conversion. The Herodians' insistence on conversion prior to marriage in this case is all the more significant given that the family viewed an alliance with Syllaeus to be highly desirable. Syllaeus' position as the *de facto* ruler of Arabia, combined with the fact that Herod considered him his "bitterest enemy," made him an ideal person to make into an ally through marriage (Josephus, *War* 1.487). And indeed, the Herodians' failure to accept Syllaeus' marriage proposal had dire consequences (Josephus, *Ant.* 16.271-299). As a result of the failed alliance, Syllaeus agreed to harbor brigands who were terrorizing Judea. This action, in turn, promptly led to the outbreak of hostilities between Herod and Syllaeus. After a series of incursions into each other's territories, the incident culminated with Augustus growing angry with Herod, largely on account of Syllaeus' exaggerated report of the damage that Herod's men had inflicted in Arabia.

This story of the Herodians' actively refusing a desirable alliance with a gentile spouse, combined with the fact that only one of the forty-nine Herodian marriages was to a gentile identified as unconverted, suggests that, in agreement with Second Temple views, the Herodians avoided exogamous marriage. The fact that the Herodians were willing to be flexible on other points of Jewish law but were stringent in their insistence on endogamous marriage suggests to both Ilan and Hadas-Lebel that Second Temple Jews generally were united on their insistence upon endogamous marriage.[39] Indeed, Ilan argues that this view was held so widely and strongly that the Herodians had to marry endogamously "to avoid disqualifying themselves as rulers in the eyes of the people."[40]

6.2.3 Herodian Exogamy

While the Herodians, like their fellow Jews, eschewed exogamous marriages, the appeal of marriage to gentile spouses was unquestionable. Our study of the alliance system revealed that, while marriage within the biological family unit was generally preferable, at times it would be more favorable to contract marriages with non-family members in order to develop alliances with other prominent clans.[41] In fact, while marriage within the Herodian family itself was the most common type of marriage strategy employed by the royal Jews, only somewhat less common were unions between Herodians and individuals of gentile backgrounds.

[39] *Ibid.,* 15 and Hadas-Lebel, "Les marriages," 403.
[40] Ilan, *Jewish Women*, 76.
[41] Hanson, *Palestine in the Time of Jesus*, 36 and Richardson, *Herod, King of the Jews*, 43.

Josephus' histories preserve descriptions of nine marriages between Herodians and partners of gentile origins.[42] For example, Antipater married Cypros, who hailed from an illustrious Arabian family. Two of Herod's sons married Glaphyra, the daughter of the king of Cappadocia. And Berenice married Polemo of Cilicia (Josephus, *Ant.* 14.120-121; 20.139-147; *War* 1.180-182). Marriages between Herodians and non-royal Jews, on the other hand, are less common in Josephus' histories. In fact, only Herod regularly married Jewish women of non-royal origins—three of his ten wives were non-royal Jewesses.[43] The first of these marriages to non-royal Jewesses, however, occurred when he was still a commoner and was not yet in a position to to marry royal wives (Josephus, *War* 1.241, 432).

The frequency of marriages to persons of gentile backgrounds, as opposed to the dearth of marriages to non-royal Jews, is not surprising. Given that the kinship system was an important factor in arranging marriages, oftentimes it would be most profitable for a Herodian to contract an alliance with a neighboring ruler or his daughter. With few exceptions, such individuals would be gentiles.[44]

6.3 Conversion to Judaism and Marriage

The requirement to marry within the Jewish people did not necessarily clash with the Herodians' interest in spouses of gentile origin, since conversion to Judaism was a viable option (Josephus, *Ag. Ap.* 257-261). That is, in Second Temple times one could

[42] Josephus' references to Herodians marrying partners of gentile backgrounds are as follows: *War* 1.180-182, 534-535; 2.114-116; *Ant.* 14.120-121; 16.194-205, 16.215-216, 16.194-205; 18.109-113, 18.334-335, and 362. For an accounting of the number of people of gentile origins who married into the Herodian family, see, Kokkinos, *Herodian Dynasty*, 354-355.
[43] Doris (*Ant.* 14.300), the daughter of Simon ben Boethus (*Ant.* 15.319-323), and Cleopatra of Jerusalem (*Ant.* 17.18-22) are all identified as non-royal Jewish women.
[44] Hanson, *Palestine in the Time of Jesus*, 36 and Richardson, *Herod, King of the Jews*, 43.

transform an exogamous marriage partner into an endogamous one through conversion, a practice lacking clear biblical precedent. Josephus reminds us of the most famous example of mass conversion to Judaism in antiquity when discussing Salome's second husband Costobarus. He relates that Costobarus' family was displaced from its traditional role as the priestly family in charge of service to the Idumaean god Koe when John Hyrcanus the Hasmonean conquered their territory and forced the Idumaeans to "adopt the customs and laws of the Jews" (Josephus, *Ant.* 15.253-356 [Marcus and Wikgren, LCL]).

In addition to this tale of mass conversion of an entire people to Judaism, stories of individuals who sought to take on Jewish practices are not unknown in Josephus' works. In most cases, the conversions are motivated by marriage. In fact, the only undisputed example of a man converting to Judaism without the motivation of marriage is Izates of Adiabene (Josephus, *Ant.* 20.17, 34-48).[45] Josephus notes female converts to Judaism independently of marriage somewhat more frequently. A Roman matron named Fulvia, Queen Helena of Adiabene, and a group of married women from Damascus are all identified as converts to Judaism (Josephus, *Ant.* 18.82; 20.17, 35; *War* 2.559-561).[46]

The most frequent context for mentioning conversion, however, is as a stipulation for marriage into the Herodian family. For example, Salome's family objected to her proposed marriage to Syllaeus because he refused "to be initiated into the customs of the

[45] Izates' brother, Monobazus, and his kinsmen may have also converted to Judaism, but Josephus is not entirely clear on this point (*Ant.* 20.75-96).

[46] Louis Feldman notes that historical circumstances effect Josphus' presentation of conversion. Given that the expulsion of the Jews from Rome in 139 B.C.E. and 19 C.E. was allegedly connected to the Jews' attempt to convert gentiles, the issue of conversion was a delicate one. Hence, Josephus moderates biblical prohibitions on intermarriage and instead focuses on maintaining the purity of the priestly line through avoiding intermarriage. Indeed, the story of the conversion of the royal family of Abidene is the only propaganda for conversion in his writings. See Louis H. Feldman, *Studies in Josephus' Rewritten Bible* (Leiden: Brill, 1998), 196-199 and 544.

Jews before the wedding" (προσήκατο Σύλλαιος δὲ ἀξιούντων αὐτὸν ἐγγραφῆναι τοῖς τῶν Ἰουδαίων ἔθεσι καὶ τότε γαμεῖν ἄλλως γὰρ οὐκ εἶναι δυνατόν) (Josephus, *Ant.*, 16.225 [Marcus and Wikgren, LCL]). Epiphanes, son of King Antiochus of Commagene, was similarly unable to marry the Hasmonean princess Drusilla since he reneged on his promise to convert to Judaism at the eleventh hour (Josephus, *Ant.* 20.139-147). That is, "Epiphanes, son of King Antiochus, had rejected the marriage since he was not willing to convert to the Jewish religion, although he had previously contracted with her [Drusilla's] father to do so (Josephus, *Ant.* 20.142 [Feldman, LCL]). Herodian marriage partners who greeted the demand to convert to Judaism more positively include Azizus king of Emesa, who consented to circumcision prior to marrying Drusilla, and Polemo king of Cilicia, who agreed to submit to circumcision in order to marry Berenice (Josephus, *Ant.* 20.139-140, 145-147).

The marriages between Herodians and individuals of gentile backgrounds discussed thus far fit into one of two categories. There is one openly exogamous marriage (that of Drusilla and Felix) and four marriages where Josephus explicitly states the demand to adopt Jewish observance. The majority of the marriages between Jews and spouses of gentile backgrounds described in Josephus' writings, however, do not conform to either of these two models but rather represent a third option: silence as to whether or not the gentile spouse took on Jewish practices or not. For example, Josephus describes Herodian marriages with women of gentile backgrounds, such as Cypros, Jotape, and Glaphyra, without noting whether or not they adopted Jewish observances or not (Josephus, *War* 1.180-182, 475-478; 2.114-116; *Ant.* 18.109-113, 140).

Circumstantial evidence suggests that these six marriages were not considered problematic from the standpoint of Second Temple Judaism. Indeed, despite Josephus' silence as to whether these women converted prior to their marriage, Josephus does not condemn any of the marriages as illicit, nor do any of the personalities mentioned in his writings. This is in contrast to Josephus' open condemnation of the marriages that he appraises as exogamous, making his silence in these six cases all the more telling. If Josephus' own presentation of the unions is not compelling enough, it is also true that the Herodians thus far do not show a pattern of engaging in illicit unions. Indeed, Drusilla's marriage to Felix is the only certain unlawful exogamous marriage among the Herodians. Moreover, the Herodians' refusal to abide the marriage of Salome to Syllaeus without the latter's conversion suggests that family policy required avoiding unlawful unions.[47] The historian's failure to criticize these six outside marriages, combined with the frequency of this type of marriages and lack of public opposition to these unions, suggests that these unusual royal marriages were not viewed as violating the prohibition of exogamous marriages; examining some of these marriages more closely reveals other aspects that strengthen this viewpoint, and may help explain why this is so.

Josephus identifies Herod's fourth wife, Malthace, as a Samaritan (Josephus, *War* 1.562). Even though there is no mention of Malthace's conversion prior to marriage into the Herodian family, the acceptability of her marriage to Herod is easily derived (Josephus, *War* 1.562). First, Josephus does not hint that the union was problematic in any way, despite the fact that he does not shy away from criticizing Malthace's husband,

[47] Drusilla's marriage is discussed in further depth below. Her marriage did not develop out of Herodian family marriage policy. On the contrary, her marriage was inspired by passion and not arranged by her family.

Herod.[48] Second, Malthace's sons ruled over various areas of the land of Israel without encountering any opposition based on their lineage. For example, Malthace's eldest son Archelaus succeeded Herod as the king of the Jews, and her younger son Herod Antipas ruled as the tetrarch of the Galilee. Moreover, although popular protests broke out during Archelaus' rule, none of the discontented factions sought to defame the regent due to his mother's gentile background (Josephus, *War* 17.193-320). Both of these factors suggest, in turn, that despite the absence of a reference to their mother's converting to Judaism, Malthace's sons were regarded as Jews.

In the case of Herod's marriage to Malthace, the absence of a reference to conversion may not be happenstance, but rather may be attributed to Malthace's Samaritan origins. Although Hadas-Lebel argues that this union was permissible since marriage to a Samaritan woman was not considered in violation of the requirement to marry within the Jewish people in late Second Temple times, few agree with her conclusion.[49] Indeed, by the Herodian era, the line demarcating Jews from Samaritans was clear. For example, a number of texts, including the books of Ezra, Luke, and John note the animosity between the two groups (Ezra 4:1-24; Luke 10:29-37; John 4:7-42). Kokkinos' argument for the legality of the union is more promising. Kokkinos argues that one should not necessarily understand Malthace's identification as a Samaritan as an

[48] Hadas-Lebel, "Les mariages," 399.

[49] *Ibid.*, 399. The historic connection of the Samaritan and Jewish people has been discussed extensively elsewhere and will not be reviewed here (Nathan Shur, *History of the Samaritans* [New York: P. Lang, 1989]). Suffice it to say the Samaritans share with the Jews the idea of the sacred authority of the Torah and a common land. Even if at one point in history the two groups were viewed as one entity more or less, by the fourth century B.C.E. at the latest, Jews and Samaritans were viewed as two distinct, often conflicting groups. For example, Ezra 4 records a disagreement between them. In particular, the Jews were seeking to have the Samaritans declared unfit to work in the Temple. Additionally, the New Testament parable of the "Good Samaritan" as well as John's gospel suggests that the Jews and Samaritans were in an adversarial relationship to one another (Luke 10:29-37; John 4:7-42). Contrary to the evidence suggesting that the two groups were divided, Hadas-Lebel turns to a later Talmudic text to argue that Second Temple Jews could lawfully contract marriages with Samaritans, but the Talmud is not a good source for the Herodian era.

indication of her religious loyalties any more than the epitaph that identifies Herod as an Idumean explains his religious loyalties.[50] Indeed, Kokkinos thinks that it is probable that Malthace was a Jewess from the region of Samaria and not a Samaritan by religion.[51]

While there are clear grounds for defending the legality of the marriage of Herod and Malthace, namely that she may have been a Jewess resident in Samaria as opposed to a Samaritan by religion, this explanation cannot account for any of the other five marriages of gentiles to members of the Herodian family. For example, at various points two of Herod's sons married Glaphyra, the daughter of Archelaus, the gentile king of Cappadocia, without encountering any opposition.[52] Herod himself boasted of the marriages that he arranged for his children, including Alexander's marriage to Glaphyra, as being among "the most brilliant marriages" (Josephus, *Ant.* 16.97 [Marcus and Wikgren, LCL]). Similarly, Josephus refrains from condemning Antipater's marriage to Cypros, an Arabian, and Herod Antipas' marriage to the daughter of Aretas, the king of Petra (Josephus, *War* 1.181; *Ant.* 18.109)

Noticing that there is no mention of the conversion of gentile women who married into the Herodian family, whereas men who sought to marry Herodian princesses were nearly uniformly met with the demand that they convert, many scholars believe that Josephus' omissions should be understood at face value, namely, that gentile women did not need to convert to marry Jewish men.[53] Scholars who hold this position, including Tal Ilan, Mireille Hadas-Lebel, and Shaye Cohen, believe that the women who married

[50] Kokkinos, *Herodian Dynasty,* 223-224.
[51] *Ibid.,* 223-224.
[52] Hadas-Lebel, "Les mariages," 399-400.
[53] Felix is the only gentile man who does not adopt Judaism when he marries a Herodian princess. Kokkinos also identifies Salome's husband Alexas I as a gentile who marries into the Herodian family without first converting to Judaism (Kokkinos, *Herodian Dynasty,* 355). Kokkinos' identification of Alexas I as a gentile does not accord with the general scholarly consensus that Alexas I was a Jew.

into the Herodian line followed the precedent set for them in the Bible. In other words, patrilineal descent continued to determine Jewish identity and religious loyalties in the first centuries B.C.E. and C.E.[54]

Biblical narratives rarely present women as having loyalties independent from those of their husbands, or at least the Bible presumes that women *ought not* to have loyalties independent of those espoused by their husbands.[55] Because Israelite (and later Jewish) families were normally patrilocal, that is to say, the married couple resided with the husband's family, a woman was expected to adopt the gods of her husband's clan upon marriage or, minimally, to give up her connections to her ancestral deities.[56] Even if the wife did not adopt Israelite customs, her children living in an Israelite context generally would have done so. Consequently, the children born of Israelite fathers and women of gentile origins were considered Israelites. Again, the evidence shows that the patrilineal principle determined identity.

Although an appeal to the patrilineal principle combined with the practice of patrilocality might be useful to explain the apparent permissibility of many of the marriages of gentile women into the Herodian family, these concepts alone cannot account for all of these marriages. Indeed, although marriage to a Jewish man normally

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[54] Ilan, "Intermarriage,"11-12 ; Hadas-Lebel , "Les marriages" 397 and 403; S. Cohen, *Beginnings*, 156-170. While it is clear that the patrilineal principle was the dominant factor in determining descent, the patrilineal principle does not fully account for the marriage practices of the Herodian family. Given the desirability of the Hasmonean princesses as marriage partners, Hanson argues that cognatic descent, that is, patrilineal descent complemented by matrilineal descent, best describes how status and honor were passed on among the royal Jews (Hanson, "Genealogy and Descent," 76, 82-83 and Hadas-Lebel, "Les mariages," 403).

[55] For example, the marriages of Joseph, Moses, David, Solomon, and Boaz to women of gentile origins were not problematic. Similarly, Esther, the only named biblical woman who married a gentile man, was not condemned for her marriage to a gentile king. Coexisting with the view that marriage with gentile women in particular was unproblematic is a less positive view of this type of marriage. For example, King Solomon's many foreign wives are identified as having compromised his loyalty to the Israelite deity (1 Kings 11:1-8).

[56] Hadas-Lebel, "Les mariages," 400.

meant that a woman's religious loyalties changed to those favored by the Jewish people, Josephus' disparaging comments about Anilaeus' marriage to the Parthian commander's wife, who continued to worship the pagan gods of her family while married to a Jew, suggest that marriage to a Jewish man was not always sufficient to do so (Josephus, *Ant.* 18.344-352; 20:35). Likewise, Queen Helena of Adiabene's conversion to Judaism independent of marriage (it is unclear if Helena's husband was deceased at the time of her conversion) indicates that the patrilineal principle combined with the effect of patrilocal living were not always determinative in establishing a woman's loyalties. Indeed, relating the conversion of Queen Helena, Josephus makes it clear that women sometimes could and did adopt their own identities. He writes of her conversion: "Helena had likewise been instructed by another Jew and had been brought over to their laws" (Josephus, *Ant.* 20.35 [Feldman, LCL]). Similarly, Josephus' account of the women of Damascus who followed Jewish practices while married to gentile men indicates that women could express their own religious loyalties independently of marriage (Josephus, *War* 2.560-561). Together, the stories of the Parthian commander's wife, Queen Helena, and the women of Damascus indicate that the patrilineal principle alone cannot fully explain why Josephus does not condemn these five Herodian marriage to gentiles in which conversion is not mentioned.

Indeed, Josephus' general view, in agreement with a popular Second Temple position (see section 6.1), is that marriages to both gentile men *and women* are equally problematic. Returning to his description of Anilaeus' marriage, Josephus writes, "his actions were quite contrary to Hebraic custom and not consonant with their laws, in *that he had taken a gentile wife*" (Josephus, *Ant.* 18.344-352 [Feldman, LCL]; emphasis

mine). Similarly, Josephus' summary of the biblical stories about King Solomon indicates that he considered marriage to gentile women to be prohibited. He writes, "…not satisfied with the women of his own country alone, he [Solomon] married many from foreign nations as well…thereby transgressing the laws of Moses who forbade marriage with persons of other races" (Josephus, *Ant.* 8.191 [Marcus, LCL]).

If the patrilineal principle alone cannot explain Josephus' matter-of-fact descriptions the Herodians' marriages to gentile women, then perhaps some other factor might have been involved. For example, maybe all of the gentile women who married into the Herodian family lived as pious Jewesses while married to their royal husbands. Alternatively, perhaps these women converted to Judaism as a condition of marriage and Josephus may have simply failed to mention it? Indeed, the omission of the conversion stories of these four women (four gentile women were partners to five Herodian marriages; Glaphyra married into the family twice) may merely be an accident of transmission. On the other hand, their omission may relate to the lack of drama of a woman's conversion to Judaism compared to the circumcision requirement for men. Not subject to circumcision, instead only requiring the adoption of Jewish practices according to the stories of the conversion of Queen Helena and the women from Damascus, perhaps a woman's adoption of Judaism was almost expected and certainly not noteworthy in comparison to the greater physical (and psychological) trauma that a man's conversion entailed.[57] Indeed, Josephus' only two references to female converts are atypical ones,

[57] In theory, all the men who converted to Judaism should have undergone circumcision. It is likely, however, that many of the male converts underwent circumcision as children. Despite the fact that ancient literature on Jews and Judaism invariably connects circumcision to Jews by describing it as a mark of the uniqueness of the Jews, the Jews were not the only group in antiquity to practice circumcision. For example, among Arabs and Egyptians circumcision was nearly universal (S. Cohen, *The Beginnings of Jewishness,* 42-49, esp., 45). For reference to women's conversion rituals, and the lack thereof until the publication of the rabbinic corpus, see Ilan, "Intermarriage," 1, 10 and S. Cohen, *Beginnings,* 156 and 170.

that is to say, they are not prompted by marriage (Josephus, *Ant.* 20:35; *War* 2.560-561). Moreover, the prominence of conversion to Judaism in many of the marriage negotiations with gentile spouses and the negative assessment of the three cases of certain post-biblical marriages to unconverted gentiles suggest that we should take a closer look at these five marriages to women for whom no information about the conversion status is given.

Most of Josephus' references to the five Herodian marriages to women from gentile backgrounds are very brief. Indeed, in the majority of the cases he merely cites the names of the Herodian groom and the gentile bride and rarely mentions the bride again. In contrast to his generally taciturn descriptions of most of these marriages, in one case Josephus offers a more expansive marital history: Glaphyra's marriage to two different Herodian princes is described in comparatively more detail.

Josephus initially relates that when Alexander came of age his father Herod married him to Glaphyra, the daughter of Archelaus, the king of Cappadocia (Josephus, *Ant.* 16.11). Glaphyra reappears frequently in Josephus' narratives. On one occasion, she is cited in relationship to her snubbing of the women of the Herodian court for their comparatively common lineage (Josephus, *Ant.* 16.193). Glaphyra is also mentioned in connection with the palace intrigue surrounding her husband Alexander, as was related above in section 5.2 (Josephus, *War* 1.508-510; *Ant.* 16.261-270, 328-334). Josephus' final reference to this marriage notes the fate of the couple's sons after Alexander's execution (Josephus, *Ant.* 17.12). Later, Josephus reveals that Alexander and Glaphyra's great grandchildren "abandoned from their birth the observance of Jewish customs and adopted in their place the ways of the Greeks," a comment that would not make sense if

Alexander and Glaphyra's children were considered gentiles (Josephus, *Ant.* 18.141 [Feldman, LCL]).

So far, the marital history of Alexander and Glaphyra agrees with the standard view that patrilineal descent determined Jewish identity. Indeed, even though Josephus never mentions a conversion in connection with the Cappadocian princess's marriage to the Herodian prince, it is clear that the offspring from the union were considered Jewish and the gentile status of the mother was not problematic for marriage into the Herodian line. The rest of Josephus' presentation of Glaphyra's biography, however, may complicate this view somewhat.

After Alexander's execution, Glaphyra marries Juba, a king of Libya (Josephus, *War* 2.115; *Ant.* 17.349). Following Juba's death in turn, Glaphyra goes back to Cappadocia, where she lives as a widow (Josephus, *War* 2.115). At this point, Archelaus, the half-brother of Glaphyra's first husband, visits Cappadocia and falls in love with the princess (Josephus, *War* 2.115). As a result, Archelaus promptly divorces his wife and marries Glaphyra (Josephus, *War* 2.115; *Ant.* 17.349). Both Archelaus and Glaphyra are criticized for their marriage. Archelaus is accused of transgressing the ancestral laws by marrying his brother's wife, a union prohibited by the Torah (Lev 18:16; 20:21; Josephus, *Ant.* 17.349); notably he is not criticized for marrying a gentile woman. Josephus' condemnation of Glaphyra's role in the marriage is less explicit. Josephus reports that Glaphyra experienced a vision of her deceased first husband returning to her. In the dream, Alexander accuses Glaphyra:

> For though you were betrothed and married to me as a virgin, and children were born to us, you let yourself forget my love in your desire to marry again. But not content even with this outrage, you had the temerity to take still a third bridegroom to your bed, and in an indecent and shameless

> manner you again became a member of my family by entering into marriage with Archelaus, your own brother-in-law and my own brother. (Josephus, *Ant.* 17.352-353 [Marcus and Wikgren, LCL])

Alexander does not blame his brother Archelaus for entering into the biblically prohibited marriage (Lev 18:16; 20:21).[58] Instead, his condemnation is directed at his Cappadocian widow. He twice stresses the endogamous problem which prohibited Glaphyra's union with Archelaus, namely that he was "your own brother-in-law and my own brother." Furthermore, his criticism of his widow specifically refers to requirements of levirate marriage—a biblically based marriage practice incumbent on *Jews* that trumped the incest prohibitions of Leviticus 18 and 20: Levirate marriage permitted marriage to a brother's widow in the event that the deceased had not sired heirs (Deut 25:5-10).

Josephus' final criticism of this marriage is more circumspect. He states that Glaphyra died unexpectedly two days after experiencing this disturbing vision of her first husband. By juxtaposing her untimely death with the vision of her husband from beyond, Josephus suggests some measure of divine retribution for her illicit marriage. This is particularly true since immediately after describing Glaphyra's vision and death, Josephus explains why he includes these sorts of stories in his histories although many would consider them superfluous to his larger history of the Jews (Josephus, *Ant.* 17.354). Josephus responds:

> I do not consider such stories extraneous to my history, since…they provide instances of something bearing on the immortality of the soul and of the way in which God's providence embraces the affairs of man. (Josephus, *Ant.* 17.354 [Marcus and Wikgren, LCL])

It is notable that while Glaphyra is neither Herodian nor of Jewish origin, it is she and not her Jewish-born husband who is presented as meeting an untimely death due to their

[58] The incestuous nature of this marriage is described in more detail below in section 5.6.

illicit marriage, a union only proscribed by the terms of Jewish law. Given that Glaphyra was condemned for her failure to comply with the Jewish prohibition on marrying a husband's brother, it is possible that her status vis-à-vis Judaism is more complex than at first might seem.[59]

Whether gentile women changed religious loyalties as a condition of marriage into the Herodian royal house or whether the gentile status of the potential Herodian brides was not considered an obstacle to marriage with the royal Jews, it is probable that the marriages between women of gentile backgrounds and Herodians were within the bounds of acceptable Jewish practice in antiquity. Josephus' virulent reactions to the three clear cases of intermarriage in his histories, including his negative appraisal of Drusilla's marriage to Felix, compared to his matter-of-fact descriptions of the marriages between Herodian princes and women of gentile backgrounds, suggests that these marriages were not seen as being in violation of Jewish law as it was interpreted in Roman Palestine.[60] Moreover, the one case of marriage to a woman of gentile origins where Josephus is less circumspect in his description may suggest that the wife, Glaphyra, did adopt Judaism (at least while married to Herodian men) even though no mention of conversion was made in the account of her marriage.

In view of the fact that highly desirable marriages were called off if the potential gentile partner did not follow through with conversion to Judaism, it seems likely that the prohibition against mixed marriages was one aspect of biblical law that carried forward to the late Second Temple period with tremendous force. This is especially true since the

[59] Kokkinos, *Herodian Dynasty,* 355. Even Kokkinos, who is loathe to admit that the Herodians were pious Jews, believes that the Cappodocian princess, Glaphyra, became a Jew upon marriage into Herod's family.
[60] Compare *Ant.* 11.303-312; 18.344-352; 20.141-144 to *War* 1.180-182, 475-478; 2.114-116; *Ant.*18.109-113, 140.

Herodians, who approached some aspects of Jewish law with a good deal of flexibility, appear to have taken the call to refrain from exogamous marriage quite seriously. Indeed, the only certain example of a Herodian marriage that violates this prohibition, that of Drusilla and Felix, is a union of passion; the marriage was not vetted by the Herodians. On the contrary, Drusilla is described as having run off with the Roman governor (Josephus, *Ant.* 20.142-143). Given the above scenario, the avoidance of marriage with unconverted gentiles was not an exceptional practice among Second Temple Jews.[61] On the contrary, the avoidance of these types of unions represented normative and accepted Jewish practice.

6.3 Endogamy and Incestuous Marriages

We have suggested that the Herodians largely upheld the wider definition of endogamy. That is, they actively avoided marriage to unconverted gentile men in favor of marriage to Jews. The royal Jews were also beholden to the narrower definition of the term, namely they regularly married both blood relatives and relatives by marriage. Although the Bible does not contain any universal positive commandments calling upon individuals to marry relatives through blood or marriage, marriages between kin are frequent in the Bible.[62] The model of marriage illustrated by the ancestor narratives in Genesis, for example, is almost exclusively in concert with the narrower definition of

[61] Hadas-Lebel, "Les mariages," 403 and Ilan, "Intermarriage," 15.
[62] Kunin, *Logic of Incest*, 56-57 and Richardson, *Herod, King of the Jews*, 43.

endogamy.[63] The unions of Abram and Sarai, Isaac and Rebecca, as well as Jacob with both Leah and Rachel are all examples of kin marriages (Gen 12:9; 19:10; 28:3, 9).[64]

The members of the Herodian family reproduced this biblical model for kin marriages in arranging their unions. Indeed, references to marriages within the royal house are common in Josephus' histories.[65] The expectation among the royal family that Jews would not only marry other Jews but also conform to the narrower definition of endogamy can be discerned from one of Pheroras' requests to Herod. Pheroras implored Herod to change the marital arrangements that he had decreed for his family members by pointing out that "the palace contained a numerous family" to whom various family members could be united in marriage (κατηντιβόλει δὲ πολλῆς οὔσης γενεᾶς κατὰ τὸ βασίλειον μεταθεῖναι τοὺς γάμους ἦσαν) (Josephus, *War* 1.562 [Thackeray]; also, 1.563).[66] Pheroras' appraisal of the situation is accurate, as Josephus describes at least twenty-two kin marriages entered into by thirty-nine Herodians.[67] Seventeen of the twenty-two endogamous marriages were consanguineous, or unions with blood relatives such as cousin marriages and uncle-niece unions, the most popular forms of endogamous marriage entered into by the Herodians.[68] For example, the marriages of Phasaelus II and Salampsio, Josephus II and Olympias, and Pheroras' two sons to Herod's daughters are

[63] The odd practice of levirate marriage is the exception to this rule (Deut 25:5-6).
[64] Sarai was Abram's half-sister, Rebecca was the granddaughter of Isaac's father's brother, and Rachel and Leah were the daughters of Jacob's mother's brother.
[65] Kokkinos, *Herodian Dynasty,* 354.
[66] Marriages between not-too-distant family members were the rule, not the exception (Josephus, *War* 1.483-484, 561-566 and *Ant.* 12.186-187, 16.194-200). Even the Herodian least likely to marry within the family, Herod the Great himself, counted a cousin and niece among his ten wives (Josephus, *War* 1.563). The high incidence of intra-marriage within the Herodian-line, in combination with the practice of recycling of the names of prominent family members, means that the Herodian family tree is a tangled web. The complexity of the family tree is further exacerbated by the reality that the English language does not include terms describing relationships that are exact enough to illustrate the relationship of the various Herodian family members to each other easily.
[67] Hanson, "Marriage and Divorce," 144.
[68] Richardson, *Herod, King of the Jews,* 43.

all examples of cousin marriages. Herod Philip I's marriage to Herodias, the king of Chalcis' marriage to Berenice, and Herod's marriage to his niece are examples of uncle-niece unions (Josephus, *Ant.* 17.19-22, 322; 18.136; 19.354). The other five endogamous marriages entered into by the Herodians are affinal, that is, between relatives by marriage.[69] For example, the marriage of Pheroras to the daughter of Alexander I is affinal, since a sister's husband's brother married a brother's wife's sister (Josephus, *War* 1.483). In the case of Alexas' son marrying the daughter of Salome I, a mother's husband's son married a father's wife's daughter (Josephus, *War* 1.566).

Given the frequency of marriages within the Jewish royal family itself, the Herodians had a particular interest in knowledge of the biblical laws prohibiting certain couplings of relatives by blood and marriage.[70] Prohibited incestuous relationships are detailed in Leviticus 18 and 20 and Deut 27:20, 22, and 23. These forbidden couplings include one's biological and stepparents, sisters (full, half, and step), granddaughters, aunts, aunts-in-law, daughters-in-law, and sisters-in-law, among others.[71] Other legislation prohibited union with one's brother's wife (Lev 18:16; 20:21). The only exception to this rule was levirate marriage, an obscure custom in which a brother would marry the wife of his childless, deceased brother specifically to sire a child in the name of his brother. The child of this union would then go on to inherit the portion due to the

[69] Hanson, "Marriage and Divorce," 144.

[70] Ancient Jewish conceptions of desirable marriage partners were informed by the conflicting goals of marrying within the biologically connected family yet, at the same time, avoiding relationships that were considered incestuous (Kunin, *Logic of Incest,* 265).

[71] The vast majority of ancient literature appears to have been written by men for men, hence the absence of reciprocal male relatives for the female ones listed in the biblical texts outlining prohibited relationships. For example, while biblical legislation prohibits the marriage of a nephew to an aunt, the corresponding union of a niece to an uncle is not specifically outlawed (Instone-Brewer, *Divorce and Remarriage,* 68). Nonetheless, later rabbinic enactments would close this loophole by adding uncle-niece unions to its list of prohibited pairings—a coupling that Essenes also held to have been illicit (CD 5; Kokkinos, *Herodian Dynasty,* 354; Satlow, *Jewish Marriage,* 144 and Instone-Brewer, *Divorce and Remarriage,* 68). Josephus' description of the six uncle-niece unions among the Herodians suggests that he considered these types of marriages licit (Josephus, *Ant.* 17.18-19; 18.136-137; 19.354).

deceased brother (Deut 25:5-6).[72] If the brother of the deceased refused to fulfill his duty as the levir, he had to undergo a humiliating public ritual to free himself of his obligation (Deut 25:7-10).[73] The Bible reserves the most stringent regulations for marital partners for the priestly class alone. In addition to the prohibitions against incestuous unions to which all Jews are subject, priests must abide by further prohibitions aimed at protecting the purity of the priestly line. These special restrictions bar priests from marrying women who were captives, divorcées, or known to have been sexually promiscuous (Lev 21:6-8).

Josephus is clearly aware that the Bible prohibits certain marriage relationships.[74] In *Apion,* for instance, he notes the importance of avoiding marriage to one "ineligible on account of nearness of kin" (Josephus, *Ag. Ap.* 2.198-203 [Thackeray, LCL]). Hints in Josephus' writings suggest that the Herodian family was also familiar with biblical legislation regarding incestuous relationships. The very fact that the vast majority of the royal Jewish intra-marriages described by Josephus conform to biblical law indicates that the Herodians knew the laws regarding prohibited couplings. Moreover, it is notable that

[72] The rabbis dealt with the conflict between Lev 18:16 and 20:21, on the one hand, which prohibit marriage between a man with his sister-in-law, with Deut 25:5-10, on the other hand, which calls for levirate marriage, by stating that levirate marriage is only applicable when a married brother dies without having produced offspring (*y. Ned.* 3:5).

[73] By Josephus' time, levirate marriage may have largely disappeared. The sectarian scrolls from the Dead Sea do not mention levirate marriage and the references to the practice in Josephus and Philo are intermixed with a Greek practice with similar features to levirate marriage, *epiklerate* (Satlow, *Jewish Marriage,* 186-189). Even the New Testament story of the Sadducees testing Jesus with a question about protocol for levirate marriage might be a theoretical test of Jesus' facility with the Law; this is especially so, given the fanciful nature of the legal dilemma posed to Jesus, namely the identification of the spouse of a woman who had undergone multiple levirate marriages after the resurrection (Mk 12:19-23; Matt 22:24-28; Luke 20:28-33). Moreover, less than one hundred fifty years after Josephus' death we have concrete evidence of the prohibition of this biblically mandated practice. Rabbinic law seems to be uncomfortable with the concept of levirate marriage. Consequently, under rabbinic law a man *must* exercise his "right of refusal" to release the widow to marry someone else (Hayim Halevy Donim, *To Be a Jew* [New York: Basic Books, 1972], 290). The Mishnah reads: "Beforetime the duty of levirate marriage came before the duty of *halitzah* when they acted intent on fulfilling a religious duty; but now when they so act, but not intent on fulfilling a religious duty; they have enjoined that the duty of *halitzah* comes before the duty of levirate marriage" (*m. Bekh.* 1:7 [Danby]). Also, see *b. Yev.* 39b; 106b.

[74] Also see the detailed criteria for marriage into the priestly class that Philo describes (Philo, *Spec. Laws* 1.101-111).

the alleged long-term intimate relationship that Josephus describes between two Herodian siblings, Agrippa II and Berenice, is never formalized by marriage (Josephus, *Ant.* 20.145-146).[75] Indeed, once rumors started to circulate about this relationship, Berenice quickly married Polemo to quell the rumors. Despite the Herodians' active avoidance of incestuous marriages, Josephus notes that two prominent royal marriages violated the biblical laws of prohibited pairings in his estimation.

6.4 Marriage to a Half-Brother's Former Wife

One of the marriages that Josephus condemns as in violation of Jewish law is that of Herodias and Herod Antipas (Josephus, *Ant.* 18.109-115). As noted above, Herodias' first marriage was to her half-uncle, Herod Philip in 1 or 2 C.E..[76] Her second marriage was to her first husband's half-brother, Herod Antipas, around 23 C.E.[77] Josephus, cognizant of the biblical prohibition against marrying a brother's wife, condemns Herod Antipas' marriage proposal to Herodias as being particularly "brazen" (Josephus, *Ant.* 18.110). Elsewhere Josephus defines this brazenness when he comments that "Herodias, taking it into her head to flout the way of our fathers, married Herod, her husband's brother by the same father" (Josephus, *Ant.* 18.130-142 [Feldman, LCL]).

The New Testament provides outside confirmation about the historicity of this marriage and corroborates Josephus' view that the union was illicit (Matt 14:3-4; Mark

[75] Although not formalized by law, the Romans had their own ideas about intermarriage. For example, it has been suggested that one of the reasons that Berenice's relationship to Titus never led to marriage because the idea of a marriage between a Jewess and a prominent Roman citizen was considered repugnant to Roman sensibilities. See Louis H. Feldman, *Josephus* (Cambridge, MA.: Harvard University Press, 1965), 79.
[76] There is some confusion over Herodias' husband's proper name. Compare *Ant.* 18.110-111 to Matthew 14:3, Mark 6:17, and Luke 3:19.
[77] Herodias' second husband is also her half-uncle.

6:14-29; Luke 3:19-20). For example, Matthew records: "For Herod [Antipas] had arrested John [the Baptist], bound him, and put him in prison on account of Herodias, his brother Philip's wife, because John had been telling him, 'It is not lawful for you to have her.'" (οὐκ ἔξεστίν σοι ἔχειν αὐτήν) (Matt 14:3-4). In Mark the problematic aspect of the union is made clearer. Mark cites John the Baptist as saying, "It is not lawful for you to have your brother's wife" (ὅτι οὐκ ἔξεστίν σοι ἔχειν τὴν γυναῖκα τοῦ ἀδελφοῦ σου) (Mark 6:18).

Josephus also criticizes the Herodian prince Archelaus for an unlawful marriage. Archelaus' transgression lies in marrying his deceased half-brother's wife, Glaphyra, the daughter of the Cappadocian king. In reading the two versions of Glaphyra's marital history, one learns that Glaphyra originally married a certain Alexander of the Herodian line sometime before 10 B.C.E. (Josephus, *War* 2.114-116; *Ant.* 17.340-341). Following Alexander's death, she married Juba, king of Libya.[78] After her marriage to Juba ended, whether by divorce or his demise, she rapidly married another Herodian, Archelaus, her first husband's half-brother, around 6 C.E. While Glaphyra's first and second marriages are not viewed negatively, harsh language condemns her third marriage. Josephus describes it as an "outrage" and deems it "abhorrent."

Josephus is careful to point out that Glaphyra had children with her first husband. Consequently, Archelaus cannot have excused his marriage to his deceased half-brother's former wife as a means of fulfilling the biblical concept of levirate marriage, although Levirate marriage was not in practice in late Second Temple times (Josephus, *Ant.* 17.341). Josephus, referring to the biblical legislation of Lev 18:16 and 20:21, writes:

[78] Herod had Alexander executed along with his brother Aristobulus (Josephus, *War* 1.550).

> And he [Archelaus] transgressed ancestral law in marrying Glaphyra…who had been the wife of his brother Alexander *and* had borne him children, for it is abhorrent to the Jews to marry the wife of a brother. (Josephus, *Ant.* 17.340-341[Marcus and Wikgren, LCL]; emphasis mine)

Josephus further stresses his disapproval of his marriage in his retelling of a vision that Glaphyra had of an encounter with her long-dead first husband related above (Josephus, *War* 2.116). Lastly, in juxtaposing Alexander's appearance from beyond withGlaphyra's untimely death two days later, Josephus suggests some measure of divine retribution for her illicit marriage.

What is significant about the problematic marriages that both Herodias and Glaphyra are involved in is that while Josephus presents the marriages as violating Jewish law (an assessment with which the scholarly world concurs), the marriages are not invalid (Josephus, *War* 2.114-116; *Ant.* 17.340-341; 18.116-117). Moreover, while the New Testament indicates that John the Baptist publicly condemned Herod Antipas' marriage to Herodias (Matt 14:1-12; Mark 6:14-29; Luke 3:19; Josephus, *Ant.* 18.116-117), the extent to which the public would have agreed with John's view is unclear. Indeed, although John was a popular figure according to the Gospels (Matt 3:5; 14:5: Mark 1:5; John 3:22-23: 4:1), the New Testament credits criticism of Antipas' union solely to John, not to his followers as well.[79] Moreover, Herod Antipas only imprisons John, not his disciples too, for his censure of the marriage (Matt 14:3; Mark 6:17; Luke 3:20). Furthermore, even if John's disciples agreed with his assessment of the marriage, we have no indication that Jews more generally protested the union.

The historical record on Archelaus and Glaphyra's marriage, which took place some twenty-nine years prior, is more certain. No source suggests that the public

[79] His popularity is also reflected in the fact that Josephus refers to him (Josephus, *Ant.* 18.109-117).

protested their marriage, a detail of particular significance since Archelaus was a sitting ruler at the time of his marriage to Glaphyra. Indeed, even though Archelaus' subjects rose up against him sometime after the union took place, Josephus identifies the impetus behind these revolts as Archelaus' cruelty and tyranny; his marriage to his half-brother's wife is not mentioned (Josephus, *Ant.* 17.342).

The lack of public outrage at Archelaus' illicit marriage, combined with the questionable extent to which the public would have agreed with John the Baptist's appraisal of Herod Antipas and Herodias' marriage is notable. Naturally, it is possible that the public agreed with Josephus in finding these unions to be unlawful; he may have simply chosen to omit the public's reaction from his history. Yet the fact that two sitting Herodian rulers marry their half-brothers' wives is striking. Given the above, it is possible that some Jews considered these unions licit in contravention to Josephus' assessment of these marriages.

Reviewing the authoritative texts that Josephus and his contemporaries would have had access to, namely the biblical texts, we see that Leviticus twice prohibits sexual contact with a brother's wife (Lev 18:16; 20:21). The most straightforward reading of the Bible suggests that Josephus is right in condemning marriages where brothers marry the same woman in succession. However, the Bible's presentation of prohibited sexual pairings related to a sister opens up the possibility that some Jews might not have understood the biblical injunctions against marrying a brother's wife in the same way that Josephus did.

The verse clarifying illicit couplings relating to sisters is much more expansive than the corresponding treatment of the statement concerning brothers. For example, the

discussion in Lev 18:16 of prohibited pairings connected to a brother reads as follows, "You shall not uncover the nakedness of your brother's wife; it is your brother's nakedness" (עֶרְוַ֥ת אֵֽשֶׁת־אָחִ֖יךָ לֹ֣א תְגַלֵּ֑ה עֶרְוַ֥ת אָחִ֖יךָ הִֽוא׃). By contrast, Lev 18:9, which concerns relationships connected to a sister, reads, "You shall not uncover the nakedness of your sister, your father's daughter or your mother's daughter, whether born at home or born abroad" (עֶרְוַ֤ת אֲחֹֽתְךָ֙ בַּת־אָבִ֣יךָ אֽוֹ בַת־אִמֶּ֔ךָ מוֹלֶ֥דֶת בַּ֖יִת אֽוֹ מוֹלֶ֣דֶת חֻ֑וץ לֹ֥א תְגַלֶּ֖ה עֶרְוָתָֽן׃). There is a notable difference between the introductions of the sister and brother in the respective legal statements. In contrast to the prohibition in Lev 18:16 against marrying a brother's wife, the teaching on prohibited sexual relations involving a sister in Lev 18:9 inserts a gloss defining who exactly is to be considered a sister for the purposes of the law at hand. This gloss is explicit in that it includes half-sisters, whether conceived in licit marital relationships or through pre-marital or extra-marital relations of some kind, as prohibited sexual partners. The statement about illicit pairings connected to brothers, however, does not qualify its use of the term "brother" (Lev 18:16).

If we adopt the most literal reading of the biblical text, Leviticus' prohibition on marriage to one's brother's wife does not similarly disqualify marriage to a *half*-brother's wife.[80] Given that a literal reading of the Torah permits this type of union, it is possible that Josephus' view of the unlawfulness of these unions might not have necessarily represented the general Jewish view of marriage to a half-brother's wife in Roman Palestine. Indeed, it is of note that the one text that indicates that there was opposition to the marriage of Herod Antipas and Herodias in the New Testament texts, where Herod

[80] For a listing of the rabbinic rules for biblical interpretation see the *baraita* attributed to Rabbi Ishmael in the introduction to *Sifra* and *t. Sanhedrin* 7.11.

Antipas is described as Herod Philip's brother (ἀδελφοῦ), not by the more precise title of half-brother (Luke 3:19-20).

An additional benefit of this interpretation of marriage to a half-brother's former wife is that it enables one to arrive at a unified view of the Herodian family's marital practices. The vast majority of the Herodians' spouses were acceptable by Jewish law because the royal Jews actively sought to avoid unions proscribed by biblical law. Drusilla's second marriage to a gentile is the only undisputed example thus far of a royal Jew marrying a partner prohibited by Second Temple interpretation of biblical law. The royal Jews, normally, turned down gentile suitors who refused to convert and avoided establishing unions with incestuous marriage partners. No Herodian males married a mother, step-mother, sister, grand-daughter, aunt, uncle's wife or daughter-in-law, despite their tendency to marry within the biologically related family unit (Lev 18:7-10, 12-15); they practiced only marriage to half-brothers' wives.

Lacking any outside witness that some Jewish groups in antiquity adopted this most literal reading of the biblical text to allow for marriage to one's half-brother's former wife, it is not clear if the Herodians could have appealed to this reading to justify the marriages to Glaphyra and Herodias. What is clear, however, is that the most literal reading of the biblical text itself allows for such an understanding of the marriages, and circumstantial evidence from Josephus' histories (that is the Herodians' general policy of avoiding marriages prohibited by biblical law) supports just such an approach. That said, neither of these marriages reflect official Herodian family policy. On the contrary, they are unions of passion, which were not negotiated through the family's established channels.

Notwithstanding the above, we know that Jews regularly sought loopholes or adopted narrow readings of biblical law in order to make observance of the Law easier. For example, Philo believed that one could purify oneself after sexual intercourse by splashing some water on oneself instead of full body immersion in a *mikveh*, as was required by the Torah after contact with semen (Philo, *Spec. Laws* 3.63 vs. Lev 15:16-18; Josephus, *Ag. Ap.* 2.198).[81] Hillel's *prosbul* aided the poor to get loans from fellow Jews in the years immediately preceding sabbatical years when debts were automatically forgiven (*m. Shev.* 9.3). More closely related to the topic under discussion here, the rabbis dealt with the fact that the Bible prohibited marriage to one's sister-in-law yet promulgated levirate marriage by specifying that the prohibition of marrying a sister-in-law applied only when one's own married brother died childless (Lev 18:16; Deut 25:5-6; *y. Ned.* 3:5).

Although not involving a Herodian family member, the third prohibited marriage recorded in Josephus' works helps us contextualize the Herodians' avoidance of illicit pairings and supports the claim that Jews would not have tolerated their rulers entering into illicit marriages. Josephus, who seems pleased to report on the extra stringencies in place to ensure that the priestly line remained pure, was himself involved in a potentially prohibited relationship. In his defense of Judaism, he mentions that captive women cannot marry priests, presumably in order to highlight the purity of the priestly line (Josephus, *Ag. Ap.* 1.30-36). Despite Josephus' knowledge of the marital restrictions to which priests were subject and his background as a scion of a priestly family, in the course of his own autobiography Josephus reveals that he married a captive woman in

[81] Sanders, *Practice and Belief*, 71, 113, 228, and 252.

opposition to the biblical law against the pairing of priests and captives (Lev 21:6-8 vs. Josephus, *Life* 414-416).

Josephus is clearly conscious of the issues at stake in his marriage to the captive woman. He writes:

> Vespasian showed in many ways the honour in which he held me, and it was by his command that I married one of the women taken captive at Caesarea, a virgin and native of that place. (Josephus, *Life* 414-415 [Thackeray])
>
> τὰ πολλὰ διὰ τιμῆς ἄγοντός με Οὐεσπασιανοῦ καὶ δὴ κελεύσαντος αὐτοῦ ἠγαγόμην τινὰ παρθένον ἐκ τῶν αἰχμαλωτίδων τῶν κατὰ Καισάρειαν ἁλουσῶν ἐγχώριον.

In this brief explanation of his first marriage, he finds a way to excuse his prohibited marriage without placing blame on his benefactor, Vespasian. Both rabbinic literature and Josephus' works define the problem of the captive woman (*m. Ket.* 2.5-2.6; Josephus, *Ag. Ap.* 1.35-36). Captive women are disqualified for marriage to priests because the law assumes that these women are defiled sexually and, consequently, impure. Thus, Josephus emphasizes that Vespasian forced him to marry the woman and that she was a virgin. This two-part explanation takes the blame away from Josephus for marrying a woman forbidden because of her status.[82] At the same time, Josephus absolves her of the disability that she is presumed to carry as a captive woman—sexual impurity. This explanation likewise accords with later rabbinic law, which states that one should believe a captive woman when she claims that she was not defiled (*m. Ket.* 2.5).

Josephus further underscores his wife's acceptability to a priest like himself by emphasizing her background as a native of Caesarea. Since he previously described the meticulous genealogical records kept in Jerusalem to ensure the purity of the priestly line,

[82] Riskin, "Halakhah in Josephus," 6 and Ilan, *Jewish Women*, 73.

he may be making the point that the bride's lineage is both Jewish and traceable when he identifies her as a native of a mixed Jewish/gentile city within the land of Israel itself rather than a captive from abroad (Josephus, *Life* 414-416, 426-428). Moreover, her status as a captive during a period of Roman-Jewish conflict further serves to identify his wife as a Jewess. He thus leaves the reader to conclude that her qualifications as a potential bride for a member of the priestly caste were beyond dispute, setting aside the brief period of her captivity (Josephus, *Ag. Ap.* 1.31-36). It is not important for our argument to determine whether Josephus' peers accepted his explanation for the permissibility of his marriage. What is important is that Josephus' strenuous efforts to present his marriage as licit tell us something about first-century Jewish observance, namely, that ancient Jewish prescriptions for marital practices outlined in the Bible were not just past history, but were relevant in Josephus' day as well.

This observation about the ongoing authority of biblical law to the marital choices of Jews in Roman Palestine is likely to have been of particular concern for the royal Jews who were motivated to comply with Jewish law in order to present themselves as suitable rulers for their subjects.[83] As Ilan argues, incestuous marriages would have disqualified the Herodians from the throne, since their subjects would not have tolerated their public flouting of Jewish law.[84] Given the Herodian family's avoidance of questionable marital partners in most circumstances, it is probable that, like Josephus, they sought approval for their marital choices.[85]

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[83] *Ibid.*, 76.
[84] Ilan, "Intermarriage," 15 and Sanders, *Practice and Belief*, 403.
[85] Unlike Josephus, none of the partners involved in the two "incestuous" marriages in the Herodian line finds it necessary to defend his or her marital choices—at least not in Josephus' retelling of the events. That is not to say that the Herodians did not seek to justify their marriages in someway. Josephus was an apologist for Judaism in general and a conciliator of the Romans in particular; he was not particularly interested in rehabilitating the Herodians at points where they needed his help.

6.5 Marriage to Non-Royal Jews

As we mentioned in the previous chapter, the Herodians were far more interested in marrying the offspring of gentile kings and other members of their own family than they were in marrying other Jews. There is, however, a notable caveat to the rule that the Herodians did not actively pursue marriage with Jews outside of the extended Herodian family: they were very much inclined towards marriage with members of the defunct house of the Hasmoneans. The Herodian family's incentive to marry into the Hasmonean line is clear. As non-royal pretenders to the Hasmonean throne, the Herodian family's rule was based solely on their relationship to Rome.[86] To gain credibility for their reign among their own Jewish subjects, the Herodians sought to marry into what many Jews viewed as the rightful ruling family. Most notable among the Herodian-Hasmonean marriages is the first union between the two families, Herod's marriage to Mariamme. The union, described by Josephus as taking place in order to ensure that Herod would earn the goodwill of his subjects, achieved its goal (Josephus, *War* 1.241).[87] Aware of the potency of marriages with the Hasmonean family, Herod subsequently arranged for his brother, Pheroras, to wed another Hasmonean princess (Josephus, *War* 1.483). Later Antipater III married the daughter of Antigonus, another Hasmonean, to cement the relationship or alliance between the two families (Josephus, *Ant.* 17.92).

These marriages into the Hasmonean line brought stability to the Herodian family's claim to the throne. Because the Hasmoneans were no longer sitting rulers but

[86] Kokkinos, *Herodian Dynasty.*
[87] The importance of this marriage to the Herodian family is underscored by the fact that Herod divorced his first wife, Doris, in order to marry Mariamme, when Jewish law would have allowed him to be married to both women at the same time (Josephus, *War* 1.432). In order to show his commitment to the Herodian-Hasmonean alliance, divorce of his first wife was in order.

rather national symbols of a bygone era, the Herodian family's interest in marriage with the Hasmoneans was limited. As Kokkinos notes, once the Herodian family's claim to the throne was firm, the Herodians stopped marrying Jews outside of the Herodian line itself, including Hasmoneans.[88] Antipater II, in 14 B.C.E., was the last Herodian to marry a non-Herodian Jew from Judea, whether of Hasmonean descent or otherwise.[89] After 14 B.C.E., the Herodians concentrated their efforts on marrying the daughters of gentile kings and other powerful elites in order to further the prestige and power of the family. For a brief period of time, however, the most desirable marriages for Herodians were those contracted with Hasmoneans.

6.6. Polygyny

A final issue related to the establishment of licit and illicit unions is polygyny, or marriage to multiple wives at the same time. Biblical texts confirm the acceptability of polygyny. In addition to Abraham and Jacob, both of whom had more than one wife, a number of biblical laws presume that a man might be married to multiple wives at the same time (Exod 21:10-11; Deut 21:15-17). Confirmation that Jews in antiquity understood the Torah to permit these types of marriages is widely available. For example, the Elephantine Jews in the fifth century B.C.E. inserted clauses into their marriage documents forbidding their spouses to take multiple spouses likely because they considered the practice to be lawful.[90] Thus, Miptahiah's marriage contract with Eshor contains the following stipulation:

> And I shall not be able to say: "I have another wife besides Miptahiah and

[88] Kokkinos, *Herodian Dynasty*, 354-355.
[89] *Ibid*., 354-355.
[90] Modrzejewski, *The Jews of Egypt*, 34-35.

> other children besides the children whom Miptahiah shall bear to me.' 'If I say: I have other children and wife besides Miptahiah and her children," I shall give to Miptahiah silver, 20 karsh by the royal standard. (P. Cowley; [Porten-Yardeni])

Post-biblical Jews also agreed that polygyny was licit. Scholars studying the legal papyri from the Judean Desert largely agree that Babatha's second marriage to Judah in the second century C.E. was a polgynous union.[91] The Damascus Document's prohibition of polygyny similarly suggests that it was responding to a situation in which other Jews considered the practice licit (Damascus Document col. 4, line 20).[92] A final confirmation of the lawfulness of polygyny is found in the fact that at least one medieval Jewish legalist went to the trouble of banning the practice since, technically at least, Jewish law had sanctioned the practice throughout antiquity and beyond despite gentile laws which prohibited them from entering these types of unions.[93]

Gentile sources also confirm that Jews practiced polygyny in accord with their ancestral traditions. For example, Justin Martyr, writing in the second century, testifies that Jews entered into these types of marriages (*Dialogue* 141). Similarly, in 393 C.E. Theodosius banned the practice of polygamy among Jews, which reveals that Rome tolerated Jewish polygyny prior to the fourth century (*Cod. Just.* 1:9:7).[94] The law states,

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[91] Satlow, *Jewish Marriage*, 98, 189, and 191-192 and Instone-Brewer, *Divorce and Remarriage*, 60, ft. 8, 123-124, and 179.

[92] Not all agree with Josephus on this point. For example, some believe that the Damascus Document (col. 4, line 20) forbids polygamy and 11QTemple 57:17-19 prohibits polygamy for kings, although this latter text outlines eschatological law and its intent might not be to legislate first-century behavior (Fitzmyer, "Divorce Among First-Century Jews," 104-110). The New Testament's view is closer to Josephus' position, namely it assumes monogamy but never condemn polygamy (Falk, *Jewish Matrimonial Law*, 21 and Satlow, *Jewish Marriage*, 49).

[93] While it was not until the time of Rabbi Gershom (960-1028) that Jewish law prohibited polygamy—at least among Ashkenazi Jews—it is questionable if Rabbi Gershom was actually responding to polygamy that he knew and was in practice in his day. It is possible that Rabbi Gershom's edict, instead, was merely confirming what was already in practice, that is a practical ban on polygamy. For a thorough discussion of Rabbi Gershom's edict, see Shlomo Riskin's monograph, *Women and Jewish Divorce*, 92, 109-110.

[94] Grubbs, *Women in the Law*, 161 and Satlow, *Jewish Marriage,* 189.

"None of the Jews shall keep his custom in marriage unions, neither shall he contract nuptials according to his law, or enter into several matrimonies at the same time."[95]

Josephus confirms the permissibility of polygyny in his own day on two separate occasions.[96] Both of these references are explanatory comments of Herod's polygynous marriages. In *Antiquities* 17, Josephus states, "it is an ancestral custom of ours to have several wives at the same time" (17.14 [Marcus and Wikgren, LCL]). He makes a similar remark in *War* when he writes, "His [Herod's] wives were numerous, since polygamy was permitted by Jewish custom and the king gladly availed himself of the privilege" (Josephus, *War* 1.477 [Thackeray, LCL]).

Despite the abundance of evidence speaking for the lawfulness of polygyny, the frequency of this type of marriage during the days of Roman Palestine is unclear. For one thing, actual examples of polygynous families in the post-biblical era are uncommon.[97] Herod is the only post-biblical Jewish practitioner of polygyny named in Josephus' writings (Josephus, *War* 1.475-478, 561-566; *Ant.* 17.13-22).[98] He married ten women, nine of whom he was married to concurrently (Josephus, *War* 1.562; *Ant.* 17.19-22). The only other example of a named practitioner of polygamy comes from the Judean Desert papyri. Documents from the collection indicate that Babatha's second marriage to Judah Khtousion was a polygamous union.[99] Even though we have only two references to named polygynists, it is likely that more Jews engaged in polygyny than this meager

[95] Amnon Linder, ed. *The Jews in Roman Imperial Legislation* (Detroit: Wayne State University Press, 1987), 193.
[96] See Instone-Brewer for a listing of secondary writings that maintain that polygamy was legal for Jews in the first century C.E. (Instone-Brewer, *Divorce and Remarriage,* 22).
[97] Satlow, *Jewish Marriage,* 189-191.
[98] Kokkinos, *Herodian Dynasty,* 353 and Richardson, *King of the Jews,* 289.
[99] Satlow, *Jewish Marriage,* 189-191.

statistic suggests, since imperial legislation aimed at curbing the practice of polygyny among Jews implies that the practice was not unknown.[100]

Nonetheless, Josephus' portrayal of polygamy is far from idyllic and suggests the unpopularity of the practice. Herod, the only post-biblical practitioner of polygamy named in Josephus' writings, had a domestic life that was particularly troubled. Moreover, the stipulation that a man must divorce his current wife prior to marriage to his new bride, which appears multiple times in Josephus' histories, hints that polygyny was not desirable to many Jews. For example, Herod Antipas had to divorce his current wife, the daughter of Aretas, prior to his marriage to Herodias (Josephus, *Ant.* 18.109-113). Josephus does not attribute the divorces of Ptolemy's daughter and Demetrius, Drusilla and Azizus, Herod and Doris, Mariamme IV and Archelaus, Mariamme VI and Archelaus III, Herod Philip and Herodias, and Pheroas and his "slave-wife," to a desire to avoid polygamy. Yet the fact that Josephus notes these marriages as having ended in divorce immediately prior to the notice of the remarriage of one of the partners illustrates the trend to eschew polygamous marriage (Josephus, *Ant.* 14.109-116; 16.194-205; 17.349-353; 18.139-142; 20.139-147; *War* 1.431-434). Similarly, clauses in marriage contracts as ancient as those from Elephantine and as late as the early medieval contracts from the Cairo geniza indicate that polygamous marriage was often viewed as undesirable.[101]

Although we cannot fully account for all the reasons that polygamy was unpopular, we do know that polygamous marriage complicated the lines of succession.[102] Indeed, both of the named post-biblical practitioners of polygyny experienced inheritance

[100] *Ibid.*, 189-191 and Instone-Brewer, *Divorce and Remarriage*, 61-65.
[101] Cowley, *Egyptian Aramaic Documents*, 15 and Friedman, "Wife's Demand," 104.
[102] Hanson, "Marriage and Divorce," 149.

conflicts. The Judean Desert papyri record Babatha's protracted legal struggles with her co-wife Miriam over their common husband's property after his demise.[103] Similarly, Herod's frequent waffling over which of his sons to endorse as his successor resulted in much strife in the Herodian family including the execution of two of his sons (Josephus, *War* 1.433, 448600; *Ant.* 16.302-307; 17.52-53, 78).

While we have no evidence that polyandry was practiced and polygyny may have been uncommon, one can easily infer its attractiveness to men in societies governed by the kinship principle. Herod, understanding the system and attempting to reap its benefits, married numerous times because polygyny allowed him to create alliances with many families and increased his base of heirs. Were Herod to have practiced monogamy, on the other hand, he would have gained the loyalty of only one family through marriage. Instead, he created numerous connections to many prominent Jewish and gentile families through his marriages, thereby bolstering the security of his throne. Indeed, even his marriages to non-royal Jewesses may have increased his power and prestige. His first wife Doris, who he married prior to ascending the throne, is described as a "Jewess of some standing." Similarly, his marriage into the family of the high priest, that is, his marriage to the daughter of Simeon Boethus, likely enhanced his reputation among his subjects as it linked him to a prestigious priestly family.

Herod's status as regent and the power he wielded due to his strong relationship with the Romans may have put him in a unique position to practice polygyny despite the apparent unpopularity of the practice. Although Herod's polygynous streak made him unique among his contemporaries, it did not damage his reputation for Jewish piety since polygyny was technically legal in Jewish circles. It was, however, at odds with Roman

[103] Porter, "Babatha's Family," 3.

sensibilities and law (*Cod. Just.* 1:9:7).[104] Indeed, Roman law specifically forbade polygamy and social norms viewed the practice as undesirable; the Jews were granted an exemption to this general rule since polygamy was licit according to their ancestral laws. Given that Romans were barred from practicing polygamy and that their society as a whole considered the custom unsavory, Herod's very public practice of polygyny suggests that he was not overly concerned with adopting Roman ways at all costs. On the contrary, he was at ease with the Romans viewing him as a representative of a provincial, minority group and not as a full-fledged Roman.[105]

6.7 Forbidden Marriages in the Roman Context

The Jews of antiquity were not exceptional in understanding that certain marriage relationships were forbidden. Among other groups, the Romans have a similar code which limits one's potential pool of eligible partners. Indeed, while Roman fathers had a great deal of latitude in negotiating their children's marriages, both law and custom restricted them in selecting potential spouses for their children (Gaius, I.48). By the first century C.E. a number of unions were specifically proscribed. Penalties for failure to heed the restrictions placed on marriage partners included punishments as benign as lack of recognition of the marriage and as harsh as corporal punishment, though monetary fines were the most frequently imposed measure.[106]

Unions that were specifically proscribed included marriages between slaves and their masters, unless the slaves were first freed (*Digest* 23.2.14.2, [Paulus]; 23.2.56

[104] Until 393 C.E. Roman law allowed Jews to practice polygamy (Grubbs, *Law and Family*, 98).
[105] Nigel Rodgers, *Roman Empire* (London: Lorenz, 2006), 468.
[106] Grubbs, *Women in the Law,* 161.

[Ulpian]).[107] Similarly, marriages between siblings and a woman and her maternal uncle were forbidden (*Gaius* 1.59-62; Tacitus, *Annals* 12:5-8; *Digest* 23.217.2 [Gaius]).[108] Although legislation did not prohibit unions with a brother's former wife or marrying a wife's sister, social norms effectively quashed those unions believed to be morally repugnant.[109] Moreover, as mentioned earlier, Roman law likewise prohibited polygamous marriages.[110]

In addition to these restrictions on marriage partners incumbent upon all subjects of the Roman Empire, the senatorial class had additional limitations to navigate in selecting their marriage partners, in much the same way that the Jewish legal system placed additional restrictions on the marital options of members of its select class, the priests.[111] For example, Augustus prohibited senators and their descendants from marrying former slaves, actors, and their children, among others considered too lowly for the elite (*Digest* 23.2.27, 31 [Ulpian]; 23.2.44.6 [Paulus]).[112]

Although both the Romans and the Jews agreed that certain marriage couplings were prohibited, the origins and authority of their respective lists of incestuous or otherwise unseemly relationships varied. The Jewish conception of illicit pairings derived from the Bible and was universal in that its stipulations were not subject to human interference. The Romans, by contrast, could appeal to the Senate for exceptions to their rules about prohibited pairings. For example, masters could free their slaves and, in so doing, render them as licit as marriage partners.[113]

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[107] *Ibid.*, 11 and Treggiari, *Roman Marriage*, 53.
[108] Grubbs, *Women in the Law*, 82, 123, 162.
[109] *Ibid.*, 162.
[110] Rodgers, *Roman Empire*, 468.
[111] Grubbs, *Women in Law*, 148.
[112] *Ibid.*, 8.
[113] Treggari, *Roman Marriage*, 53.

6.8 Conclusion

The Herodian family's approach to spouse selection highlights the importance of biblical law and post-biblical Jewish interpretation of that law in the lives of Jews in the Roman era. The issues of intermarriage, incestuous unions, and polygamy all have biblical precedents to which later practitioners could have looked and from which they could have received guidance. It is clear that these legal stipulations held sway among post-biblical Jews, because those involved in the marriages described by Josephus clearly confronted them. While the Herodians dabbled in questionable practices, it is rare that one has a clear-cut example of them actually overstepping the line. Drusilla's marriage to Felix is the only marriage that is clearly in violation of Jewish norms. Less clear is the status of the two Herodian marriages involving princes marrying their half-brothers' former wives. Although Josephus condemns marriage to a half-brother's wife as illicit, one can make a case for the legality of such marriages by appealing to the biblical text possibly combined with the public's reactions to these unions. Indeed, Josephus' own interpretations may figure into his negative appraisal of marriage to a half-brother's widow.

This investigation into the Herodian family's choice of spouses has shown that the royal Jews were concerned about upholding the negative prohibitions of biblical law. Nonetheless, the Herodians were not concerned with modeling their behavior after the practices of the biblical matriarchs and patriarchs. By the late Second Temple period, Jews sought to retain traditional Jewish loyalties while not remaining stuck in archaic patterns. While biblical law remained an important social force, tradition was not

powerful enough to impel the Herodians to behave in certain ways. Polygyny was not widely practiced despite its legality in both biblical and rabbinic law and its presence in the narrative tradition. Despite the biblical call to avoid intermarriage, the Herodian family members actively practiced marriage to the daughters of gentile rulers, although whether the Herodians insisted upon conversion when such unions took place is unclear.

Returning to Satlow's contention that there is nothing substantially Jewish about Jewish marriage in antiquity, we see that in many ways the Herodian family's conceptions of marriage did not differ from those of their Roman peers. Their marital choices were informed by custom and law, as well as concern for how their marriages would fit in with the goals of the kinship system operating within their respective communities. Although in broad terms the marital patterns of the two groups share a great deal, a close look at the details reveals significant disagreements. Jews and Romans differed in their understanding of the limitations on one's choice of a marriage partner. The Herodians and elite Romans also disagreed over which couplings were problematic, despite the fact that both groups sought to marry in a way that was consistent with the customs of their respective communities regarding intermarriage. The union of low-born individuals with the elite members of their society bothered the Romans, whereas the Jews were concerned to avoid marriages with gentiles and the union of members of the priestly class with spouses of questionable purity. In upholding the particularities of the Jewish system, the Herodians consciously marked their marriages as different from Roman marriages**.** In particular, the Jewish insistence on marrying within their own group at times when their gentile neighbors did not mandate these types of unions,

documents the viability of a uniquely Jewish practice that Jews in antiquity took seriously.[114]

The Herodian family's dual interests and identities, that is to say, their concurrent status as Jews and Romans, clearly informed their approach to marriage. While they appreciated and adopted Roman custom and sought to make marital decisions that responded to the demands of the kinship system, they generally refrained from making matches that were in clear violation of Jewish norms. When the loyalties of the Herodians were in tension with each other, their attachment to Jewish tradition, at least as far as marital choices were concerned, won out over any connections they might have had towards the Roman world and marked them as loyal Jews. Now that we have gained a solid understanding of the Jewish concept of marriage with which Josephus and the Herodians were familiar, it is time to turn to the study of the royal Jews' approach to divorce, in order to understand more fully the Herodian family's relationship to both Jewish law and Roman custom.

[114] Satlow, *Jewish Marriage*, 133.

7. Divorce and the Herodians: Motivations and Protocols

Despite the careful planning that went into the selection of spouses for various members of the Herodian family, the royal Jews were not always successful at staying married. In fact, Josephus records nine divorces among the forty-nine Herodian marriages he describes.[1] Given the selective nature of Josephus' history, the 18% rate of divorce that these figures suggest is likely much lower than the actual divorce rate experienced by the royal Jews. Indeed, almost all of the Herodians described thoroughly in Josephus' writings divorced at least once. For example, Herod divorced twice; and Salome, Herodias, Berenice, and Drusilla were all partners to one divorce each (Josephus, *Ant.* 15.259-260; 17.77-78; 18.130-142; 20.139-147).

7.1 The Prevalence of Divorce among Romans and Jews

Marriage was not a particularly stable institution among either the elite Jews or the aristocratic Romans of the first centuries B.C.E. and C.E. In fact, some considered divorce among upper class Romans to be at epidemic levels.[2] A well-known saying from a funerary epitaph from first-century B.C.E. Rome epitomizes this anxiety about the frequency of divorce. Written from the perspective of a husband to his newly deceased wife, the epitaph reads, "Uncommon are marriages which last so long, brought to an end by death, not broken apart by divorce; for it was our happy lot that it [our marriage]

[1] Hanson, "Marriage and Divorce," 148; Richardson, *Herod, King of the Jews,* 44; and Satlow, *Jewish Marriage,* 183.

[2] Some scholars would put the Roman divorce rate at 50%. This is likely overstating the case and taking the anecdotal evidence too seriously, given that actual statistical evidence is lacking. Indeed, many scholars argue that the hysteria surrounding the divorce rate in turn-of-the-millennium era was more imagined than real. Compare Keith Bradley, *Discovering the Roman Family: Studies in Roman Social History* (New York: Oxford University Press, 1991), 172 with Treggiari, *Roman Marriage,* 473-482.

should be prolonged to the 41st year without estrangement" [Wistrand, NDIEC].[3] A saying attributed to the first century C.E. Roman epigrammatist Martial also comments on the fragility of marriage. Responding to reports that a certain woman had married and divorced ten husbands in the space of thirty days he comments, "A woman who marries that often doesn't marry; she is a legalized adulteress. I am less put off by a more honest slut" (Martial, *Epigrammata* 6.7 [Bailey, LCL]).[4] Seneca offers another widely cited appraisal of the state of marriage in the late republic; "Is there any woman that blushes at divorce now that certain illustrious and noble ladies reckon their years, not by the number of consuls, but by the number of their husbands, and leave home in order to marry, and marry in order to be divorced?" (Seneca, *De beneficiis* 3.16.2 [Basore, LCL]).

In addition to the anecdotal evidence that upper class Romans were quick to divorce, the existence of legislation aimed at the preservation of marriage also supports this viewpoint.[5] Augustus, for one, passed laws encouraging marriage and penalizing those who did not comply, both in 18 B.C.E. and 9 A.D.[6] For example, his laws made divorce more difficult by specifying that seven witnesses were necessary to enact divorce (*Digest* 24.2.9 [Paulus]).[7] Prior to Augustus' changes to divorce law, one could enact divorce without any witnesses present. Augustus' laws also made it more difficult to divorce without first establishing just cause.[8] Commenting on the Augustan marriage

[3] Horsley, *New Documents Illustrating Early Christianity*, 3:34.
[4] See Rabello, "Divorce of Jews," 82.
[5] Grubbs, *Women and the Law*, 84-85.
[6] Rabello, "Divorce of Jews," 82-83.
[7] *Ibid.*, 82-83 and John Crook, *Law and Life in Rome* (AGRL; Ithaca: Cornell University Press, 1933), 106.
[8] Crook, *Law and Life in Rome*, 106; Rabello, "Divorce of Jews," 82-83; and Grubbs, *Women in the Law*, 187.

legislation and on popular sayings decrying the frequency of divorce, Beryl Rawson argues that Romans of this period did not view marriage as a lifelong arrangement.[9]

The elite Jews described in Josephus' histories, like their Roman peers, regularly turned to divorce.[10] Indeed, Josephus' matter-of-fact descriptions of the nine Herodian divorces and his own two divorces suggest that divorce was a common marital practice among upper class Jews, as does the fact that nearly all of the Herodians described most thoroughly in his writings were party to at least one divorce each (Josephus, *Life* 426-428; *War* 1.432 ; *Ant.* 17.68-69). Similarly, the fact that both of the extant Jewish personal archives from antiquity preserve divorce writs or other legal documents belonging to divorced individuals, indicates that divorce was somewhat common. The presence of theoretical discussions of divorce in the New Testament and the rabbinic corpus suggests the same (Matt 5:32; 19:3-12; Mark 10:2-12; Luke 16:18; *m. Ket.* 3.4; 4.2; 4:4; 4.9; 5.5; 7.6; 7.10; *m. Git.* 1.1-9.10). Lastly, a gloss Josephus inserts into his summary of Deut 24:1-4 hints that his contemporaries divorced frequently. The gloss in question reads, "he who desires to be divorced from the wife who is living with him for whatsoever cause—*and with mortals many such may arise*…" (Josephus, *Ant.* 4.253 [Thackeray, LCL]; emphasis mine).

7.2 Attitudes towards Divorce in Biblical and Rabbinic Sources

The frequency of divorce raises questions about the attitude towards divorce in the Bible and rabbinic writings. Consistent with the Bible's limited treatment of marriage as discussed above in section 4.1, the Bible is only marginally more forthcoming about

[9] Beryl Rawson, *The Family in Ancient Rome: New Perspectives* (Ithaca: Cornell University Press, 1986), 25 and 51-52.
[10] Satlow, *Jewish Marriage*, xvii and 182-183.

divorce. Overall, the Torah does not indicate any judgment about the ending of marriages, whether by the couple parting from one another or by divorce.[11] For example, Abraham's ousting of Hagar at Sarah's request is neither condemned nor praised; rather, Hagar's dismissal is portrayed somewhat ambiguously (Gen 21:12).[12] Similarly, no evaluation, whether positive or negative, is offered of the divorce guidelines revealed in Deut 24:1-4's discussion of the restrictions on remarriage. Likewise, the discussion of divorce preserved in Exod 21:10-11; Deut 21:10-14; 22:13-19, and 29, is free of any judgmental statements. While Gen 2:24, "therefore a man leaves his father and his mother and clings to his wife, and they become one flesh," could be read as a statement against divorce, there is no indication that it was read in this way until New Testament times (Matt 19:3-9).[13]

Turning to the later rabbis, we see that, as is often the case with the rabbinic writings, their position is varied. Their writings contain both positive and negative depictions of divorce, in addition to neutral ones. For example, the rabbis clearly understand divorce as a positive step when they state that it is a mitzvah to divorce an evil wife (*t. Sot.* 5:9). A much more negative appraisal of divorce appears in the declaration that the altar itself sheds tears upon hearing of divorce (*b. Git.* 90b).[14] Overall, rabbinic writings tend to view divorce as an undesired, although sometimes-necessary step, one that should be approached with the utmost gravity.[15]

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[11] Instone-Brewer, *Divorce and Remarriage*, 23.
[12] This is not a true divorce but later rabbinic texts will interpret it as such, since they record that Abraham gave Hagar a divorce writ (*Yalkut Shimoni*, Gen. Sec. 95)
[13] Instone-Brewer, *Divorce and Remarriage*, 21 and 136-141.
[14] Lewittes, *Jewish Marriage*, 170.
[15] Judith Hauptman argues that in the earliest layer of the rabbinic writings divorce was often a consequence of spouses unwillingly separated for an extended period of time or extreme poverty (Hauptman, *Rereading the Rabbis*, 102, 109-110). Similarly, the rabbis' willingness to overlook marriages that did not produce offspring after a certain number of years, in contradiction to Jewish law's requirement

The earliest strata of the rabbinic texts contain changes to divorce procedures that effectively render hasty divorce impossible; this suggests that the frequency of divorce bothered the rabbis. For example, the rabbinic enactment forbidding the use of form documents for divorce, and instead requiring that the divorce deed be written specifically for the divorcing parties, ensured a cooling-off period between the time that a person declared his intent to divorce and the formalization of the divorce (*m. Git.* 3.1-2).[16] In addition, the adoption of changes to the financial penalties for divorce delineated in the *ketubah* hints that the rabbis felt that Jews exercised the right to divorce too freely. For example, the *Tosefta* credits Shimon ben Shetach, a first-century B.C.E. sage, with changing the timing of the payment of the marriage fee (*t. Ket.* 12.1).[17] Instead of paying the bride's family (or later the bride) this fee upon marriage, ben Shetach's innovation required the groom instead to promise to pay this sum at the time of the marriage's dissolution. The passage in question reads:

> In earlier times, when [the property set aside for payment of] her marriage contract was in her father's hands, it was a light thing in his [the husband's] eyes to divorce her. Simeon ben Shetah therefore ordained that [property] to cover] her marriage contract should be with her husband. And he therefore writes for her "All property which I have is liable and obligated for the payment of your marriage contract." (*t. Ket.* 12.1)[18]

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that the couple divorce, speaks to the fact that divorce was not always entered upon lightly (Instone-Brewer, *Divorce and Remarriage*, 85).

[16] In addition, the difficulty of acquiring a scribe to write a divorce document in a world where literacy was uncommon and the ability to write was rarer still, further underscores the rabbinic attempt to lower the divorce rate (Hezser, *Jewish Literacy*, 110-168 and Amram, *The Jewish Law of Divorce,* 143.

[17] At least rabbinic history presents these changes as innovations. Since there are no extant Jewish marriage contracts from the fifth century B.C.E. until the second century C.E., we cannot document the accuracy of this rabbinic statement. We do know, however, that in the Elephantine documents the groom's family paid מוהר at the time of marriage and the Judean Desert documents adopt the postponed marriage fee, i.e., the קתובה , attributed to ben Shetach..

[18] Translation from Instone-Brewer, *Divorce and Remarriage*, 82.

These monetary innovations, which generally required that the divorcing husband sell his own personal property in order to pay his ex-wife her divorce money, made divorce more financially onerous for the husband (*t. Ket.* 12.1).[19]

Rabbinic enactments barring the use of form documents as divorce writs and changes to the timing of the payment of the marriage fee, together with other modifications to divorce law recorded in the Tannaitic writings, also heightened the legal complexity of divorce. Indeed, divorce became so complex that later Talmudic rulings only allow the rabbis, who were expert in the intricrate laws to adjudicate divorces (*b. Kid.* 13a). All of these changes, in turn, limited the accessibility of divorce in accord with ben Shetach's view that divorce should be less common (*t. Ket.* 12.1).[20]

The elite Jews and Romans from the time of Herodian rule did not share the reticence towards divorce exhibited by the prophetic writers who preceded them or the rabbis who postdated them. Indeed, it seems that the elites neither actively sought to avoid divorce nor viewed it as socially disabling. We have previously noted the frequency with which the Herodian family turned to divorce (see section 6.1). Josephus' admission that he also divorced twice can be used in support of the claim that upper class Jews viewed divorce lightly (Life 414-415, 426). Indeed, the fact that Josephus, a perennially self-conscious historian, has no trouble admitting that two of his marriages ended in divorce, neither of which he attempts to excuse by implicating his ex-wives with any serious charges, suggests that divorce did not carry significant social stigma among elite Jews. Likewise, both Josephus' histories and the Judean Desert documents contain examples of couples who remarried after short-lived divorces (a practice not prohibited

[19] Falk, *Jewish Matrimonial Law,* 115 and Instone-Brewer, *Divorce and Remarriage,* 81-84.
[20] Amram, *The Jewish Law of Divorce,* 143.

by biblical law unless a marriage to another spouse took place in the interim), suggesting that Jews in antiquity did not always pursue divorce for serious cause (Josephus, *War* 1.432-433, 451, 590-591).[21] Similarly, the evidence indicating that the elite Romans resorted to divorce at least as frequently as their Jewish counterparts reveals that Roman society also did not impose any significant socially disabling consequences on its divorced members.

There is, however, a caveat to the position that divorce was apparently stigma-free among wealthy Jews and Romans. Women involved in divorces are judged differently than men in comparable circumstances. For example, Josephus uniformly condemns women who initiate divorce (Josephus, *Ant.* 15.259-260; 18.109-136; 20.139-147).[22] Moreover, women viewed as having divorced too frequently, whether they were the initiators or not, are singled out for particularly harsh criticism. For example, Josephus criticizes Glaphyra for having married too many times (Josephus, *War* 1.115-116); but he does not censure Herod for either of his two divorces, nor does he condemn any of the other male initiators of divorce. Similarly, one notes that the sayings from ancient Rome lamenting the frequency of divorce, such as those relayed above in section 6.1, are directed mainly at women.

The Herodians' frequent turn to divorce may appear contrary to prophetic ideals, which advocate divorce as a last resort. Attitudes and thoughts are, of course, much more difficult to evaluate than actions. Thus, what looks like a callous use of the right to

[21] Herod remarried a woman he previously divorced—Doris—(he eventually divorced her a second time) and the Judean Desert documents include a contract specifying the terms of Salome and Elai b. Shimeon's second marriage to each other. For more on Salome and Elai's marriage, see Tal Ilan, "Premarital Cohabitation in Ancient Judea: The Evidence of the Babatha Archive and the Mishnah (*Kettubot* 1.4)," *HTR* 86 (1993): 247-264, esp., 250-251 and Benoit, *Les grottes de Muraba'at*, 243-253.
[22] Hanson, "Marriage and Divorce," 150.

divorce from our perspective might not have been viewed in the same way by the parties themselves. Consequently, one should not dismiss the seriousness with which the Herodian family approached their observance of Judaism, simply on account of an ideology that appears to be in conflict with that of the prophets and the sages—especially since the Torah itself does not appraise divorce negatively, and we cannot be sure to what extent the position on divorce credited to the later rabbis was current in the Herodians' day. However, the Herodians' loyalty to Jewish norms can be evaluated in terms of their actual *practice* of divorce. In order to assess the Herodian family's divorce practices in terms of their compliance to Jewish teachings, we must first examine what the Bible has to say on the subject.

7.3 Grounds for Divorce

The Bible does not present any comprehensive guidelines on divorce. Moreover, the passage that offers the most information about divorce guidelines is Deut 24:1-4, a passage about remarriage.[23] Because systematic divorce legislation does not appear in the Torah, many of the pressing issues related to divorce, such as the permissible grounds for divorce, are not addressed.[24]

For example, Deuteronomy 24 does not indicate whether there has to be serious, substantiated grounds in order to execute divorce or whether any claim, or none at all, will suffice. Exodus 21:7-11 is clearer in enumerating the scenarios that should lead to divorce. Its list of the requirements for lawful marriage stipulates sufficient food,

[23] Instone-Brewer, "Deuteronomy 24:1-4 and the Origin of the Jewish Divorce Certificate," *JJS* 49 (1998), 230-243.

[24] Instone-Brewer understands these gaping holes in the treatment of divorce proceedings in the Bible to mean that, with the exception of the few details in Exodus and Deuteronomy, Israelite divorce practices were identical to those of their neighbors (Instone-Brewer, *Divorce and Remarriage,* 23-24).

clothing, and sexual rights, in the absence of which a union should dissolve. However, even this listing is far from comprehensive, as it does not define which of the wife's behaviors should lead to divorce. Deuteronomy 22:13-21, which discusses a case where a husband attempts to charge his wife with false grounds for divorce, provides a hint that just cause is required to enact divorce, since the falsely accusing husband in this case is punished by losing the right ever to divorce his wife. However, even this passage, which suggests that charges were necessary to enact divorce, does not stipulate the severity of the charges necessary for a lawful divorce.

Given the paucity of information in the Torah about grounds for divorce, it is not surprising that diverse approaches to this subject arose. Lacking detailed biblical guidelines, Jews had to rely on unwritten customs and their own interpretations to arrive at divorce practices. For example, the fact that Philo, Josephus, the New Testament, and rabbinic corpus advance different criteria for the acceptable grounds (or even whether grounds were needed) for divorce suggests that the biblical materials on the subject can be read in more than one way. Starting in reverse chronological order, we first turn to the rabbinic corpus.

7.3.1 Rabbinic Grounds for Divorce

In general, the rabbis refrain from defining just cause for divorce or even establishing if just cause was necessary. Rather, they proceed as if the issue of the grounds for divorce had been solved. Indeed, the closest that the rabbis come to presenting a comprehensive statement on the permissible grounds for divorce comes in the context of a debate cited between the first-century C.E. schools of Hillel and

Shammai. The two sides duel over the question of "just cause" in their respective interpretations of Deut 24:1-4. This debate is particularly significant because the text is so careful to note that it is different understandings of the biblical text itself that caused the conflicting views of Hillel and Shammai about the permissibility of divorce under any number of different scenarios. The rabbinic text reads as follows:

> The School of Shammai says: "A man may not divorce his wife unless he discovers her to be sexually impure." For it is written, "[He may divorce her] if he found something [sexually] defiling about her." And the House of Hillel says: "[He may divorce her] even if she spoiled a dish for him." For it is written, "Because he has found anything objectionable." Rabbi Akiva says: "[He may divorce her] even if he found another more beautiful than her." For it is written, "And if she no longer finds favor in his eyes…" (*m. Git.* 9.10)[25]

> בית שמאי אומרים לא יגרש אדם את אשתו אלא אם כן מצא בה דבר ערוה שנאמר כי מצא בה ערות דבר ובית הלל אומרים אפלו הקדיחה תבשילו שנאמר כי מצא אה ערות דבר רבי עקיבא אומר אפלו מצא אחרת נאה הימנה שנאמר והיה אם לא תמצא חן בעיניו.

The disciples of Shammai limit the criteria for initiating divorce to cases of sexual infidelity, since they focus on to the phrase "something defiling about her" (מצה בה דבר ערוה),where the term "defiling" (ערוה) has a sexual connotation.[26] The Hillelites, on the other hand, contend that it is sufficient that the husband should find anything about his wife that he does not like. Hillel offers the example of a woman who cooks an unappetizing meal (אפלו הקדיחה תבשילו). Rabbi Akiva, active in the late first and early second century C.E., further clarifies (and takes to the extreme) the position of the followers of Hillel, by employing another phrase from Deut 24 on which to base his understanding of the proper motivation for divorce, namely, "and if she no longer finds

[25] Translation mine.
[26] See the use of the word "ערות" in Gen 9:22-23; Exod 20:26; 28:42; Lev 18:6-19; 20:11-2; Deut 23:12; 1 Sam 20:30; Ezek 22:10; 23:18, 29: Hos 2:9; and Lam 1:8.

favor in his eyes" (אִם־לֹא תִמְצָא־חֵן בְּעֵינָיו). That is to say, a man does not need any reason at all to initiate a divorce from his wife. Indeed, the mere fact that the husband has found another woman whom he wishes to marry would automatically allow divorce according to Rabbi Akiva's estimation. Thus, the school of Shammai demands a very high burden of proof in order to enact divorce, whereas the disciples of Akiva and Hillel in effect sanction no-fault divorces.

The mishnaic discussion of the permissible grounds for divorce does not necessarily negate our contention that the rabbis were uninterested in establishing whether substantiated grounds were necessary for divorce. The dialogue between Hillel and Shammai concerning grounds for divorce appears in the final mishnah of tractate *Gittin*. Judith Hauptman argues that the final mishnah of tractates generally have little to do with the topics under discussion in the chapter as a whole.[27] Instead, the rabbis use the final mishnahs as a way to give a creative flourish to an otherwise somewhat dry legal discussion.[28] In the case of *Gittin* this observation about the rabbis' style rings true. Except for the final mishnah, *Gittin* contains no discussion of the permissible grounds for divorce in any of its sixty-seven other mishnayot. Examining an outline of the mishnaic chapter as a whole further illustrates how out of place the discussion of the grounds for divorce is in the context of the larger discussion of *Gittin*. Chapter 9 of *Gittin* concerns the legality of a divorce bill that has any number of non-standard variations in its text or delivery.

9.1 The *get* specifies that the wife cannot marry a certain man.
9.2 The *get* contains a condition forbidding the wife to marry any of the

[27] Hauptman, *Rereading the Rabbis*, 104.
[28] *Ibid.*, 104 and 125.

men prohibited to her by biblical law.
9.3 Conflicting opinions about the wording of the essential clause of the *get:* that is, the phrase permitting the woman to remarry.
9.4 Circumstances that would invalidate a divorce writ but would not negatively impact the status of children produced by a remarriage after the issuance of the questionably valid *get*.
9.5 A divorce writ that was accidently delivered to the wrong woman, who happens to share the same name as the intended recipient.
9.6 Two divorce documents written on the same parchment.
9.7 More variations to the scenario in 9.6.
9.8 The witnesses sign in a different language than the divorce text is written in or do not sign in the standard way. Also, comments on a divorce bill ordered by a gentile court.
9.9 Popular opinion about a person's martial status is assumed true.
9.10 *Defining the licit grounds for divorce.*

Thus, *Gittin* 9:1-9 concerns itself with the proper protocol for negotiating divorce when it does happen. The final mishnah, debating the necessary grounds for divorce, is clumsily attached to a chapter entirely about divorce protocol. Moreover, moving beyond this chapter to the mishnaic tractate as a whole, one notes that chapters 1 through 8 are similarly concerned with variations on the preferred rabbinic text and delivery of the divorce writ, not with legislating criteria for divorce.

Two mishnahs in *Gittin* do allude to causes that might motivate some to divorce. These mishnahs refer to women divorced because of bad reputations, vows taken by their husbands, or suspected infertility (*m. Git.* 4.7-8). However, neither of these mishnahs takes away from the argument that the rabbis are not concerned with legislating just cause for divorce. Indeed, the motives behind these divorces are not under discussion in and of themselves; rather, this information is revealed incidentally in the context of a larger discussion about the legality of divorces that are interrupted midway through the process (*m. Git.* 4.1-8). For example, the rabbis consider whether a man who divorces his wife because of a bad reputation, a vow, or suspected infertility, can take her back (4.7-8).

There is no discussion of whether any of these causes necessitated divorce or even were considered appropriate grounds for divorce.

Other references in the rabbinic corpus allude to other reasons that a person might have pursued divorce. In these examples too, the issue of acceptable grounds for divorce is not discussed in any comprehensive fashion. Instead, the topic is introduced in an incidental way. In discussing related issues, such as the protocol for divorce, the rabbis mention any number of different situations in which divorce would not only be permissible but advisable. They condone divorce when a woman flouts Jewish law by serving her husband untithed food or having sexual relations with him during her time of menstrual impurity (*m. Ket.* 6.5). Likewise, they allow divorce based on the biblically derived criteria for divorce, that is adultery and material neglect, such as the lack of proper food or clothing (*m. Ket.* 5.5, 6.5; *t. Yev.* 8.5; Exod 21:10-11). In another passage, the sages require a man who emits a noxious odor or suffers from a disfiguring disease to divorce his wife (*m. Ket.* 6.10).

Despite the fact that the Mishnah cites several concrete examples of cases where divorce is both permissible and necessary, in general the rabbis' interest does not lie in articulating just cause but rather in regulating divorce when it does happen; they debate proper protocol for divorce, not proper grounds.[29] It is unclear what one should conclude from the sages' lack of interest in the debate over "just cause"; does it mean that the rabbis accepted the no-fault divorces advocated by Hillel and Akiva, or that they wanted to avoid controversy in the rabbinic ranks by not taking a position on this issue, or that the answer to this question had been established by the early second century, and thereby

[29] Hauptman, *Rereading the Rabbis*, 104.

did not need any further discussion? Turning to the New Testament writings, we will see if they share the later rabbinic reticence to define divorce criteria.

7.3.2 New Testament Divorce Grounds

The New Testament's discussions of divorce are almost exclusively concerned with the very topic that the rabbinic materials largely ignore, namely, establishing the proper grounds for it. Conversely, the Gospels and Paul show no interest in establishing proper divorce protocol, the question that was of such interest to the rabbis, although both Mark and Matthew allude to the requirement of Deuteronomy 24 that the divorcing husband send a divorce writ to his wife (Mark 10:3-4; Matt 19:7). Instead, the New Testament texts focus on establishing grounds for divorce—often deciding that there are no appropriate grounds for divorce. For example, both Mark and Luke suggest that it is impossible to sever a marriage bond fully; hence their prohibitions on remarriage (Mark 10:11-12; Luke 16:18). The version of this ban in Luke 16:18 reads: "Anyone who divorces his wife and marries another commits adultery, and whoever marries a woman divorced from her husband commits adultery."

Additional information about the New Testament's view on divorce is revealed in Matthew and Mark's parallel discussions of the topic, which are introduced by questions raised by the Pharisees. In Matthew's version, the Pharisees' question reads: "Is it lawful to divorce one's wife for any cause?" Mark's version omits the final clause, that is, "for any cause," and simply asks if it is ever lawful. Thus, despite the parallel structure of the two discussions of divorce (see below), the issues that they address differ somewhat. Matthew asks whether one can lawfully initiate divorce for any cause at all, that is, he

asks about Hillel's divorce standard as discussed above.[30] Mark's rendering of the pericope, on the other hand, discusses a more basic question, namely the lawfulness of divorce in and of itself. To illustrate the differences between these two discussions of divorce, they will be cited in full below, with the critical clauses in italics and the differences between the two underlined.

Matt 19:3-12	Mark 10.2-12
Some Pharisees came to him, and to test him they asked, *"Is it lawful for a man to divorce his wife <u>for any cause?"</u>* [32]	Some Pharisees came, and to test him they asked, *"Is it lawful for a man to divorce his wife?"*[31]
He answered,	He answered them, "What did Moses command you?" They said, "Moses allowed a man to write a certificate of dismissal and to divorce her." But Jesus said to them, "Because of your Hardness of heart he wrote this commandment for you.
"Have you not read that the one who made them at the beginning 'made them male and female,' and said, 'For this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one flesh'? So they are no longer two, but one flesh. Therefore what God has joined together, let no one separate." They said to him, "Why then did Moses command us to give a certificate of dismissal and to divorce her?" He said to them, "It was because you were so hardhearted that Moses allowed you to divorce your wives, but from the beginning it was not so.	But from the beginning of creation, 'God made them male and female.' For this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one flesh.' So they are no longer two, but one flesh. Therefore what God has joined together, let not man put asunder."
And I say to you: *whoever divorces his wife,*	Then in the house the disciples asked him again about this matter. He said to them, *"Whoever divorces his wife*

[30] Instone-Brewer, *Divorce and Remarriage,* 133-188.

[31] εἰ ἔξεστιν ἀνδρὶ γυναῖκα ἀπολῦσαι.

[32] Εἰ ἔξεστιν ἀνθρώπῳ ἀπολῦσαι τὴν γυναῖκα αὐτοῦ κατὰ πᾶσαν αἰτίαν.

<u>except for unchastity</u>, and marries another, commits adultery."[33]

and marries another, commits adultery against her; and if she divorces her husband and marries another, she commits adultery." (emphasis mine)[34]

Both Matthew and Mark offer the same reason to avoid divorce, namely that although Moses made accommodations for divorce (Matt 19:7-8; Mark 10:3-5), the original intent of marriage was for it to be lifelong, in accord with the view of marriage presented in the creation narrative in Genesis 2 (Matt 19:4-6; Luke 10:6-9). However, the implications that the two derive from their exegetical analysis differ. While Mark understands the Genesis text to forbid all divorce, Matthew reads the same pericope as restricting divorce except in the case of infidelity, which is in accord with Shammai's position as related above (also Matt 5:32).[35]

Paul's discussion of marriage and divorce in Rom 7:1-3 echoes the Gospels' viewpoint, in that he characterizes a woman who remarries as an adulteress (Rom 7:3). He clarifies that the Gospels' view that remarriage is unlawful is only true when one's ex-wife/husband is still alive (Rom 7:1-3). In 1 Corinthians 7, Paul offers yet another teaching on divorce. He implores women and men married to unbelievers not to seek divorce, since through marriage they can make the unbeliever holy (1 Cor 7:12-16). The

[33] λέγω δὲ ὑμῖν ὅτι ὃς ἂν ἀπολύσῃ τὴν γυναῖκα αὐτοῦ μὴ ἐπὶ πορνείᾳ καὶ γαμήσῃ ἄλλην μοιχᾶται.

[34] καὶ λέγει αὐτοῖς· ὃς ἂν ἀπολύσῃ τὴν γυναῖκα αὐτοῦ καὶ γαμήσῃ ἄλλην μοιχᾶται ἐπ᾽ αὐτήν· καὶ ἐὰν αὐτὴ ἀπολύσασα τὸν ἄνδρα αὐτῆς γαμήσῃ ἄλλον μοιχᾶται.

[35] Instone-Brewer, *Divorce and Remarriage*, 133-136. Instone-Brewer argues that Mark and Matthew offer the same conclusion about divorce, namely that it was permitted in the case of infidelity. He argues that the Mark's terse account of this exchange with the Pharisees is influenced by the rabbinic tendency towards abbreviation and that all of Mark's readers would have mentally inserted the exception clause (*Ibid.*, 133-136, esp. 134).

only scenario in which divorce would be acceptable, according to Paul, is when a believer is married to an unbelieving spouse who does not want to continue the relationship.[36]

Thus, we see that the main concern of both the Gospels and Paul is to establish the proper grounds (if any) for divorce and to help define the legal status of divorced spouses. The later rabbis' overriding interest in defining proper divorce protocol is altogether ignored in the New Testament texts.

7.3.3 Philo and Josephus on Grounds for Divorce

Similar to the Mishnah's stance and in opposition to the New Testament position, Philo and Josephus are disinterested in establishing the permissible grounds for initiating divorce. Neither exhibits familiarity with the debate between the disciples of Hillel and Shammai; they could not have known the version of the debate preserved in the Mishnah, although the possibility exists that they may have known an earlier incarnation of the debate. Yet in addition to acknowledging the debate between these two schools of sages, neither Philo nor Josephus gives any indication that establishing the proper grounds for divorce was a controversial issue for the Jews of his day. Indeed, Philo never inserts himself into the debate over the acceptable grounds for divorce. For example, in his summary of Deut 24:1-4 Philo writes:

> Another commandment is that if a woman *after parting from her husband for any cause whatever* marries another and then again becomes a widow, whether this second husband is alive or dead, she must not return to her first husband but ally herself with any other rather than him, because she has broken with the rules that bound her in the past and cast them into oblivion when she chose new love-ties in preference to the old. (Philo, *Spec. Laws* 3.30 [Colson, LCL]; emphasis mine)

[36] Instone-Brewer, *Divorce and Remarriage*, 197-203.

> ἐὰν δέ, φησίν, ἀνδρὸς ἀπαλλαγεῖσα γυνὴ καθ᾽ ἣν ἂν τύχῃ πρόφασιν ἑτέρῳ γημαμένη πάλιν χηρεύσῃ, ζῶντος ἢ καὶ τετελευτηκότος τοῦ δευτέρου, μὴ ἐπανίτω πρὸς ἄνδρα τὸν πρότερον, ἀλλὰ πᾶσι τοῖς ἄλλοις ἔνσπονδος μᾶλλον ἢ τῷδε γενέσθω, θεσμοὺς παραβᾶσα τοὺς ἀρχαίους, ὧν ἐξελάθετο φίλτρα καινὰ πρὸ τῶν παλαιῶν ἑλομένη.

Similarly, in Josephus' synopsis of Deut 24, his comments are limited to a brief reference to the fact that people divorced for a multiplicity of reasons and a comment suggesting that he viewed divorced as occurring too frequently: πολλαὶ δ᾽ ἂν τοῖς ἀνθρώποις τοιαῦται γίγνοιντο (Josephus, *Ant.* 4.253 [Thackeray, LCL]). Josephus may be articulating his own viewpoint that divorce was too frequently employed and too easily excused by himself and his peers; but neither he nor Philo suggests that the issue of the acceptable grounds for divorce was a contentious one among Jews in Roman Palestine.

The viewpoint of Philo, Josephus, and the Mishnah concerning the grounds for divorce may have been normative: Jews divorced their spouses according to established norms and thus ascertaining just cause for divorce was not a controversial issue. Indeed, the lack of debate about the topic in these three ancient Jewish sources might lead one to believe that the issue was resolved by late Second Temple times.

Despite the fact that Josephus never directly addresses the issue in any theoretical discussion of divorce, the language that he uses to describe his divorces and those of the Herodians suggests that elite Jews rarely levied weighty charges against their spouses to initiate divorce or minimally that they did not view it as important to excuse their divorces by publicly announcing serious charges.[37] In fact, in Josephus' writings, divorce was anything but rare and the causes for divorce were rarely significant. For example,

[37] A divorce motivated by the alliance system, conversely, might be branded as significant,

the wording and tone used to describe Salome's reason for parting from Costobarus highlight the spontaneous nature of her decision to leave her husband. Josephus writes that the impetus behind Salome's divorce was that she had "occasion to quarrel with Costobarus" (Josephus, *Ant.* 15.529-260 [Marcus & Wikgren, LCL]). Similarly, although Josephus' second marriage ended for some sort of cause, the gravity of the charge against his ex-wife is questionable. While Josephus does not specify what grounds drove him to dissolve his marriage, his decision to describe the motivation as being "displeased at her behavior" does not suggest a particularly egregious offense (Josephus, *Life* 426-428 [Thackeray, LCL]). In a similar vein, Josephus describes the reasons for divorce in many of the other cases that appear in his histories. Although it is possible that Josephus may be employing euphemisms or stereotyped formulations to account for his divorces and those of the Herodians, it is telling that Josephus does not identify any serious charges to excuse these divorces.[38] Indeed, given the frequency and ease with which elite Jews turned to divorce, it seems equally probable that Josephus' descriptions accurately depict the relatively inconsequential reasons behind many of the divorces of these elite Jews. In fact, Josephus only identifies serious grounds for dissolving the marriage in one of the nine divorces that he describes. Herod allegedly divorced his wife, the daughter of the high priest Simon ben Boethus, because she sought to incite an insurrection against him (Josephus, *Ant.* 17.77-78).

Because it is not clear what the minimum criteria for divorce was in Herodian times, it is difficult to ascertain whether in divorcing so frequently and with grounds that were so spurious, the Herodians were considered to be in violation of Jewish law. This determination is particularly problematic given the biblical reticence on the proper

[38] Instone-Brewer, *Divorce and Remarriage*, 134-135.

grounds for divorce. What we can say with some certainty, however, is that in divorcing for reasons other than sexual infidelity the Herodians transgressed the New Testament's and the school of Shammai's interpretations of proper divorce grounds, if these interpretations were in circulation in the first centuries B.C.E. and C.E. The Herodians (and Josephus himself), however, could have appealed to the greater freedom provided by the no-fault divorces condoned by other Jews, such as Hillel.

7.3.4 Divorce to Avoid Polygamous Marriage

While the reasons for most of the divorces that Josephus describes were not particularly significant, some marriages broke up under the pretext of some just cause—however contrived. The most common reason to divorce in Josephus' histories was to avoid being in a polygamous marriage. Thus, agreeing with Rabbi Akiva, who contended that the desire to marry another was sufficient to merit divorce, we repeatedly hear of men who divorced their current wives as a precondition for entering into a marriage with a new wife (*m. Git.* 9.10). For example, Herodias stipulated that Herod Antipas had to divorce his current wife, the daughter of Aretas, before she would consent to marry him (Josephus, *Ant.* 18.109-113). Sometimes Josephus does not specify that divorce of one's present spouse was a precondition of remarriage; immediately preceding the information of a man's remarriage, however, there is a notice of his divorce from his current wife. For example, Archelaus divorced his wife Mariamme immediately preceding his marriage to Glaphyra (Josephus, *Ant.* 17.9-11). Likewise, Herod divorced his first wife, Doris, prior to his marriage to the Hasmonean princess Mariamme (Josephus, *War* 1.432).

Although both men and women divorced their current spouses prior to remarriage, the motivation of the two genders to divorce under these circumstances may have differed. The most obvious reason for a woman to seek a divorce was to avoid the charge of adultery. Jewish law, both biblical and rabbinic, is unanimous in prohibiting women from practicing polyandry (Lev 20:10; Deut 22:22; *b. Kid.* 7a).[39] For example, the biblical definition of adultery is lying with a married woman (Deut 22:22). Consequently, any woman behaving as if she were concurrently married to two men would be subject to the charge of adultery and its concomitant punishment, namely death (Lev 20:10; Deut 22:22; Philo, *On Jos.* 44; Ag. Ap. 2.25; *m. Sanh.* 7.2; 6.4; 7.3; John 7:53-8:11).[40] Indeed, Herod executed two family members for adultery. On one occasion, he had his Hasmonean wife executed for suspicions of her adultery (Josephus, *War* 1.486-487; *Ant.* 15.81-87, 218-254).[41] In contrast to the practice among the Herodians, the more likely consequence for a woman's adultery in the first century may have been divorce without repayment of the marriage fee, in accord with the views of the prophetic books and the New Testament (Jer 3:1-20; Ezek 16:35-43; Isa 50:1; Mal 2:14-16; Matt 19:9).[42] By the early third century at the latest, this change was fixed in law. For example, in *Sotah* the rabbis enjoin men married to adulterous women to divorce them (*m. Sotah* 6.1).[43]

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[39] However, the inclusion of clauses in the Elephantine marriage documents prohibiting both polygyny and polyandry may complicate this view (Cowley, *Egyptian Aramaic Documents*, 15).
[40] Instone-Brewer, *Divorce and Remarriage*, 9 and 94.
[41] In the case of Joseph, the accusation of adultery may well have been a trumped one. Indeed, Josephus may have charged Joseph with a crime for which the Bible legislates death as a means to dispose of his opposition.
[42] Instone-Brewer, *Divorce and Remarriage*, 94, esp. ft. 33.
[43] The New Testament position on the necessity of divorce in light of adultery differs from the approach in the Hebrew Bible and the rabbinic corpus. Since most New Testament texts prohibit divorce under any circumstances, adultery is not a permissible ground for divorce. In Matt 19:9, on the other hand, adultery is

Given that polyandry was not an option for Jewish women, it is not surprising that Josephus never specifies that divorce of one's current husband was a term of marriage to a new husband; in Josephus' histories, it was a given that any woman who wished to marry anew would first divorce her current husband. In fact, this is precisely what happens as, invariably, Josephus notes that a woman, or a party supposedly expressing her interests, initiates divorce immediately prior to notice of her marrying anew.[44] For example, Josephus notes that Drusilla, Berenice, Salome, and Herodias all divorced their first husbands prior to describing their remarriages (Josephus, *Ant.* 17.9-11, 18.109-113*; War* 1.432). While women turned to divorce prior to remarriage so as not to find themselves in legal jeopardy, the reasons for men divorcing their current wives prior to remarriage might be different, since polygyny was licit for men according to the Bible, Josephus, and the later rabbinic guidelines (Exod 21:10; Deut 21:15-16; Josephus, *Ant.* 17.9-11, 18.109-113; *b. Yev.* 65a).

As noted in our discussion of polygyny in section 6.9, social norms combined with the goals of the kinship system may have worked together to make the practice of polygyny relatively rare in the late Second Temple era. Indeed, Herod is the only royal Jew known to have practiced polygyny and Judah, Babatha's husband, is the only named practitioner of polygamy among commoners known from post-biblical times through the close of the Mishnah.[45] Therefore, divorce normally preceded remarriage for men as well, likely because many viewed the practice unfavorably. One of the reasons that upper

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given as the only acceptable ground for divorce but even in this passage adultery does not necessitate divorce (Instone-Brewer, *Divorce and Remarriage*, 141-146).

[44] At least twice when the reciprocal scenario is broached, namely a married man seeks to form a union with an unmarried woman, the potential bride (or her representative) tells the man to leave his first wife prior to marrying the new woman (Josephus, *Ant.* 17.9-11; 18.109-113).

[45] Satlow, *Jewish Marriage*, 189-192.

class Jews may have avoided polygyny was monetary.[46] Because of the merger of all the wives' assets that took place upon marriage, the proper return of what rightfully belonged to the bride's family in the event of divorce or death is complicated in the event of polygamous marriage. For example, the Judean Desert papyri describe the protracted legal battles between Babatha and her co-wife Miriam over the proper division of their husband's assets.[47] Polygyny also confused inheritance lines among the father's offspring since all of the husband's offspring, not just the biological children of the woman who brought the dowry to the marriage, would share the dowry's proceeds.[48] Indeed, many of the palace intrigues and dramas precipitated by the uncertainty of the identity of Herod's chief heir. In the case of a monogamous marriage, on the other hand, one could more easily arrive at the amount of money due the divorced wife and her children. Another reason that families preferred their offspring to enter monogamous marriages is that the family could expect more attention and resources to be devoted to maintaining an alliance with a single family, resources that would be in competition if one had multiple alliances to nurture. For example, Herod's divorce of Doris prior to his marriage to the Hasmonean princess pinned the dynasty's future on children conceived with his new wife (Josephus, *War* 1.240-241, 431-432).

On a micro level, the motivations of men and women to seek divorce prior to remarriage may have differed. On a macro level, however, since marriage to another spouse effectively cut off both men and women from marrying anew, one can view both preferences for monogamy as one and the same phenomenon. Moreover, while the avoidance of polygamy or the charge of adultery were real concerns, it is clear that the

[46] *Ibid.,* 204-207.
[47] Porter, "Babatha's Family," 3.
[48] Satlow, *Jewish Marriage,* 204-207.

impetus that set most of these divorces in motion was the weighty role of the alliance system in marital decisions.

7.3.5 Divorce to Further the Goals of the Alliance System

One might better understand divorces instigated to avoid polygamy or the charge of adultery as marriages intent upon furthering the kinship/alliance concerns. Although Josephus only rarely identifies the alliance system as the reason for a particular divorce, given the alliance system's centrality to the establishment of marital relationships, it should come as no surprise that the alliance system informed divorce decisions as well. Indeed, reading between the lines, one can tell that the alliance system and its goals provide the impetus behind most of the divorces in Josephus' histories. For example, marriages with high status-women are never broken up so that men can marry less well-connected women. Marriages which could be considered as lateral moves—marriages with women of comparable status to one's present wife—were sometimes broken up in order to facilitate marriage to a new wife if her familial connections were deemed more beneficial. Most common, however, was divorce of one's current spouse as a precondition of entering into a union with a woman, or more precisely a family, of higher status.

The most famous case of divorce of a lower-ranking woman in order to marry a woman with more developed political connections is Herod's divorce of the commoner Doris before his marriage to the Hasmonean princess Mariamme (Josephus, *War* 1.240-241, 431-432).[49] Herod's marriage to Doris took place before he assumed the throne of Judea. While marriage to a "Jewess of some standing", as Josephus describes Doris, may

[49] Richardson, *King of the Jews*, 122.

have had some appeal to Herod when he was still a commoner, once Herod ascended to the throne he quickly divorced Doris in order to marry Mariamme the Hasmonean (Josephus, *War* 1.241 [Thackeray, LCL]). Similarly, Herod's brother Pheroras was supposed to divorce his slave-girl wife and marry Herod's own daughter instead. Pheroras, however, breached the socially determined order when he failed to follow through with his promise to Herod (Josephus, *Ant.* 16.194-205, 215-216).

Herodias' divorce of her uncle Herod Philip, precipitated by her desire to marry his half-brother Herod Antipas, demonstrates that the desire to seek spouses of higher-status meant that even marriages within the same biological family were not safe from dissolution in the face of forming unions with higher status family members (Josephus, *Ant.* 18.109-115).[50] Indeed, Herodias' first husband, Herod Philip, had been disinherited because of his mother's involvement in a plot against her husband, whereas Herod Antipas was not only royal but was the reigning monarch over both Perea and the Galilee.

The last Herodian example of the significance of the alliance system in determining divorces comes from a story of a threatened divorce. As was mentioned above in section 5.2, the Cappodocian king Archelaus threatened to dissolve his daughter's marriage with Alexander, Herod's son, in a ploy to reconcile the Herodian father and son (Josephus, War 1.508-510; Ant. 16.263-264). There is no hint that the marriage of Alexander with Archelaus' daughter was actually troubled. On the contrary, the marriage was a happy one. Consequently, the threat of the marriage ending weighed heavily on Alexander and his father, Herod. In the end, Archelaus left the marriage intact and returned to Cappodocia after extorting a sizeable amount of money from Herod. That Archelaus' motivation to involve himself in this intra-Herodian conflict was the

[50] *Ibid.*, 44 and 223 and Hanson, "Marriage and Divorce," 149.

alliance system and his fear that Herod's conflict with Alexander might compromise his alliance with Herod is made clear by Archelaus' remarks to Herod. Archelaus describes the motive behind his daughter's marriage to Alexander as his "regard for your [Herod's] exalted rank," (Josephus, *War* 1.501 [Thackeray, LCL]). Moreover, when threatening to end his daughter's marriage with Alexander, Archelaus' foremost concern is that his alliance with Herod not thereby suffer. Hence, Archelaus requests that Herod pair his daughter to another one of the Herodian princes, since "his dearest desire was to maintain the marriage ties which linked him to Herod" (Josephus, *War* 1.508-509 [Thackeray, LCL]).

While not involving a member of the Herodian family, Josephus' retelling of the first and second marriages of Ptolemy Philometer's daughter Cleopatra in the 160's B.C.E. demonstrates that divorce motivated by kinship concern was not limited to Jews or the first centuries B.C.E. and C.E. (Josephus, *Ant.* 13.109-116; 1 Macc 10:51-11.15). As described above in section 5.2, initially Cleopatra was married to Alexander Balas (Josephus, *Ant.* 13.80-82; 1 Macc 10:51-58). Ptolemy engineered this marriage to cement a pact between Alexander and himself against their common rival Demetrius. Over time Ptolemy's appraisal of Alexander and Demetrius changed; in fact, his opinion of the two men was reversed. Instead of favoring Alexander and using his relationship with him to bring about the downfall of Demetrius, Ptolemy decided to form an alliance with his former rival Demetrius against Alexander. Ptolemy formalized this change of attitude by removing his daughter from her marriage to Alexander and marrying her off to Demetrius instead (Josephus, *Ant.* 13.109-111; 1 Macc 11:10-12). Thus, the ending of Cleopatra's

marriage to Alexander was motivated by concerns that Demetrius might be more beneficial to the family's achievement of its alliance goals.

7.3.6 Divorce for Other Reasons

Besides marriages that are ended in order for one party to marry anew, whether motivated by the goals of the alliance system or some other reason, only one of the divorces that Josephus describes has any sort of identifiable cause. Herod divorced his wife, who was the daughter of the high priest, because she was said to be involved in plots against him (Josephus, *Ant.* 17.77-78). However, Herod did not always resort to divorcing wives that he found to be problematic; in one case, he had a wife executed (Josephus, *Ant.* 15.231; *War* 1.444)!

In describing the Herodian divorces, Josephus never attributes any divorce to infertility. Given that neither he nor the royal Jews mention the need to bear children in connection with any Herodian marriage, it is not surprising that no spouse seeks to divorce because of infertility, even though Josephus does stress the link between marriage and the bearing of children in his theoretical discussions of Jewish marriage (Josephus, *Ag. Ap.* 2.199-203; *War* 2.160; *Ant.* 4.259). On the other hand, both Philo and the rabbinic traditions, some of which might even be contemporaneous to Josephus' writings, state that it is incumbent upon a man to divorce his wife should their marriage remain childless after a prescribed length of time (see 5.1; Philo, *Spec. Laws* 3.35; *t. Yev.* 8.5-6; *y. Yev.* 7b, 65b; *b. Ket.* 77a-b).[51]

[51] Instone-Brewer discusses the traditional Jewish understanding of the need to divorce in the event of infertility versus the New Testament's approach to the issue (Instone-Brewer, *Divorce and Remarriage*, 46-47, 91-93, and 170).

It is possible that happenstance explains why none of the divorces Josephus describes broke up due to these serious grounds. Conversely, Josephus may not have known why some of the Herodian unions dissolved; he may have simply opted for discretion and restrained himself from specifying which marriages ended as a result of infertility.[52] For example, he may have simply stated that they found another more attractive partner with whom to wed, rather than defame one of the parties.

The most significant insight derived from the grounds that Josephus offers for his own divorce and the divorces of the Herodians is that there does not appear to have been any social or legislative pressure to remain in marriages that were no longer viable or beneficial to the marriage partners.[53] Indeed, Jews in Roman Palestine regularly turned to divorce without leveling serious charges such as infidelity or infertility against their spouses. Even Jews who behaved in ways that demonstrated their pious orientation appear to have sought divorce without establishing any serious cause. Josephus' unwillingness to criticize the Herodians for their many divorces implies that divorce without serious cause was a socially acceptable practice in Roman Palestine, among both Jews and gentiles and the elite as well as royals.

Having discussed *why* the Herodians divorced, now it is time to turn to the question of *how* the Herodians divorced. In doing so, we return to the emphasis on the protocols of marriage and divorce, about which fewer details are found in the Bible.

[52] Josephus specifies that Herod's marriages to both his niece and cousin did not result in the birth of children (Richardson, *King of the Jews*, 235).
[53] Rodgers, *Roman Empire*, 468.

7.4 Divorce Protocol

As we noted earlier, the Bible says little about divorce, but it does provide some information about divorce protocol. In discussions of other practices, the Bible incidentally broaches issues related to divorce.[54] The most helpful and widely-studied biblical text dealing with the topic of divorce is found in Deut 24:1-4, a legal ruling involving remarriage and its limitations. The text reads as follows:

> Suppose a man enters into marriage with a woman, but she does not please him because he finds something objectionable about her, and so he writes her a certificate of divorce, puts it in her hand, and sends her out of the house; she then leaves his house and goes off to become another man's wife. Then suppose the second man dislikes her, writes her a bill of divorce, puts it in her hand, and sends her out of his house (or the second man who married her dies); her first husband who sent her away, is not permitted to take her again to be his wife after she had been defiled.

Because a law which institutes divorce or even elucidates the practice fully is lacking in the biblical corpus, those concerned with the Bible's attitude on divorce have largely had to resort for guidance to this ruling presented in Deut 24:1-4 for guidance. A number of other legal statements, such as Lev 21:7-14 and Deut 22:29, provide further details of biblical divorce guidelines.[55]

There are two salient features of the divorce described in Deuteronomy 24. First, the man initiates the divorce. Second, the divorcing husband sends his wife a divorce certificate. It is unknown whether the divorce ruling recorded in Deuteronomy 24 accurately reflects normative divorce practice in antiquity or was merely one example of proper divorce protocol. Because Deuteronomy 24 is part of a larger section listing case

[54] Instone-Brewer, *Divorce and Remarriage*, 20-21.
[55] Instone-Brewer, "Deuteronomy 24:1-4," 230.

laws, that is, rulings reached in a single specific case, its divorce guidelines may not have been universal across even biblical era communities.[56] Jews did not understand these laws as case laws as their original context suggests; rather they interpreted them as universal rulings incumbent upon all. Consequently, other passages in the Hebrew Bible, the New Testament, and the rabbinic corpus suggest that these two concepts were considered normative divorce protocol (Isa 50:1; Jer 3:1,8; Matt 19:7-9; Mark 10:2-4; *m. Git.* 9.3; *m. Yev.* 14.1; *m. Kid.* 1.1; *m. Ket.* 4.9; 10:5). For example, Isa 50:1 reads: "Where is your mother's bill of divorce with which I put her away?" Matthew 19:7 records: "Why then did Moses command us to give a certificate of dismissal and to divorce her?" The early third-century rabbinic writings also confirm the formal necessity of these two elements, namely male initiation and the delivery of a divorce writ. *Yevamoth* 14.1 establishes the necessity of male initiation. The mishnah notes: "The man that divorces is not like to the woman that is divorced; for a woman is put away with her consent or without it, but a husband can put away his wife only with his own consent" (*m. Yev.* 14.1 [Danby]). Mishnah *Kiddushin* indicates that a writ is essential to proper divorce protocol: "By three means is the woman acquired and by two means she acquires her freedom. She is acquired by money or by writ or by intercourse…And she acquires her freedom by a bill of divorce or by the death of her husband" (*m. Kid.* 1.1 [Danby]). Josephus' rehearsal of standard divorce protocol also notes as normative these two elements, namely male initiation and the sending of a divorce writ: "He who desires to be divorced from him for whatsoever cause…must certify in writing that he will have no further intercourse with her" (Josephus, *Ant.* 4.253; [Thackeray and Marcus, LCL]; also, 15.259-260).

[56] *Ibid.*, 7 and 20-21.

In contrast to the viewpoint of Matthew, Mark, the rabbinic writings, and *Antiquities* 4, Josephus' descriptions of actual divorces suggest that Jewish divorce was not always so rigidly defined by these two elements—male initiation and the issuance of a divorce writ—as many interpreters, both ancient and modern, would lead one to believe.[57] For example, the wording of Josephus' description of the termination of his first marriage hints that his wife left him without any formal divorce proceedings. Josephus' account of the divorce reads, "[I]t was by his [Vespasian's] command that I married one of the women taken captive at Caesarea, a virgin and a native of that place. She did not, however, remain long with me, for she left me..." (καὶ δὴ κελεύσαντος αὐτοῦ ἠγαγόμην τινὰ παρθένον ἐκ τῶν αἰχμαλωτίδων τῶν κατὰ Καισάρειαν ἁλουσῶν ἐγχώριον οὐ παρέμενεν δ᾽ αὕτη μοι πολὺν χρόνον ἀλλὰ λυθέντος) (Josephus, *Life* 414-416 [Thackeray, LCL]). There are two problems with this "divorce" for those who accept the view that the husband must initiate divorce and a divorce document must change hands for a divorce to be valid; neither of these elements is present in Josephus' description of his first divorce.

Josephus' retelling of the break-up of his second marriage does look more like his remarks on the essential elements of Jewish divorce that he relates in *Antiquities* 4.[58] In Josephus' own words, "After this period I divorced my wife, being displeased with her behavior" (καθ᾽ ὃν δὴ καιρὸν καὶ τὴν γυναῖκα μὴ ἀρεσκόμενος αὐτῆς τοῖς ἤθεσιν ἀπεπεμψάμην) (Josephus, *Life* 426 [Thackeray, LCL]). In this case, the husband—i.e., Josephus—initiates divorce. Josephus' reason for seeking divorce also conforms to what one would expect from Deut 24:1-4, which seems to suggest that no-fault divorce is not

[57] Leander E. Keck, "Divorce," *NIBC* (12 vols.; Nashville: Abingdon, 1998): 2:380.
[58] *Ibid*., 426-428.

an option and that some type of grounds, which would fulfill the requirement to "no longer find favor in one's eyes," is a prerequisite for divorce. What is missing, however, is mention of the divorce document, which many ancient Jewish and early Christian texts represent as being essential (Isa 50:1; Jer 3:1,8; Matt 19:7-9; Mark 10:2-4; *m. Git.* 9.3; *m. Kidd.* 1.1; Josephus, *Ant.* 4.253; 15.259-260).

Josephus' failure to describe each divorce in a way that would definitively mark them as licit is odd, given that on two separate occasions Josephus explicitly states his understanding of proper divorce protocol. Josephus' first review of divorce procedure is in his summary of biblical law, where the historian refers to the necessity of male initiation of divorce proceedings and the exchange of a divorce document (Josephus, *Ant.* 4.253). The second time that Josephus discusses divorce he articulates the essentiality of these two elements more clearly. He notes the requirements of male initiation and the exchange of a divorce writ in discussing the dissolution of the marriage of Salome and Costobarus (Josephus, *Ant.* 15.259-266). If Josephus were in compliance with his own ideas of proper divorce protocol, his failure to mention it is surprising. This is especially so given Josephus' reputation as a self-conscious historian (Josephus, *Ant.* 4.253; 15.259-266).

Moving beyond Josephus' own divorces, not a single one of the Herodian divorces he describes conforms to the protocol that Josephus and the later rabbis identify as proper. Herod's divorces do not accord with most late Second Temple interpretations of divorce law, nor do those to which Glaphyra, Herodias, Pheroras, and Salome are party. This is striking given that none of the Herodians' divorces are in accord with this view of Jewish law, since the Herodians generally married in accord with accepted

Jewish practices. While the study of the Herodian family's marriage practices reveals isolated examples of the Herodians contracting marriages that were prohibited by biblical law, the Herodians largely exhibit a conscious effort to form licit marriages. Nothing about the Herodian family's marriage choices prepares us for the disparity that we see between law and practice in studying the royal Jews' patterns of divorce. If Josephus' descriptions of these divorces reflect real practices, we may conclude that the Herodians' practice of divorce is our first example of the royal Jews as a whole operating in open defiance of Jewish custom.

7.5 Conclusion

In the case of divorce, the Herodian family's behavior appears to differ regularly from the presentation of proper divorce motivations and protocol in the Bible, Josephus' theoretical statements, other Second Temple texts, and the later rabbinic writings. The prophets and rabbis viewed divorce as a last resort after habitual wrongdoing on the part of one of the spouses. Often their presentations of divorce border on the tragic. The Herodians, by contrast, appear to approach divorce lightly and see divorce as a less than extraordinary measure. Nonetheless, because Josephus and Philo (and the rabbis) never state what would or would not qualify as acceptable grounds for divorce, it is difficult to know whether or not the Herodians in divorcing so readily and in leveling grounds that seem so specious, were in violation of first century Jewish practice. Moreover, because Jewish divorce law does not prohibit questionable motives or ideologies, only forbidden actions, it is unclear what first century Jewish law would have to say about what appears

to outside observers as the Herodian family members' quick turn to divorce as a marriage strategy.

In order to understand why Josephus, and the Bible and Mishnah too, according to most readers, are so insistent that Jewish divorce must exhibit male initiation and the exchange of a divorce document, and to see what it means that none of the actual divorces that Josephus describes exhibit these characteristics, it is necessary to turn to a detailed study of Josephus' description of the divorce of Salome and Costobarus—the case that establishes the necessity of these two elements in Josephus' writings.

8. A Legal System for Salome's Divorce

The best-known divorce case from the ancient Jewish world is that of Salome and Costobarus, as described by Josephus:[1]

> Some time afterwards Salome had occasion to quarrel with Costobarus and soon sent him a document dissolving their marriage, which was not in accordance with Jewish law. For it is (only) the man who is permitted by us to do this, and not even a divorced woman may marry again on her own initiative unless her former husband consents. Salome, however, did not choose to follow her country's law but acted on her own authority and repudiated her marriage…(Josephus, *Ant.* 15.259-260 [Marcus and Wikgren, LCL])
>
> Χρόνου δὲ διελθόντος ἐπισυνέβη τὴν Σαλώμην στασιάσαι πρὸς τὸν Κοστόβαρον καὶ πέμπει μὲν εὐθὺς αὐτῷ γραμμάτιον ἀπολυομένη τὸν γάμον οὐ κατὰ τοὺς Ἰουδαίων νόμους ἀνδρὶ μὲν γὰρ ἔξεστιν παρ᾽ ἡμῖν τοῦτο ποιεῖν γυναικὶ δὲ οὐδὲ διαχωρισθείσῃ καθ᾽ αὑτὴν γαμηθῆναι μὴ τοῦ πρότερον ἀνδρὸς ἐφιέντος οὐ μὴν ἡ Σαλώμη τὸν ἐγγενῆ νόμον ἀλλὰ τὸν ἀπ᾽ ἐξουσίας ἑλομένη τήν τε συμβίωσιν προαπηγόρευσεν.

The scholarly world's interest in this divorce rests on Josephus' comments. His remarks conform to the traditional reading of Deut 24 and its interpretation in later writings, in that they allude to both elements that most modern readers think would characterize a Jewish divorce in antiquity: the husband initiates divorce and issues a divorce document to his wife (Isa 50:1; Jer 3:1, 8; Matt 19:7-9; Mark 10:2-4; *m. Git.* 9.3; *m. Yev.* 14.1; *m. Kid.* 1.1; *m. Ket.* 4.9; 10:5). Due to the focus of the secondary literature on this case, many assume that Josephus' critique of the divorce of Salome and Costobarus accurately reflects first-century Jewish practice.[2]

[1] Virtually all studies of Jewish divorce in antiquity cite the case of Salome and Costobarus. The few studies that move beyond discussing Salome and Costobarus tend to cite Josephus' own divorces (Josephus, *Life* 414-416, 426-428). The more general study of the topic of divorce in Josephus is virtually unknown in the secondary literature.

[2] For example, Schremer, "A Reply," 193; Solomon Zeitlin, *The Rise and Fall of the Judaean State* (Philadelphia: Jewish Publication Society, 1967), 32 and Llewelyn, "A Jewish Deed," 88.

However, not all pious first-century Jews agreed with Josephus' appraisal of the divorce. Our criticism of that view is not based on the charge of dishonesty or even source criticism. There is no hint that Josephus fabricated the details of the divorce, and there are no grounds for suggesting that the phrase "for it is (only) the man who is permitted by us to do this" is a later interpolation (Josephus, *Ant.* 15.259-260 [Marcus and Wikgren, LCL]). Rather, our objection is that in singling out Josephus' comments on this particular divorce, the reader is left unaware that Josephus' view of proper divorce procedure in this case is not shared in all, or even a minority, of the rest of his reports of the Herodians' divorces. In fact, it is *only* in connection with Salome and Costobarus' divorce that Josephus notes the elements of male initiation and the exchange of a writ as normative or, for that matter, mentions them at all.

Even though we will argue that Josephus' view of proper divorce protocol was not shared by all his contemporaries, we agree that the divorce of Salome and Costobarus should hold a prominent role in the scholarly discussion of the topic. However, the importance of this divorce does not relate to the fact that it seems to conform to the rule that Jewish divorce requires male initiation and the exchange of a bill of divorce. On the contrary, what is remarkable about this divorce is that *Salome* sent Costobarus a divorce writ and that, despite Josephus' protests that her action was contrary to Jewish law, a successful divorce ensued. Indeed, Josephus does not relate that Salome merely asked or attempted to dissolve the marriage, he records that she *did* end the marriage: καὶ πέμπει μὲν εὐθὺς αὐτῷ γραμμάτιον ἀπολυομένη τὸν γάμον (Ant 15:259). Her success at

severing the marriage is also evidenced by the fact that she had to offer an explanation to her brother Herod of why she did so.[4]

Despite the apparent effectiveness of Salome's divorce, Josephus declares that it was not in accordance with Jewish law. The language that Josephus uses to convey his disapproval of Salome's divorce—"she [Salome] did not choose to follow her country's law but *acted on her own authority*"—may be hyperbolic in nature (Josephus, *Ant.* 15.259-260 [Marcus and Wikgren, LCL]; emphasis mine). Josephus' view that Salome's divorce was based merely on her own authority might be an exaggeration given that both the Roman and Jewish legal systems were keenly interested in establishing matters of personal status. Moreover, Josephus' description of the divorce and Herod's reaction to it also support the efficacy of the divorce.[5] In light of the tension surrounding the legality of Salome's divorce, then, two important questions arise. First, what legal system authorized Salome's divorce? Second, how can we explain the fact that Salome's divorce was not in accord with the traditional understanding of acceptable Jewish divorce protocol yet the Herodian family and Josephus presume its validity?

8.1 Roman Law

Roman law is the obvious starting point of a search for a legal system that would have permitted Salome's divorce, since the two legal systems in place in Roman Palestine

[4] Another possible hint of the acceptability of Salome's divorce derives from the circumstances surrounding her next marriage proposal. Syllaeus' proposed marriage to Salome was rejected because the groom refused to adopt "the customs of the Jews" not because Salome was still technically married to Costobarus (Josephus, *Ant.* 16.255 [Marcus and Wikgren]). Moreover, when Salome finally does remarry Alexas, at Herod's behest, Josephus does not identify the union as polyandrous—a type of relationship proscribed by both Jewish and Roman law (Num 5:11-31; Josephus, *Ant.* 17.9-10). Although *Antiquities* 16.255 identifies Salome as a widow at the time that Syllaeus proposed to her, War 1.485-487 suggests that Salome's first husband Costobarus was still alive when Syllaeus proposed to Salome.

[5] Josephus does not accuse any of the five Herodian women who initiate divorce with polyandry upon their subsequent marriages.

were the Jewish and the Roman ones.[6] While the exact relationship between the two competing legal codes is unclear, some generalizations can be made.[7] As a rule, subjects of the Roman Empire, whether living in Rome itself or in one of its many provinces, followed Roman law. However, the Romans granted exemptions to certain minority groups who had their own historic legal codes and allowed them to follow their ancestral laws instead. As long as the minority groups continued to pay taxes to the Empire, among other obligations, the Romans largely left them alone.[8] As a recognized minority with their own law code, the Jews were one of the groups granted a measure of legal autonomy.[9]

While minority peoples had the right to settle their affairs in accordance with their ancestral traditions, they were not necessarily bound to their traditional legal codes. In fact, members of the various autonomous groups had the right to opt out of their own traditional legal systems in favor of the Roman one, should they so desire. However, how one would opt out of one's native legal code is unclear. It is thus unknown whether one could adopt the Roman or some other approved foreign legal system piecemeal, or one had to adopt one legal code or another in its entirety.[10]

While the details of how these legal systems coexisted are not clear, the existence of multiple legal codes is incontrovertible. What this means for our discussion is that a

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[6] Grubbs, *Women and the Law,* xiii.
[7] Stephen R. Llewelyn, ed., *New Documents Illustrating Early Christianity* (9 vols.; Grand Rapids, Mich.: Eerdmans, 2002), 9:45-53 and B. Cohen, *Jewish and Roman Law*, 23.
[8] Grubbs, *Women and the Law,* xiii.
[9] Matthew 26:47-27:14, Mark 14:43-15:14, Luke 22:47-23:23, John 18:2-40, Acts 22:25, 23:15, 23, 25:3 and Grubbs, *Women and the Law*, 53.
[10] Llewelyn, *New Documents Illustrating*, 9:45-53, esp. 52-53, 97 and Grubbs, *Women in the Law*, 7. The papyri from the Judean Desert may support the former view, namely that one did not have to follow one legal system in its entirety. For example, Judah employs a marriage contract containing the clause that it was established according to the laws of the Jews (Judeans) but shortly thereafter issues a Greek property deed.

person who considered him- or herself to be a member of the Jewish community could appeal to the Roman courts. In the case of women and divorce, the motivation to appeal to Roman law may have been that Roman law allowed women to initiate divorce whereas Jewish law, as described in some readings of Deuteronomy 24, Josephus' writings, and rabbinic literature, prohibited it.[11]

8.1.1 Divorce Protocol in the Roman Context

The Roman divorce law current in late Second Temple period is difficult to pin down, given the two defining features of Roman marital law described above: Roman law changed over time and was not universally applicable, but rather class-specific. Despite these variables, it is nonetheless possible to offer some generalizations about Roman divorce law in the late Second Temple period.

First-century Roman law generally allowed either party to initiate divorce, although at times women were subject to certain disadvantages that did not apply to men (*Institutes of Gaius* I.137; *Digest* 24.2.2 [Gaius]; *Cod. Just.* 8.38.2 [223 C.E.]; *Digest* 24.3.2 [Ulpian]).[12] Indeed, other than cases of infidelity, divorce could proceed without cause or penalty.[13] Thus, while law and tradition may have hindered Jewish women from initiating divorce (Isa 50:1; Jer 3:1, 8; Matt 19:7-9; Mark 10:2-4; *m. Git.* 9.3; *m. Yev.* 14.1; *m. Kid.* 1.1; *m. Ket.* 4.9; 10:5), Roman women had the right of self-determination when it came to their marital status (*Institutes of Gaius* I.137; Plautus, *Miles* 1164).[14]

[11] Hauptman, *Rereading*, 112.
[12] Treggiari, *Roman Marriage*, 441; Instone-Brewer, *Divorce and Remarriage*, 72-74; and Hauptman, *Rereading the Rabbis*, 112.
[13] Hauptman, *Rereading the Rabbis*, 112-114.
[14] Treggiari, *Roman Marriage*, 442-444.

8.1.2 Jewish Women and Gentile Legal Systems

Although Josephus' comments suggest that Jewish law consigned women to the passive role in divorce, he does not depict women as passive in general. On the contrary, he portrays a number of strong female personalities, none of whom is stronger than Salome herself. Her foes appraise her as dangerous, and her allies are intensely loyal, precisely because she is so formidable (Josephus, *War* 1.483). In a number of instances, Salome seeks to steer her own marital decisions as well as those of her family members (Josephus, *Ant.* 16.215-216, 220-228). The most relevant example of her active hand in determining her own marital status is her alleged signing of a contract confirming her consent to marry the Arab ruler Syllaeus (Josephus, *Ant.* 16.220-228). Given Salome's character, it would not be surprising for her to turn to Roman law to rid herself of a no-longer-wanted husband, aware of her limitations under the Jewish legal system.

Salome would not have been alone among Jewish women in antiquity who took such a course of action. There is evidence that Jewish women regularly manipulated the legal systems to which they were subject to their own advantage. For example, the Babatha archive from the Judean Desert includes the archive's namesake's Aramaic legal writ establishing her polygynous union with Judah—a type of marriage prohibited by Roman law (P. Yadin 10).[15] Yet many of Babatha's legal documents were written in Greek and were intended to be adjudicated within the Roman legal system. Indeed, Babatha directly appeals to the Roman governors to solve her disputes with her co-wife and has regular contact with the Roman courts over the guardianship and maintenance of her son, Jesus (P. Yadin 12-15, 26-30). The persistence with which she pursued her legal

[15] Rodgers, *Roman Empire*, 468.

claims in the Roman court system suggests the confidence with which she viewed that legal system, yet her Aramaic deeds, including her marriage writ, show that she did not desist from turning to the Jewish legal system when Roman law prohibited her actions.[16]

In addition to this early second-century evidence suggesting that Jewish women turned to foreign courts, some later rabbinic passages provide explicit proof of this practice. A *Tannaitic* passage from Mishnah *Gittin* alludes to women who use the gentile courts to force their husbands to issue them divorce writs (*m. Git.* 9.8). Talmudic passages, which discuss the issues raised in *m. Gittin* 9.8, are even clearer in this regard. *Baba Batra* states that the rabbis dismissed the legality of a *get* forced by a gentile court precisely because they wanted to discourage women from seeking the assistance of gentile courts (*b. B. Bat.* 48a).[17] A passage from *Gittin* states that Jewish women sought out the gentile court system in adjudicating their divorces because those courts were more favorable to them (*b. Git.* 88b). Since the admission that women turned to foreign courts for their divorces is less than flattering to the rabbinic worldview, these statements likely reflect actual practice. Indeed, Cotton argues that the harsh language in the passages prohibiting Jews from using gentile courts suggests that Jewish women regularly sought them out.[18] Many Jews appealed to Roman law and Salome may have been one of them. Although the rabbinic evidence postdates the Herodian era and we cannot be sure to what extent it accurately describes the late Second Temple era, taken together with the Judean Desert papyri it may establish a pattern of Jewish women appealing to gentile courts.

Returning to our original question as to which legal code sanctioned Salome's divorce, we see that the Roman legal system is a definite possibility. Salome's status as a

[16] Goodman, "Babatha's Story," 171.
[17] See the parallel text in *Gittin* 88b.
[18] Cotton, "The Rabbis and the Documents," 167-179, esp. 170-171.

Roman citizen, combined with Roman law's position that women could initiate divorce, suggest a Roman derivation for her divorce. The references from the Judean Desert Papyri and the Tannaitic writings indicating that some Jewish women appealed to Roman courts (at least within one hundred years of Salome's death) provide further support for this position. While we have made a case for Roman law's sanction of Salome's divorce, we must still explore the status of her divorce under the Jewish legal system.

8.2 Jewish Divorce Law: The Bible and the Mishnah

Josephus claims that Salome's divorce was not licit by the terms of Jewish law. On the surface, his opinion has much to recommend it; his view is rooted in a common Jewish interpretation of biblical law, whereby only men could initiate a divorce. Moreover, the idea of the necessity of male initiation is preserved in a number of other texts from around the turn of the millennium as well (Sir 25:26; Josephus, *Ant.* 4.253; Matt 19:3-9). In particular, the Tannaitic literature is insistent on this matter (*m. Git.* 9.3; *m. Yev.* 14.1; *m. Kid.* 1.1; *m. Ket.* 4.9; 10:5).

In large part, the Mishnah adopts a narrow reading of Deuteronomy 24. That is to say, it understands the one example of divorce protocol presented in Deuteronomy 24 to define proper Jewish divorce procedure in its entirety. For example, at one point the Mishnah stipulates that only a man could initiate divorce and indicates that the divorcing husband must send his wife a divorce document. The exclusive right of the husband to initiate divorce is reflected in the following mishnah: "The man that divorces is not like the woman that is divorced; for a woman is put away with her consent or without it, but a husband can put away his wife only with his own consent" (אינו דומה האיש המגרש לאישה

המתגרשת שהאש ה יוצאה לרצונה ושלא לרצונה והאיש אינו מוציא אלא לרצונו) (*m. Yev.* 14.1 [Danby]). From the opening mishnah of *Kiddushin* we learn that a bill of divorce is necessary. These two elements of divorce do not appear in the Elephantine papyri from the sixth-century B.C.E., but many other Jewish texts from antiquity do reflect the importance of male initiation and the divorce document.[19]

Given the overlaps between the divorce guidelines in the rabbinic corpus and Josephus' writings, most scholars have accepted Josephus' assessment that Salome's divorce was outside of the bounds of Jewish law. For example, Hadas-Lebel contends that Josephus' comments on Salome's divorce represent the standard Jewish legal opinion of his day.[20] Others such as Alfredo Rabello, Daniel Schwartz**,** and David Instone-Brewer also accept Josephus' appraisal of Salome's divorce, often noting that rabbinic law restricts the divorce prerogative to men.[21]

Nonetheless, one complication weakens the argument. The argument starts from later established Jewish law—i.e. the Mishnah—and assumes that Jewish law in Josephus' time was the same as in this later period. Consequently, one concludes that the Bible restricts initiation of divorce to males, even though this is by no means the only possible reading of the texts.[22]

Studying the biblical passages dealing with divorce without assuming *a priori* that Josephus' view of divorce was shared across the ancient Jewish world, one finds hints

[19] Given the relative "completeness" of the Elephantine archive, most scholars believe that the absence of extant divorce documents in the collection means that divorce documents were not in use at Elephantine. Markham Geller and Robert Brody, in contrast, assume the minority position that the Elephantine community *did* use divorce documents; the deeds are simply not extant due to an accident of preservation. Markham J. Geller, "The Elephantine Papyri and Hosea 2,3," *JSJ* 8 (1977): 139-148 and Brody, "Evidence for Divorce," 231.
[20] Hadas-Lebel, *Mixed Marriages,* 397.
[21] Rabello, "Divorce of Jews," 100; D. Schwartz, *Agippa I,* 134; and Instone-Brewer, *Divorce and Remarriage,* 89.
[22] Brody, "Evidence for Divorce," 230.

that biblical divorce law was much more complex than Josephus' comments suggest.[23] For example, Exod 21:10-11 indicates that a woman deserves a divorce if she suffers from physical or emotional neglect at the hands of her husband. Moreover, Deut 22:13-21 implies that a man's right to initiate divorce was not absolute but could be taken from him under some circumstances, for example if he wrongly accused his wife of not being a virgin at the time of their marriage. Viewing these biblical texts together with the divorce guidelines presented in other ancient Near Eastern law codes, both Lipiński and Zakovitch have argued convincingly that women in pre-rabbinic times could demand divorces under certain circumstances.[24] Thus, biblical divorce law is not as simple as a superficial reading of Deut 24:1-4 or Josephus' comments might lead one to believe.

It is worth noting that most of the ancient Israelites' neighbors allowed women to initiate divorce. For example, Hittite Law, the Code of Hammurabi, and the Middle Assyrian laws contain such provisions (Hitt. 26a; Hamm. 142; and MAL 36, 45).[25] In the case of the Middle Assyrian laws, Instone-Brewer finds that the wording of the reasons that a woman could give to seek divorce is nearly identical to the conditions in Exodus 21 (שְׁאֵרָהּ כְּסוּתָהּ וְעֹנָתָהּ לֹא יִגְרָע:).[26] The evidence for divorces initiated by women in the ancient Near East suggests, in turn, that the Israelites would also have made allowances for female initiation.

Even certain statements preserved in the later rabbinic corpus show that women did not always assume a passive role in divorce proceedings. Indeed, women sometimes

[23] Instone-Brewer, *Divorce and Remarriage*, 7, 20-21 and "Deuteronomy 24:1-4," 230 and 233.
[24] Lipiński, "The Wife's Right," 9-27 and Zakovitch, "The Woman's Right," 28-46.
[25] Martha T. Roth, *Law Collections from Mesopotamia and Asia Minor* (WAW 6; ed. Piotr Michalowski; Atlanta: Scholar's Press, 1995), 108, 165-166, 170-171, 220 and Nemat-Nejat, *Daily Life in Ancient Mesopotamia*, 132-138.
[26] Instone-Brewer, *Divorce and Remarriage*, 26 and 28-29.

set divorce proceedings in motion by approaching the rabbinic courts and asking them to assist in compelling their husbands go grant them divorces.[27] If the charges were serious enough, the court would work on the women's behalf. For instance, the Mishnah records that it was the court's duty to compel a man to divorce his wife if he failed to provide her with the necessities outlined in Exod 21, namely food, clothing, and sexual relations (*m. Ket.* 5.6, 6.2-5, 7.2-5; *b. Ket.* 77a; *m. Ned.* 11.12). Similarly, a woman married to a man with a disfiguring condition could go to the court to obtain a divorce, as could a woman married to a man who emitted a displeasing odor related to the practice of his occupation (*m. Ket.* 6.10). The rabbis also compelled divorce at a wife's behest if her husband forbade her to attend feasts and visit houses of mourning or even to eat certain types of food (*m. Ket.* 6.2-3). This limited ability of the wife to initiate divorce in the rabbinic system, namely that she could enjoin the rabbis to compel her husband to divorce her, should not be equated with a man's divorce prerogative. However, these texts do indicate that even the rabbis agreed that a woman might play a somewhat active role in divorce proceedings.

8.2.1 The Ascendancy of the Mishnah

Despite hints that the divorce protocol derived from the narrowest reading of Deut 24 did not define Jewish divorce protocol in its entirety in antiquity, it is certain that over time limiting the divorce prerogative to men and insisting upon the issuance of a divorce

[27] Hauptman, *Rereading*, 114-115.

writ did become normative in accord with the Mishnah's standard view.[28] Consequently, establishing the Jewish identity of both parties to a marriage is generally not sufficient to label a divorce "Jewish" in the secondary literature in the absence of these two elements.[29] For example, discussions of Jewish divorce in antiquity disregard almost every case of divorce described by Josephus. Instead, they cite only the divorce of Salome and Costobarus, precisely because Josephus mentions both the necessity of male initiation and the exchange of a divorce document. Moreover, the persistence with which the secondary literature defines divorce by these two elements demonstrates the influence of rabbinic thought over contemporary views of ancient Jewish practice.[30]

The ascendancy of the Mishnah in late antiquity helps us to understand why a particular, restrictive interpretation of Deuteronomy 24—namely, the necessity of male initiation and the issuance of the divorce writ—gained prominence in the Jewish world.[31] Because we lack much information about the sects that did not survive the revolts of 70 and 135 C.E., we tend to equate Judaism in antiquity with the practices and thought of the rabbinic writings. The problem of evaluating the divorce practices of Jews from the first centuries B.C.E. and C.E. with rabbinic ideas, which became crystallized into authoritative law only gradually, and not until late antiquity at the earliest, should be obvious.

Certainly, most Jews did not consider the Mishnah authoritative at the time of its redaction. We have no evidence about the spread of the Mishnah's ideas and teachings among the lower classes, among whom both literacy and access to documents were rare;

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[28] *Ibid.*, 20-21 and Instone-Brewer, "Deuteronomy 24:1-4," 230.
[29] Satlow argues that because the *ethnos* of individuals was always of preeminent concern in antiquity, any marriage of two Jews would be a Jewish marriage (Satlow, *Jewish Marriage,* 87).
[30] Kunin, *Logic of Incest,* 56.
[31] Stephen Wald, "Mishnah" *EncJud* (2nd ed.) 14:319-331, esp. 320.

and we have only slightly more evidence of the Mishnah's influence among the wealthy and literate. That said, some Jews would have been aware of the Mishnah's contents through oral teachings. However, given that ideas spread slowly and unevenly in pre-modern societies without mass communication, our impulse would be to assume that the Mishnah's influence was initially restricted, even among the elite.

Nonetheless, it is certain that already by Second Temple times many of the marriage and divorce procedures recorded in the later Mishnah were already in practice.[32] For example, many of the Judean Desert marriage and divorce papyri correspond closely to the Mishnah's viewpoint on the subject. Thus, marriage documents from the Judean Desert do not refer to the biblical practice of the giving of מוהר; but rather adopt the postponed marriage fee (קתובה), which the Mishnah attributes to one of their own, namely Shimon ben Shetah (*m. Ket.* 1.2-5; 2.1; 4.2, 7; esp. *t. Ket.* 12.1). Furthermore, nearly every divorce deed from the collection contains the mishnaic provision stipulating that sons were to inherit their fathers' estates, whereas daughters were to be maintained from it (*m. Ket.* 4.11).[33] In particular, the *get* from Masada exhibits a form that closely resembles the rabbis' preferences for the deed (P. Muraba'at 20; *m. Ket.* 4.11). Similarly, the many overlaps between Josephus' viewpoint and the positions of the rabbis, noted above in section 4.4.1, demonstrate the connection between first- and second-century practice and the traditions compiled in the later Mishnah. But notwithstanding the Mishnah's many correspondences with the Judean Desert papyri and Josephus' writings, neither of these sources transmit rabbinic ideas exclusively. On the contrary, side by side with these examples of the close relationship of these texts with later rabbinic views are

[32] Goodman, *Graeco-Roman World*, 43-45.
[33] Satlow, *Jewish Marriage*, 207.

deviations from it thereby demonstrating that the positions recorded in the Mishnah were not yet the exclusive possibilities for licit Jewish practice.

8.2.2 Josephus and Sectarian Law

Let us temporarily set aside the Mishnah as the established code of Jewish law and imagine another possibility. Perhaps Josephus did not represent Jewish law as a whole but only represented *one* version of Jewish law in his day. After all, the Mishnah, with which Josephus' writings often exhibit close correspondence, preserves only the official story of those who would come to define Judaism from late antiquity on, the rabbis.[34] Other Jewish groups may have had their own versions of proper Jewish observance, but these narratives of ancient Judaism have largely been lost. Indeed, while we know of the names of a number of different Jewish subgroups, we know comparatively little of their practices and beliefs.[35]

For example, Tal Ilan, who accepts the traditional view of Josephus as a Pharisee, dismisses the possibility that Josephus' legal views were normative by appealing to his presumed Pharisaic loyalties.[36] That is, Josephus may be stating *a* Jewish position, perhaps a Pharisaic one, when he claims that Jewish law did not allow women to initiate divorce. Making any wider claim, namely that Josephus' views on divorce represent *the* first-century Jewish position on the topic, is premature at best. That Josephus' worldview is influenced by extra-biblical traditions, whether Pharisaic or otherwise, and may not reflect a universal first-century practice, is discussed above in sections 4.3-6.6. Although

[34] Sanders, *Practice and Belief*, 5, 386, 413-415 and Riskin, *Halakhah in Josephus*, 52.
[35] See sections 3-3.1.2.
[36] Ilan, *Integrating Women*, 253-262.

connecting Josephus to the Pharisees or some other first-century sect opens up the possibility that other Jews may have accepted female initiation of divorce, it does not prove that this was the case. Indeed, only explicit confirmation from other late Second Temple texts would prove that not all Jews agreed with Josephus' position on divorce in *Ant.* 4.253 and 15.259-260.

8.2.3 Women Initiating Divorce in Jewish History

As a rule, scholars studying the topic of Jewish divorce in antiquity conclude that the corroborating evidence is weak for viewing divorces initiated by women, like Salome's, as examples of Jewish practice.[37] In fact, according to most students of antiquity, the papyri from the fifth-century B.C.E. Jewish community of Elephantine in Egypt are the only undisputed examples of a Jewish position permitting divorce initiated by women from antiquity.

The sixth-century B.C.E. marriage documents from Elephantine contain clauses that describe a remarkably egalitarian divorce protocol. Indeed, the documents indicate that husband and wife have equal rights and responsibilities, or penalties, in the event that he/she should choose to initiate divorce (P. Cowley 15; P. Kraeling 2). Also unlike later practice, Elephantine divorce protocol did not require the issuance of a divorce writ.[38] For example, the relevant clauses in the marriage contract establishing Miptahiah, a wealthy Jewess' third marriage to Eshor, a gentile Egyptian, reads:[39]

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[37] Brooten, "Konnten Frauen," 65.
[38] Instone-Brewer, *Divorce and Remarriage*, 75-76.
[39] Joseph Modrzejewski, *Jews of Egypt*, 34-35. The inclusion of divorce clause specifying the right of women to initiate divorce may hint that the Elephantine community did not think that women normally retained this right. See Ze'ev W. Falk, *Introduction to Jewish Law of the Second Commonwealth* (AGJU 11; 2 vols.; Leiden: Brill, 1972), 2:310-311.

> Tomorrow o[r] (the) next day, should Miptahiah stand up in an assembly and say: "I hated Eshor my husband," silver of hatred is on her head… And all that she brought in her hand she shall take out, from straw to string, and go away wherever she desires, without suit or without process… Tomorrow or (the) next day, should Eshor stand up in an assembly and say: "I hated my [wif]e Miptahiah," her mohar [will be] lost and all that she brought in her hand she shall take out. (P. Cowley 15 [Porten])[40]

Scholarly consensus is that the Jewish community of Elephantine was distant geographically, culturally, and ideologically from mainstream Judaism.[41] For example, many scholars contend that the strong influence of egalitarian ideals in the Elephantine community made the group anomalous among Jewish communities in antiquity.[42] Consequently, they often question the relevance of the Elephantine papyri to studies of the larger Jewish world in antiquity.[43] As a result, the Elephantine papyri do not figure into discussions of what Jewish practice in antiquity would have looked like beyond the small island of Elephantine itself.[44] While this is not the place for a full discussion of the strengths and weaknesses of maintaining such a position, we should bear in mind three caveats as we consider whether or not we can learn anything about the wider (and later) Jewish world in antiquity from the Elephantine papyri.

First, the Elephantine group is often dismissed as atypical because of a supposition, not an argument or proof. Scholars who expect the community to be proto-rabbinic (or at least in full compliance with biblical law) and untainted by Gentile norms are bothered by the thorough involvement of the Elephantine Jews in the Gentile world, which is evident from their business transactions and personal relationships as well as the

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[40] Bezalel Porten, *The Elephantine Papyri in English* (Leiden, Netherlands: Brill, 1996) and Modrzejewski, *Jews of Egypt*, 34.
[41] Yaron, *Introduction to the Law*, 53 and 127-128; Brody, "Evidence for Divorce," 231, fn. 7; Lipiński, "The Wife's Right to Divorce," 9-27; Jackson, "Introduction," 5; Ilan, *Integrating Women*, 253; and Ilan, "Notes and Observations," 201.
[42] Falk, *Jewish Matrimonial Law*, 120-121 and Ilan, "Notes and Observations," 196.
[43] Jackson, "Introduction," 5.
[44] Yaron, *Law of the Aramaic Papyri*, 53 and Porten, *Archives*, 261.

terms used in their contracts.[45] However, given that outside of the Jewish communities described in the Bible, the Elephantine community is the only Jewish group from their era about which we have substantial information, we simply do not know if the community was typical for its time. Moreover, it is clearly unwise to use later Jewish practice and legal norms as the guide by which one decides whether the practices of a sixth-century B.C.E. community are representative of other communities or not.

Second, there is evidence of ongoing communication between the leaders in Jerusalem and the Jews in Elephantine, as the Jerusalem-based leaders were concerned about the practices of the Jews at Elephantine. For example, the Passover letter sent from Jerusalem to Elephantine, either reminding them of the date and reason for the holiday, changing the date of the holiday, or instituting the holiday's observance on the Egyptian island, shows that the Elephantine community was considered to be within the purview of the larger Jewish community (P. Cowley 21).[46] Similarly, a letter dating to 407 B.C.E. from Elephantine to a member of the Samaritan elite, requesting permission to rebuild the Elephantine temple, refers to earlier correspondence making the same request sent from the Elephantine Jews to the priestly elite in Jerusalem (P. Cowley 30-31).[47] The Jews of Elephantine sought the advice of distant Jewish leaders precisely because they considered their decisions to be authoritative. Likewise, Jewish elders maintained contact with the Elephantine community because they understood that the island dwellers were members of the same larger Jewish family to which they belonged, as the familial language of the letters suggests.[48]

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[45] Bleiberg, *Jewish Life*, 13 and 19-21.
[46] Porten, *Elephantine Papyri in English*, 125-126 and Modrzejewski, *Jews of Egypt*, 39.
[47] *Ibid.*, 139-444.
[48] *Ibid.*, 125-126, for example.

The correspondence between the Elephantine community and the Jewish leaders in Jerusalem is a challenge to those who would label the Elephantine outpost as atypical or isolated and therefore as having developed along radically different lines than a "normative" Jewish community. The exchange of ideas through letters may mean that the Elephantine Jews were not as remote from their Jewish brethren as their geographical distance might suggest.[49] Thus, the Elephantine evidence may contribute towards our understanding of the history of Jewish law; however, the community's distance chronologically from first-century Judea means that it cannot directly explain late Second Temple views.

Third, even if the Elephantine Jews adopted some positions that were in conflict with later rabbinic interpretations or at odds with the Jerusalem elites' ideas of proper Jewish observance, the Jerusalem establishment did not therefore cut off the Elephantine community from the Jewish people. Therefore, one could argue that, even if their tendencies were not popular (something that we do not know), a position adopted by few is no less Jewish than one espoused by many. This is especially so since the history of Jewish law suggests that the Elephantine Jews were not the only group to grant women legal equality in divorce.

Three first-century texts hint that the Elephantine community's sanctioning of female initiation in divorce (as opposed to the ability to appeal to a court to force their husbands to grant them divorces) may not have been unique in Jewish legal history. Philo's summary of the guidelines for remarriage in *Special Laws* reads: "[I]f a woman after parting from her husband (ἐὰν δέ, φησίν, ἀνδρὸς ἀπαλλαγεῖσα γυνὴ) for any

[49] Ilan, "Notes and Observations," 201.

cause whatever and then again becomes a widow, whether this second husband is alive or dead, she must not return to her first husband" (Philo, *Spec. Laws* 3.30 [Colson, LCL]). Thus, Philo apparently describes a woman as actively ending a marriage. What makes Philo's report even more notable is that it does not even mention the possibility that a man might initiate divorce, even though the biblical text that Philo is summarizing only portrays the husband as the active initiator (Deut 24:1, 3).

The Gospel of Mark and 1 Corinthians 7, both of which date to the second half of the first century, likewise assume that Jewish women could initiate divorce. Although both works are addressed to predominantly gentile communities, where a woman's right to initiate divorce was uncontested, their references to female-initiation are set in first century Judea. Mark 10:2-9 describes a relatively lengthy dialogue between Jesus and the Pharisees prompted by a question about the permissibility of divorce. Throughout the passage, Mark depicts a husband's active role in initiating divorce. Immediately following this pericope, however, Jesus presents another teaching on divorce to his disciples alone (Mark 10:10-12). Jesus' statement on divorce in verse 10:12 differs from his remarks on divorce in Mark 10:2-9; this time Jesus refers to a woman's ability to divorce too. Mark depicts the exchange between Jesus and the disciples as follows:

> Then in the house the disciples asked him again about this matter [the permissibility of divorce]. He said to them, "Whoever divorces (ἀπολύσῃ) his wife and marries another commits adultery against her; and *if she divorces* (ἀπολύσασα) her husband and marries another, she commits adultery." (Mark 10:10-12; emphasis mine)

Many scholars discount Mark's view that women could initiate divorce as an example of a Hellenistic, gentile writer inserting a Roman view of divorce into his gospel.[50]

[50] Instone-Brewer, *Divorce and Remarriage*, 151-152 and Joseph Fitzmyer, "The Matthean Divorce Texts and Some New Palestinian Evidence," *ThSt* 37 (1976): 197-226, esp. 205.

However, both the Elephantine community and Philo, who was a near contemporary to the author of Mark, appear to support the position that women could initiate divorce. That said, dismissing Mark's contribution to the history of Jewish divorce practices seems premature, especially since regardless of Mark's background, he pictures a first-century Jewish figure referring to a husband divorcing his wife and the converse in the context of a discussion with the Pharisees.[51]

Likewise, Paul's presentation of divorce in 1 Corinthians 7 may confirm that first-century Jewish women had the right to initiate divorce. Paul twice commands married women to refrain from separating from their husbands (1 Cor 7:10, 13), a declaration that would not make sense if women did not have the right to divorce. Moreover, Paul prioritizes a woman's right to divorce over that of a man.[52] That is, he discusses a woman who separates from her husband before addressing the opposite scenario (1 Cor 7:10). The discussions of divorce in both Matthew and Mark, conversely, assume that the standard model is for the man to take the active role in divorce. Thus, they both present the scenario of a male initiation first and and only second (or even much later) is the deviation from that rule, namely female initiation, presented. Nonetheless, many interpreters disregard 1 Cor 7 in reviewing the history of Jewish divorce law because of the terms that Paul uses to describe the ending of marriage, namely ἀφίημι and χωρίζω instead of the verb ἀπολύω preferred in the Gospels. Moreover, despite Paul's Jewish identity and his membership in the Pharisaic party (Acts 23:6), scholars disregard his

[51] Brooten suggests that Mark 10 may gain further support from Matt 5:32 (Bernadette J. Brooten, "Matt 5:31-32: Divorced Wife," *WIS*, 407-408).
[52] Sheila Briggs, "1 Corinthians 7: Married Women (and Men), Unmarried Women (and Men), and Women (and Men) Married to Unbelievers," *WIS*, 472-473.

statements about female initiation citing the intended audience of his letters—largely gentile—and his desire to make his letters relevant to their life circumstances.[53]

Over three hundred years after Philo, Mark, and Paul, the Jerusalem Talmud from the 400's C.E. provides the next evidence for female initiation of divorce. A statement in the Jerusalem Talmud defends a woman's right to initiate divorce if her marriage contract includes a clause to the effect:

> R. Yoseh said: For those who write [a stipulation in the marriage contract] that if he grow to hate her *or she grow to hate him [a divorce will ensue*, with the prescribed monetary gain or loss, and] it is considered a condition of monetary payment, and such considerations are valid and binding" (*y. Ket*. 30b, [Riskin]; emphasis mine)[54]

The Jerusalem Talmud also states that a woman could obtain a divorce if she wished to move to the land of Israel and her husband did not agree to the move or if, after ten years of marriage, the couple was childless and the wife desired offspring (*y. Ket.* 36b; *Yev.* 7d). However, the Jerusalem Talmud's more liberal understanding of divorce law, is not reproduced in the later Babylonian Talmud.

Because the talmudic material is theoretical and because it is difficult to evaluate the authenticity of statements from rabbinic literature, we will consider the more recent documents from the Cairo Geniza together with the sayings of the Jerusalem Talmud. The documents of the *geniza*, a storage place for discarded writings considered too holy to be thrown out with normal refuse, span many centuries.[55] The oldest document in the *geniza* dates from the early medieval period, 750 C.E., whereas the latest document hails

[53] *Ibid.*, 473; Instone-Brewer, *Divorce and Remarriage*, 197-201; and Fitzmyer, "The Matthean Divorce Texts," 205.
[54] As cited and translated by Riskin (*Women and Jewish Divorce*, 30).
[55] Halberstam, "Genizah," *EncJud* 7:404.

from the fifteenth century C.E.[56] Among the many fragments of biblical and rabbinic texts are some personal documents, including fifty marriage documents. Two of them, dating from the tenth to the thirteenth centuries, contain clauses permitting women to initiate divorce.[57]

The Elephantine papyri provide undisputed evidence that Jewish divorce initiated by women was permissible as early as the sixth-century B.C.E. and the Cairo Geniza documents testify to this same position as late as the early medieval period. In between, we have evidence from Philo, Mark, Paul, and the Jerusalem Talmud. With the exception of the Elephantine and Cairo Geniza materials, few of these references are compelling in and of themselves as proof for female initiation; however, their place within a larger tradition permitting such a protocol enhances their validity. Since there is no chain of tradition linking these disparate testimonies to the permissibility of female divorce, this evidence does not allow us to assert that divorce initiated by women was a licit Jewish alternative in Roman Palestine with any certainty. Josephus' writings, however, may strengthen the case for the lawfulness of female initiation.

8.2.4 Women Initiating Divorce in Josephus' Writings

It is Josephus' histories themselves that force us to pause before dismissing Salome's action as outside the pale of late Second Temple Jewish practice. For example, although Josephus vehemently denies that Jewish women had the right to initiate divorce (Josephus, *Ant.* 4.253; 15.259-260), he gives many examples of women who successfully terminated their marriages. Josephus notes that his first wife, the Caesarean captive,

[56] *Ibid.*, 7:406.
[57] Rishkin, *Women and Jewish Divorce*, 79.

initiated the dissolution of their marriage (λυθέντος) (Josephus, *Life* 414-416). The Herodian princess Berenice deserted (καταλείπει) her husband Polemo, who had converted to Judaism in order to marry her (Josephus, *Ant.* 20.146). Another Herodian, Mariamme, "took leave" (παραιτησαμένη**)** of her husband Archelaus, in order to marry an Alexandrian Jew (Josephus, *Ant.* 20.147). Two other Herodian princesses, Herodias and Drusilla, actively pursued divorce from their husbands.[58] Josephus writes that Herodias "married Herod, her husband's brother by the same father, who was tetrarch of Galilee; to do this she parted from a living husband" (Josephus, *Ant.* 18.130-142 [Feldman, LCL]). Describing Drusilla's divorce, he writes that a magician was engaged to "persuade her [Drusilla] to leave (καταλιποῦσαν) her husband and marry Felix" (Josephus, *Ant.* 20.139-140 [Feldman, LCL]). Thus, for all of Josephus' energy to imply the opposite while describing Salome's case, it was not unusual for elite Jewish women to initiate divorce in Second Temple Judea.

Despite the simplest reading of Josephus' evidence, few scholars consider these cases of female initiation to support a *Jewish* position permitting women to initiate divorce. There are two reasons why the secondary literature overlooks these divorce cases: one relates to the problem of identifying a Jewish divorce in contradistinction to a gentile one, and the other is the language that Josephus uses to describe the dissolution of these marriages.

Identifying a Jewish divorce as such is not without complications. The Bible does not specify its outlines or rituals. Instead, information about divorce is revealed

[58] Struck by the fact that Josephus identifies all three of Agrippa's daughters as having left their husbands—Berenice left Polemo, Drusilla left Azizus to marry Felix, and Mariamme left Julius Archeluas to marry Demetrius (Josephus, *Ant.* 20.142-147)—Ilan thinks that Josephus used divorce to defame Agrippa's family (Ilan, *Jewish Women*, 145). There is, however, no concrete evidence that Josephus invented these divorces.

incidentally in the context of other discussions, thus compromising our ability to identify a Jewish divorce when we see one. Consequently, for those who do not accept the Mishnah's teachings on the subject as definitive for all Jews in all places in antiquity, differentiating a Jewish divorce from a gentile one is problematic.[59] It is likely that many of the divorces recorded by Josephus have been dismissed as gentile ones because they do not conform to the mishnaic model. Moreover, since the Herodian family's divorces mirror first-century Roman practices, they are often dismissed as examples of Roman divorce. Similarly, the New Testament texts that refer to divorces initiated by women are dismissed as examples of Hellenistic influence on the writings of the early Jesus movement (Mark 10:11-12; 1 Cor 7:10).[60]

Evidence that these divorces might have been an outgrowth of a Jewish practice that did not endure, rather than examples of Roman divorces executed by Jewish women, can be gleaned from Josephus' descriptions of the divorces. With the exception of Salome's divorce of Costobarus, Josephus does not condemn the other four Herodian divorces said to be initiated by women. Indeed, he neither defames the women for initiating divorce nor labels the divorces as being in violation of Jewish law.[61] For example, his descriptions of the roles of Berenice and Mariamme in ending their marriages are free of rebuke (Josephus, *Ant.* 20.146-147).[62] Moreover, he does not

[59] Llewelyn, *New Documents*, 96-97.
[60] Instone Brewer, "Jewish Women Divorcing," 356 and Ilan, "Notes and Observations," 196.
[61] Josephus also notes a divorce initiated by a gentile woman in *Antiquities* 18.353-362.
[62] Describing Berenice's divorce, Josephus writes, "After the death of Herod, who had been her uncle and husband, Berenice lived for a long time as a widow. But when a report gained currency that she had a liaison with her brother, she induced Polemo king of Cilicia, to be circumcised and to take her in marriage; for she thought that she would demonstrate in this way that the reports were false. Polemo was prevailed upon chiefly on account of her wealth. The marriage did not, however, last long, for Berenice, out of licentiousness, according to report, deserted Polemo. And he was relieved simultaneously of his marriage, and of further adherence to the Jewish way of life" (Josephus, *Ant.* 20.146-147 [Feldman, LCL]). Following his description of Berenice's divorce, Josephus alludes to the divorce of her sister, Mariamme.

present his own first wife's role in severing their marriage in a way that indicates that it was atypical or problematic (Josephus, *Life* 414-416).[63]

Josephus does, however, level some criticism in connection with two of the cases of Herodian women initiating divorce. He criticizes Herodias, who married her half brother-in-law, for "flouting the way of our fathers" in "parting from a living husband" (Josephus, *Ant.* 18.130-142 [Feldman, LCL]). He also offers a negative assessment of Drusilla's divorce of her first husband prior to marriage to Felix, a Roman. He writes that Drusilla was convinced to leave her husband and was "persuaded to transgress the ancestral laws and marry Felix" (Josephus, *Ant.* 20.142-145 [Feldman, LCL]). In both the cases of Herodias and Drusilla, though, Josephus does not take issue with the divorces themselves, but with other complicating factors. Taking the example of Herodias, who Josephus accuses of "flouting the way of our fathers," we see that Josephus' criticism is directed at her choice of her half brother-in-law as her marriage partner. Thus, Herodias' marriage to a relative prohibited to her according to biblical law bothered Josephus, but not apparently her initiation of divorce. Similarly, while Josephus' remark that Drusilla had transgressed "the ancestral laws" appears in close proximity to his account of Drusilla's divorce, it is directed at the fact that Drusilla's new husband was an unconverted gentile.[64]

Josephus writes: "At the same time Mariamme took leave of Archelaus and married Demetrious, an Alexandrian Jew who stood among the first in birth and wealth" (Josephus, *Ant.* 20.147 [Feldman, LCL]).

[63] The full text describing Josephus' first divorce reads as follows, "Vespasian showed in many ways the honour in which he held me, and it was by his command that I married one of the women taken captive at Caesarea, a virgin and native of that place. She did not, however, remain long with me, for she left me on my obtaining my release and accompanying Vespasian to Alexandria" (Josephus, *Life* 414-416 [Thackeray, LCL]).

[64] Describing Drusilla's divorce, Josephus writes, "Not long afterwards Drusilla's marriage to Azizus was dissolved under the impact of the following circumstances. At the time when Felix was procurator of Judea, he beheld her; and inasmuch as she surpassed all other women in beauty, he conceived a passion for the lady. He sent to her one of his friends…who pretended to be a magician in effort to persuade her to

The other issue that has left some unwilling to accept the possibility of first-century Jewish women initiating divorce is one of language. Josephus employs a range of terms—four in all—to describe the termination of the marital bond. Notably, there is no overlap in the terms that he uses to describe divorces initiated by men and those he uses to describe divorces initiated by women. For example, Josephus uses two terms that connote expulsion to describe divorces initiated by men: ἀποπεμπω, meaning "send away," and,ἐκβάλλω meaning "cast out.". He writes that Herod sent Doris away ἀποπεμψάμενος and ἐκβάλλει (Josephus, *War* 1.432, 590) Doris and cast out Mariamme, the high priest's daughter (Josephus, *Ant.* 17.78). Herod Antipas likewise was required to cast out (ἐκβαλεῖν) the daughter of Aretas (Josephus, *Ant.* 18.110).

Describing marriages ended by women, on the other hand, Josephus uses the terms ἀπολύω and καταλείπω. The former term connotes releasing or dissolving and the latter, leaving. Salome is described as having sent a document (ἀπολυομένη) dissolving her marriage with Costobarus (Josephus, *Ant.* 15.259), whereas both Berenice and Drusilla are noted as having left (καταλείπει) their husbands (Josephus, *Ant.* 20.146).

Noting the discrepancies in the terms used to describe divorces initiated by men versus those initiated by women, some scholars are reticent to label the marriages ended by the actions of Herodian women as true divorces. On the contrary, while Salome's act of dissolving (ἀπολύω) her marriage is widely identified as a divorce in the secondary literature, the actives roles of Berenice, Drusilla, and Herodias in initiating the ending of

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leave her husband and marry Felix. Felix promised to make her supremely happy if she did not disdain him. She being unhappy…was persuaded to transgress the ancestral laws and to marry Felix" (Josephus, *Ant.* 20.142-145 [Feldman, LCL]).

their marriages (καταλείπω) has not been similarly appraised; often they are viewed as having left their husbands, not as having divorced them.

It is problematic to discount these actions as desertion merely because Josephus does not use the same terms as the male ones. This reading assumes that one view preserved in the later Tannaitic material, namely that the divorce prerogative is restricted to men, was universally true for the late Second Temple era. Moreover, it is based on the assumption that the term καταλείπω cannot possibly describe a divorce, since its semantic range is the opposite of ἀποπεμπω and ἐκβάλλω, the terms used to describe male initiation. However, given what we know about normative living arrangements in the ancient Mediterranean, namely that they were patrilocal, the terms used to describe male initiation would not have been appropriate to describe divorces initiated by women.[65] For example, a woman who was displeased with her husband could not therefore expel him from his natal home. On the contrary, her only recourse was to take the opposite, proactive response: she herself could leave. Thus, the term "leaving" may be an appropriate one to describe female initiation of divorce.

The New Testament's descriptions of divorce may bolster this argument about language. Matthew, Mark, Luke, and Paul use three different terms to describe divorce: ἀπολύω, ἀφὶημι and χωρὶζω; only one of which overlaps with Josephus' terms: ἀπολύω. All three terms have a similar semantic range, meaning to divorce, separate, or dismiss.[66] That said, the choice of which term to use often appears to be motivated by a

[65] Hanson, "Marriage and Divorce," 148.
[66] Instone-Brewer, *Divorce and Remarriage*, 140 and 198-199.

stylistic desire to avoid repetition rather than any actual difference in the terms' meaning.[67]

The Gospel writers use the terms ἀπολύω and ἀφίημι to describe the dissolution of marriage, with a notable preference for the term ἀπολύω (Matt 19:3, 7-9; Mark 10:2, 4, 11; Luke 16:18). Overall, the Gospels' discussion of divorce presumes male initiation and ignores the possibility of the reverse action. However, the sole undisputed reference to a woman's ability to divorce in the Gospels, Mark 10:12, also uses the term *apoluo*. Similarly, the term χωρίζω is used to describe actions initiated by both men and women (Mark 10:9; Matt 19:6). Likewise, Paul uses the terms ἀφίημι and χωρίζω indiscriminately. In 1 Cor 7:10-15, he uses the verb χωρίζω in connection with actions of both women and a mixed group of men and women (1 Cor 7:10-11, 15). Furthermore, in 1 Cor 7:12-13 he employs the term ἀφίημι to describe the actions of both sexes. Thus, no one term is used exclusively for males or females in the Gospels.[68]

The New Testament's egalitarian divorce terminology conflicts with Josephus' gender specific terms. This may not necessarily imply that the New Testament authors understood female initiation to be a viable practice, while Josephus did not. On the contrary, whereas Josephus exclusively employs terms that reflect the gender specific actions of the parties to the divorces, namely the wife's expulsion or departure from the husband's natal home, the New Testament authors use less specific divorce terminology. Hence, although Matthew, Mark, and Paul do show some tendency to prefer certain terms for male versus female initiators, they do not restrict their usage of any term to either men

[67] *Ibid.*, 198-199.
[68] Roman sources from the second century C.E. generally use divorce terms defined by gender, although not exclusively so. *Repudiare* is generally used to describe divorces initiated by men, whereas *divortere* is more commonly used in connection with women (Treggiari, *Roman Marriage,* 436-440).

or women, since all the terms are equally applicable to both sexes. Given the above, the different terms that Josephus generally uses to describe divorces initiated by men versus those of women may not necessarily imply that women lacked the divorce prerogative altogether.

Josephus' description of Salome's divorce and the secondary literature on Jewish divorce in antiquity both point towards the exceptional nature of Salome's divorce, but a thorough reading of Josephus' own writings suggests that divorce initiated by women was far from unknown.[69] Indeed, he describes five Herodian divorces initiated by women and only four initiated by men.[70] If we include Josephus' own domestic history then the number of divorces initiated by women rises to six (Josephus, *Life* 414-416). Moreover, the terms that he uses to describe female initiation, especially when compared to the New Testament references, may indicate the permissibility of women's initiating of divorce. That said, it is possible that some interpreters of Jewish law sanctioned this type of divorce. This is especially likely since no woman who remarries after divorcing her first husband is deemed in violation of the prohibition against a married woman entering into an intimate relationship with two men concurrently (Lev 20:10; Deut 22:22; *b. Kid.* 7a; Josephus, *Ant.* 18.130-142, 20.142-147).

8.2.5 Explaining the Herodians' Divorces

[69] Horsley, *New Documents*, 33-36, esp. 34.
[70] Hanson, "Marriage and Divorce," 148.

Scholars generally explain the many Herodian divorces initiated by women as examples of the influence of Roman practice on the royal Jews. Scholars who have adopted this view of the Herodian family's marital practices find the royal Jews to have been exceptional among Jews of their era, at least in this regard.[71] Hanson, among others, thinks that the Herodians relied on the leeway provided by their identification as urban elites to adopt foreign practices that were not common among their non-royal brethren.[72]

Given the limitations of the ancient evidence, we cannot know definitively whether the Herodians' behavior was exceptional or ordinary. Although labeling the Herodians' divorces as gentile in form is an attractive approach, since it confirms the traditional view of Jewish divorce law, there is reason to believe that the Herodians' behavior may not have differed too greatly from that of their non-royal Jewish contemporaries.

First, Josephus, though ever-opinionated, does not criticize any woman other than Salome for initiating a divorce. The lack of criticism, coupled with the fact that women initiators are able to remarry successfully, suggests that Josephus and perhaps Jews more generally did not find this type of divorce unacceptable. A second and even more compelling reason why these divorces might have been within the range of first-century Jewish practice derives from the non-response of the Jewish public to them. No Herodian divorce initiated by a woman is met with public protest or private grumblings according to Josephus' descriptions. This is even more compelling since there was a tradition of protesting actions that the public deemed problematic. For example,

[71] Rabello, "Introduction," 9.
[72] Hanson, "Marriage and Divorce," 150; Jackson, "Introduction," 5; and Rabello, *Divorce of Jews*, 92-95 and 100-101.

Josephus notes the suspicion with which the masses viewed Herod's ascension to the throne, as well as the action that the new king took to quell these feelings, namely marrying into the Hasmonean family (Josephus, *War* 1.241). Herod's subjects also protested the golden eagle he installed over an entranceway to the Temple (Josephus, *Ant.* 17.150-163) and the "idols" used to decorate a theatre (Josephus, *Ant.* 15.272-279), as well as the loyalty oath that Herod wanted all his subjects to swear (Josephus, *Ant.* 15.369-372). With the exception of the incident of the golden eagle, Herod responded favorably to his subjects' protests.[73]

Despite the lack of legal channels through which to challenge the behavior of the rulers, the royals could not act without concern for public opinion. Social controls regularly curbed the will of the royal family and influenced all facets of their public and not-so-private personal lives, including their marital choices. For example, just as we saw that Jewish law and popular opinion tempered the royal family's ruling and choice of marital partners, it seems equally likely that their divorce decisions would have had public reverberations as well.

Nonetheless, one might offer the example of the outcome of the protests following Herodias' marriage to her ex-husband's half-brother in 23 C.E. to explain the absence of the public's reaction to these divorces (Josephus, *Ant.* 18.109-115). John the Baptist disapproved of Herodias' marriage; he considered the marriage to be in violation of the Bible's incest prohibitions (Lev 18; 20; Deut 27:20, 22, 23; Matt 14:3-12; Mark 6:14-29; Luke 3:19-20). In this case, the Herodians did not address the public's anger in a way that pacified them. On the contrary, the protest leader, John the Baptist, was killed

[73] Also, *Ant.* 19.332.

as a result (Matt 14:8-12; Mark 6:16-29). While one might argue that the divorces of Berenice, Drusilla, and Mariamme followed Herodias' unlawful marriage chronologically and therefore the public avoided voicing their disapproval so as to avoid John the Baptist's fate, this argument cannot account for the presentation of female-initiated divorces in Josephus' writings in its entirety. Indeed, the last divorce chronologically, namely Josephus' first wife's divorce of him, is similarly free of rebuke or even any comment suggesting the exceptionality of her action. This is particularly notable since Josephus does not avoid criticizing his second marriage, a union that ended in a divorce initiated by Josephus. On the contrary, he states that he initiated divorce because he was "displeased at her behavior" (Josephus, *Life* 426-428 [Thackeray, LCL]). Moreover, even though the public may have been afraid to voice disapproval of Herodian marital decisions after the events surrounding Herodias' marriage to Herod Antipas, Josephus was not. Josephus' histories are replete with unflattering statements about the Herodians. Thus, even if the public did not react negatively to these divorces, this would not have stopped Josephus from inserting his own private grumblings about their decisions; yet for the most part, he did not.

The third and most significant factor as to why these female-initiated divorces should be seen as an accepted Jewish practice derives from the frequency with which the Herodians divorced in this way. While the Herodians occasionally strayed from proper Jewish behavior, their public actions generally conformed to accepted Jewish practices to ensure that their subjects would support their rule. Indeed, those who understand the Herodians' divorces initiated by women to reflect Roman custom must explain why it is that in this one area the royal Jews fall back on Roman practices, when in general they

exhibit a family structure that was common among Jews, as Hanson argues.[74] Given that the royal Jews' choice of marriage partners (or minimally, the family policy towards selecting marital partners) and patterns of inheritance accord with traditional Jewish teachings, it makes little sense that they would opt to divorce by a protocol not considered lawful by their fellow Jews.[75] Even if the Herodians' own sense of piety did not lead them to divorce by Jewish standards, they may have adopted divorce practices approved by their subjects out of pragmatic concerns. The Herodians' ability to preserve their dynasty for more than a century without any serious internal interference suggests that their subjects accepted their practices to some degree.[76] Thus, despite the difficulty of identifying a Jewish divorce, our best proof that these divorces were within the range of acceptable Jewish behavior comes from the frequency with which the royal Jews divorced in this way. It seems that even if divorce initiated by women was at one time seen as a foreign practice, by the late Second Temple period this type of divorce had become a licit practice for Jewish women.

8.2.6 Support for a Jewish Derivation for Salome's Divorce

Despite the arguments offered above, we have no explicit statement in Josephus' writings or any other source from a Judean Jew confirming the legality of Jewish divorce initiated by women. Indeed, Philo's summary of Deuteronomy 24 is as close as we can get to such a statement (Philo, *Spec. Laws* 3.30). However, Philo's Alexandrian Jewish community may have authorized divorce practices that were not accepted by the Jerusalem-based community. Thus, much of our argument for the legality of Salome's

[74] Hanson, "Economics," 20
[75] *Ibid*., 18-20 and "Marriage and Divorce," 143.
[76] Richardson, *King of the Jews*, 314.

divorce under the Jewish legal system is based on circumstantial evidence; at best, we have made a tendentious case for the legality of divorce initiated by women under Jewish law, compared with its certain permissibility under the Roman legal system. That said, we should bear in mind that the only undisputed statement that divorce initiation was restricted to men is from a third-century C.E. rabbinic source, the Mishnah. Even the evidence from Josephus, which is often presented as corroborating the Mishnah's view, is far from definitive on this account, since he describes six divorces initiated by women and only condemns one of them.

8.3 A Compromise Position: Cooperative Legal Systems

Our inquiry has failed to provide a decisive answer to our question of whether Salome's divorce was sanctioned by Roman or Jewish law. While the argument that Roman law authorized Salome's divorce has merits, it does not explain why Josephus describes six divorces initiated by women but only labels one as being in violation of Jewish law. The view that these divorces were sanctioned by Jewish law is likewise problematic because we cannot definitively show that divorce initiated by women was authorized in first-century Jewish sources. Given the above, an alternative to classifying the legality of divorce initiated by women as *either* Roman *or* Jewish may be necessary. This position has to account for both the strengths and weaknesses of attributing the legality of these divorces to either of the legal systems. A number of references in the New Testament and Mishnah hint at such a position.

The Mishnah periodically refers to the legal tools and customs of gentiles. It is not surprising that the rabbis have extensive knowledge of gentile legal practices since

they lived, socialized, and conducted business among gentiles (*m. Git.* 5.9). In fact, Jews were so engaged in the gentile world that they even adopted a number of distinctly gentile legal customs for their own court system. For example, Mishnah *Gittin* discusses the acceptability by Jewish law of a divorce document that has features in common with gentile legal documents.[77] More specifically, it discusses whether a divorce writ dated in accordance with gentile custom—i.e. according to the dates of the rule of a gentile king—is valid (*m. Git.* 8.5). Both the Mishnah and Talmud are reluctant to declare foreign dating formulas unacceptable by Jewish law. Instead, they permit the adoption of foreign dating formulas out of a desire to promote peace with their gentile neighbors and overlords (*m. Git.* 1.5, 8.5).[78] If many accepted the rabbis' position that promoting peace with gentiles took priority over maintaining a strict separation from them, it is possible that many cases adjudicated in the Jewish court system would have involved gentile legal formulae.

Rabbinic writings also indicate that the Jewish legal system sometimes functioned with the support of gentile courts. For example, a gentile court could beat a Jew in order to force him to submit to the will of the Jewish courts (*m. Git.* 9.8). Here one observes the cooperation of the legal systems. Although some might dispute the authenticity of this statement, it is unlikely that a claim like this would have been preserved if gentile courts did not have some concern for the outcome of Jewish legal disputes. In fact, circumstantial evidence from the Gospels and Acts demonstrates that the two legal systems sometimes functioned as complementary rather than competing institutions, since both the Roman governors of Judea and the local Jewish court officials were

[77] Ilan, *Jewish Women*, 94.
[78] Rabello, "Divorce of Jews," 93-99.

involved in various aspects of the arrests and trials of Jesus and Paul (Matt 26:47-27:14; Mark 14:43-15:14; Luke 22:47-23:23; John 18:2-40; Acts 21:27-28:31).

In the case of Paul, he was initially detained by a Jewish mob (Acts 21:27-28). Shortly thereafter, he was turned over to Roman soldiers (Acts 21:31-33), who brought him before a Jewish court (the Sanhedrin) to determine the charges against him (Acts 22:30; 23:28). The court interrogated Paul and declared him innocent (Acts 23:1-10, 29) and then returned him to his Roman captors (Acts 23:10). The next day, Jews conspiring against Paul approached the leaders of the Sanhedrin requesting that they make up some pretext to force the Romans to return Paul to their court (Acts 23:15), an action that did not come to pass (Acts 23:17-35). Instead, the Roman governors transferred Paul to Caesarea. Shortly thereafter, the high priest and other Jewish leaders went to Caesarea to state their case against Paul (Acts 24:1-9). The Roman court did not issue a verdict and Paul languished in prison for two years (Acts 24:22-25:2). Finally, upon the appointment of a new Roman governor, Paul's case was reconsidered. The governor began his investigation into Paul's case by making a trip to Jerusalem to hear the charges that the Jewish leaders levied against Paul (Acts 25:1-3). Less than two weeks later, a new trial for Paul was opened, once again with the Jewish leaders in attendance (Acts 25:7). The governor then asked Paul if he would like to be turned over to the Jewish courts to stand trial; Paul responded to this query by asserting his clear preference to remain in the Roman court system and simultaneously declared his desire to appeal to the emperor (Acts 25:9-10). Even then Paul's case was not resolved, since the Roman governor recruited Agrippa II to hear the charges against Paul once again (Acts 25:13-26:32). Agrippa II agreed with the verdict that the Sanhedrin announced earlier, namely Paul was

innocent; nonetheless Paul was transferred to Rome to stand trial since he had appealed to the emperor for assistance, a privilege of his Roman citizenship (Acts 27:1; 28:16).

In addition to exhibiting the slow speed of justice and the complexity of arriving at verdicts when multiple legal codes share jurisdiction, Paul's case also demonstrates the extent to which the Jewish and Roman court systems interfaced. In this situation, the Roman court was unable to function without the assistance of the Jewish court and vice versa. Indeed, both court systems worked together to establish the charges against Paul and determine the case's outcome. Another important detail that reveals the integration of the two court systems is that the Jewish leaders had the active ability to call a Jewish person detained in a Roman prison to stand before them; they did not have to wait until the Romans decided it would be wise for the Jews to interrogate the accused (Acts 23:15). While the interfacing of the Jewish and Roman court systems in the arrest and trial of Jesus are not quite as convoluted as the story of Paul in Acts, Jesus' case provides further evidence of the cooperation of the legal systems.

The New Testament stories of the arrests and trials of Paul and Jesus combined with the rabbinic sayings reviewed above indicating that the Jewish and Roman courts cooperated in arriving at verdicts and were interested in enforcing each other's decisions (*m. Git.* 9.8) show the extent to which the dual legal systems often functioned as one organ. The most striking statement yet as to the symbiosis of the Roman and Jewish legal systems is found in one of the opening mishnahs in *Gittin*: "All documents entered in the records-offices of non-Jews even if their signatories be non-Jews, are valid, except

letters of divorce and writs of manumission of bondmen. R. Simon says, even these latter are licit" (*m. Git.* 1.5 [Danby]).[79]

Given this evidence for cooperation between the legal systems, characterizing the practice of divorce initiated by women as *either* Jewish *or* Roman is fundamentally flawed. The existence of conversation between the legal systems suggests that they functioned in a symbiotic relationship to one another, a view which may help explain why Josephus only criticizes one of the six divorces initiated by women that he describes. Given the symbiosis of Roman and Jewish law, perhaps it was not always entirely clear where the jurisdiction of one legal system began and the other ended. Indeed, both the trials of Jesus and Paul demonstrate how convoluted issues of jurisdiction could be. Thus, the absence of clear boundaries demarcating Jewish practices from Roman ones made it possible for women to initiate divorce without violating Jewish law, even if this type of divorce technically achieved its legality through Roman law, or at least originated from an idea in a gentile legal code. In fact, the widespread acceptance of this type of divorce by the personalities in Josephus' writings (as well as in Philo, the Gospels, and 1 Corinthians 7) suggests that, over time, it became a *de facto* Jewish practice. This is especially so since no biblical law specifically prevents women from initiating divorce.

Viewing the legal basis of divorce initiated by women as the result of an unspoken balance between the statutes of Roman law and the norms of Roman-inspired Jewish society accounts for the fact that Jewish women regularly initiated divorce even though no Jewish law specifically sanctions such behavior. Such a law was not needed,

[79] The anonymous redactor of the Mishnah rejects R. Simon's opinion. Also, see *m. Git.* 9.8.

evidently, since the option of initiating divorce was already available to Jewish women.[80] Understanding the legal basis for divorce initiated by women as a result of the influence of Roman legal and cultural norms combined with the unarticulated complicity of Jewish legalists, may best account for Josephus' representation of female-initiated divorces.

8.4 Salome's Misstep

Further proof of the legality of divorce initiated by women comes from the most unlikely of places—Josephus' sharp condemnation of Salome's divorce as being in violation of Jewish law. Having seen that Jewish women initiated divorce in antiquity, one wonders whether the problem with Salome's divorce was not the initiation of the divorce itself but rather some other complicating factor. If we examine the case more closely, we discover that Salome's divorce was indeed unique because she was the only woman in Josephus' histories who dared to mark the end of her marriage by sending a divorce document to her former husband (Josephus, *Ant.* 15.259-260).

The phrasing of Josephus' criticism strengthens the case for viewing Salome's issuance of the divorce writ as the specific action that resulted in his attack. One notes that immediately after relating that Salome "sent him [Costobarus] a document dissolving their marriage" Josephus adds "which was not in accordance with Jewish law" (Josephus, *Ant.* 15.259-260 [Marcus and Wikgren, LCL]). He then criticizes Salome's action: "For it is only the man who is permitted by us to do this…Salome, however, did not choose to follow her country's laws but acted on her own authority" (Josephus, *Ant.* 15.259-260

[80] Hauptman makes a similar argument. She connects Jewish court-ordered divorces to the pressures imposed by Roman society. She suggests that the references to divorces forced by the court might be the rabbis' response to Jewish women demanding the right to divorce that their Gentile counterparts held under the terms of Roman law (Hauptman, *Rereading,* 114-115).

[Marcus and Wikgren, LCL]). Only one act is described in this passage: Salome's issuance of the divorce document (καὶ πέμπει μὲν εὐθὺς αὐτῷ γραμμάτιον ἀπολυομένη τὸν γάμον); the rest of the paragraph is a critique of that action. Indeed, the statement that Salome sent a divorce writ is immediately followed by a relative clause, which comments that this action was in violation of Jewish law (οὐ κατὰ τοὺς Ἰουδαίων νόμους). Therefore, the phrase that has been traditionally read as proof that Jewish women did not have the right to initiate divorce in antiquity, "for it is (only) the man who is permitted by us to do this" (*andri men gar ezesti par ēmin touto poiein*), comments on Salome's issuance of the divorce document not on her ability in initiate divorce more generally (Josephus, *Ant.* 15.259-260 [Marcus and Wikgren, LCL]).

One benefit of this approach to Salome's divorce is that it allows Josephus to be internally consistent. His appraisal of Salome's divorce is not an exception to his normal approach of not protesting divorces initiated by women. As elsewhere, he does not deny Salome the right to divorce, he only objects to her *issuance* of the divorce writ, these being two separate actions.[81] In order to ascertain why Josephus considered her issuance of the divorce document to be problematic, one must first learn a little about the divorce writ itself.

8.4.1 The "Get": History and Form

Ancient Jewish sources show considerable interest in the *get* or divorce deed. Indeed, the persistence with which divorce documents are referred to in Second Temple texts demonstrates this (Josephus, *Ant.* 4.253; 15.259-260; Mark 10:3-5; Matt 5:31; 19:7-

[81] This view also has the benefit of agreeing with views of Jewish divorce expressed by Philo, Mark, and possibly the contested divorce writ from Nahal Hever.

8; poss. 1 Cor 7:39), as does the amount of attention that the Mishnah devotes to elaborating its form and delivery protocol.[82] Some of the interest in the divorce document might also relate to the writ's uniqueness. With the exception of the Tablet of Widowhood from the Middle Assyrian laws, no ancient legal document closely parallels the function of the *get.*[83] However, the Talmud's efforts to bar those not expert in the details of divorce writs from drafting them, combined with the rabbis prohibition against remarriage for women who do not have divorce writs, suggests that the deed's uniqueness alone does not account for all the interest in the document.

Although the document is clearly vital, there is a problem with determining its actual nature. Indeed, there are few biblical references to the deed. Deuteronomy 24 preserves two passing references to it. Verses 1 and 3 in Dueteronomy 24 allude to a writ of "cutting off/denial" (ספר כריתות), translated below as a "certificate of divorce."

> It a man enters into marriage with a woman, but she does not please him because he finds something objectionable about her, then he writes her a *certificate of divorce,* puts it in her hand, and sends her out of the house; she then leaves his house and becomes the wife of another. Then if the second man dislikes her, writes her a *certificate of divorce,* puts it in her hand, and sends her out of his house (or the second man who married her dies); her first husband who sent her away, is not permitted to take her again to be his wife since she is defiled to him. (Deut 24:1-4; emphasis and translation mine)

[82] In 1 Corinthians 7, Paul may also refer to the text of the divorce deed. The verse in question reads: "she is free to marry whichever man she wishes, (but) only in the Lord." One notes that the statement closely mirrors the phrase that the rabbis identify as the heart of the get, namely the clause permitting the wife to remarry. However, this verse refers to a widowed woman not a divorcee (Instone-Brewer, *Divorce and Remarriage,* 122).). Philo, in contrast, does not mention a divorce writ at all (Philo, *Spec. Laws* 3.30).
[83] The parallel is not exact, since rabbinic sources presume that all divorced Jewish women (and officially abandoned ones) would receive a *get,* while the Tablet of Widowhood was not universal. Only the wives of men missing in time of war received the tablets attesting to their legal widowhood and consequent right to remarry (Instone-Brewer, "Deuteronomy 24:1-4," 241-243).

This passage neither reveals the content of the document nor clarifies its role. Mishnah *Gittin* takes up where the biblical text leaves off.[84] The Mishnah declares that:

> A woman is acquired by three ways and acquires her freedom by two ways. She is acquired by means of money, a contract, or cohabitation, and acquires her freedom by a writ of divorce or the death of her husband. (*m. Kidd.* 1.1 [Danby])

Moreover, the Mishnah identifies the essential clause of the writ at various points as "you are free to marry any man" and "let this be from me your writ of divorce and document of dismissal and deed of liberation, that you can marry any man you desire" (*m. Git.* 9.3 [Danby]). Elsewhere, the Mishnah states that if a woman lacks a *ketubah,* without specifying whether the writ was lost or never issued in the first place, then popular public opinion about her marital status is presumed true (*m. Git.* 9.9). Both of these mishanic texts, in turn, agree with Josephus that the writ documents a woman's ability to remarry lawfully (Josephus, *Ant.* 4.253; see section 4.4.2).[85]

In addition to specifying the contents of the divorce writ and clarifying its purpose, at least by inference, the Mishnah is concerned with determining if divorce writs exhibiting non-standard forms or delivery methods are licit. One of the variations discussed in the Mishnah is relevant to the divorce of Salome and Costobarus. In discussing the validity of a divorce deed written by someone other than the divorcing husband, the Mishnah allows that "all are qualified to write out a letter of divorce, even a deaf mute, a mentally defective person, or a minor" (*m. Git.* 2.5 [Danby]). The addition of this stipulation implies that the Mishnah seeks to widen the category of those permitted

[84] The term for the divorce document in the Hebrew Bible, ספר כריתות, does not become the term of choice in the post-biblical era. The fact that a general Aramaic term for a document, *get*, becomes the standard term by which to identify the writ may simply be a result of shifts of language patterns over time. On the other hand, the term *get* may have gained popularity because the form and function of the divorce document may have changed so significantly that the former term, ספר כריתו, might not have seemed appropriate any longer.

[85] Instone-Brewer, "Deuteronomy 24:1-4," 238-243.

to send a divorce document. However, the Mishnah then introduces a caveat limiting the earlier statement: "A woman may write out her writ of divorce and a man may write out his quittance, because the validness of a letter is established by its signatories" (*m. Git.* 2.5 [Danby]). That is, while deaf mutes, minors, and women can serve as scribes for divorce deeds, the ability to divorce by sending these deeds is restricted to men.

8.4.2 Taking Josephus' Rebuke Seriously

Returning to Josephus' criticism of Salome's divorce, one can see how the language he uses to describe Salome's divorce further supports the hypothesis that his criticism of the divorce was limited to her act of issuing the divorce writ. The simplest reading of Deuteronomy 24, which twice specifies that the divorcing husband is to issue a divorce writ, suggests that Salome would have lacked the authority to issue this document. Moreover, since Josephus asserts that the purpose of a marriage deed is to provide testimony to the right of a once-married woman to remarry licitly, Salome's act of sending a divorce writ to her husband does not accord with Josephus' understanding of the writ's purpose, namely witnessing her ability to remarry. Moreover, Josephus' condemnation of Salome's action also agrees with the later Mishnah's viewpoint that a woman cannot send a divorce document, primarily because a person is not allowed to testify on his/her own behalf (*m. Git.* 2.5; *m. Ket.* 2.1-10).

Josephus' interpretation of Deuteronomy 24 derives from a literal reading of the Bible, a type of interpretation that is often favored by the rabbis. Because of the rabbis' careful readings of the Bible, their critics often characterize them as overly strict interpreters of biblical law. It would be more accurate to think of them as precise readers

of the text. At times, their rigorous textual approach results in strict interpretations of the biblical text. Other times, however, the most precise reading of the biblical text results in a more liberal view. For example, the early rabbinic commentary on Ruth displays this tendency. For example, the Bible proscribes marriage with the Moabite people, among other groups (Deut 23:3). Nonetheless, the book of Ruth describes three marriages between Israelite men and Moabite woman, including the marriage of Ruth and Boaz (Ruth 1.1-5; 4.13). Since the biblical text presumes the validity of at least the marriage of Ruth and Boaz, given that the future messiah will stem from the union's descendants (Ruth 4:22), the rabbis needed to explain this breach of biblical law without defaming the marriage itself. Resorting to grammatical technicalities, the rabbis were able to allow the biblical prohibition against marriage to Moabites to stand, while deeming Ruth and Boaz's marriage licit. Thus, instead of reading the prohibition against marriage with the Moabites as a universal statement, the Pharisees capitalized on the fact that Hebrew is a gendered language (*m. Yev.* 8.3). Since the word "Moabites" appears in Deuteronomy 23 in its masculine plural version (מואבים), the rabbis adopted a narrow understanding of the term, namely, that the prohibition referred to Moabite men. Moabite women, on the other hand, could contract licit marriages with Israelite men (*m. Yev*. 8.3; *Ruth Rab.* 4.1). Naturally, the original intention of the prohibition against marriage into the Moabite nation was likely absolute, not gender specific; nonetheless, a literal reading of the text allowed for a more liberal interpretation of the prohibition to stand.

Josephus similarly chooses to understand the divorce protocol hinted at in Deuteronomy 24 in its narrowest sense, restricting to men *only* the right to send a divorce document. It is thus possible that, short of initiating a type of divorce that necessitated

the sending a *get*, women were allowed to initiate divorce proceedings. For example, Brooten stresses the fact that the divorce protocol revealed in Deuteronomy 24's review of prohibitions on remarriage is a case law; thus it does not describe biblical divorce practices in their entirety.[86] Consequently, Brooten argues that Deuteronomy 24 represents one particular form of divorce protocol—when the wife lived with the groom's family. In that case, the divorced wife needed documentation as to her ability to remarry when she returned to her natal home.[87] While Brooten's argument is based on her understanding of case law and not of any late Second Temple texts, there is one text that might support her view, namely Josephus' summary of Deuteronomy 24 in *Antiquities* 4. As discussed above, Josephus' summary does not stick to a literal review of Deuteronomy 24. His first extra-biblical insertion into his summary reads:

> He who desires to be divorced from the wife who *is living with him* (συνοικούσης) for whatsoever cause...must certify in writing that he will have no further intercourse with her; for thus will the woman obtain the right to consort with another…(Josephus, *Ant.* 4.253 [Thackeray, LCL])

The biblical text from which Josephus' summary derives, conversely, does not contain this stipulation about the wife living in the husband's home. Instead, it only refers to a man who is married without noting their place of residence: "Suppose a man enters into marriage with a woman, but she does not please him…he writes her a certificate of divorce…and puts it in her hand and sends her out of his house (ושלחה מביתו)."[88] Thus, Josephus' own interpretation of the biblical text may prove that some late Second Temple Jews understood Deut 24's insistence on male initiation and the

[86] Brooten, "Konnten Frauen," 68.
[87] *Ibid.*, 68-69.
[88] Translation mine.

husband's issuance of a divorce deed to describe one particular version of a proper divorce protocol—not divorce procedure in its entirety.

While Salome may have had the authority to divorce her husband, divorce with a *get* was a protocol of divorce that had to originate with a man. Moreover, although the *get* later became synonymous with Jewish divorce, Brooten and a literal reading of the biblical text may suggest that a divorce document was not a necessary aspect of divorce protocol in Roman Palestine. Even though Josephus never explicitly states that Jewish law allowed women to initiate divorce, it is nonetheless a plausible reading of his views on the subject, especially given the persistence with which other first century texts refer to female initiation of divorce (Mark 10:10-12; 1 Cor 7:10-16; Philo, *Spec. Laws* 3.30).

8.5 Conclusion

The benefit of accepting Josephus' position, which only prohibits women from sending divorce writs, is that it upholds the biblical law of Deuteronomy 24 in its narrowest sense, while not denying women the right to divorce outright. A further advantage of this interpretation is that it provides a coherent reading of Josephus' views on divorce, while affirming his and the Herodians' general faithfulness to the Torah. Thus, we have shown that by removing the overlay of rabbinic interpretation that has determined our views of proper Jewish divorce protocol in antiquity, we uncover yet another example of the diversity of Judaism in Roman Palestine in the Herodians' divorce practices.

9. Diversity in Late Second Temple Judaism and the Herodians

9.1 The Marital Practices of the Herodians and Jewish Law

The Herodians were not exemplary Jews. They were greedy, opportunistic, vindictive, murderous, and deceitful. Moreover, in many respects they were more at home in the Roman world than the Jewish one. The royal family sent their children to Rome to be educated, and they socialized with the Roman elite. They sponsored the building of Hellenistic institutions, such as theaters, gymnasia, amphitheaters, and hippodromes, and often participated in viewing the spectacles presented therein. The most prominent Herodian, Herod, was even the benefactor for a pagan temple and, on at least one occasion, was at the emperor's side when he offered up pagan sacrifices. Despite questionable morals and a strong connection to the Roman way of life, when it came time to marry and divorce the Herodians largely followed established Jewish guidelines.

What does it mean that the Herodians largely upheld Jewish marital guidelines? At the beginning of this study, I posed the question: How do we know a Jewish marriage when we see one? Throughout this dissertation, I have argued that late Second Temple Judaism was highly diverse and that acceptable practices were in a sense a moving target. That is, practices acceptable to one subset of Jews were not necessarily approved of by their contemporaries. On the contrary, many practices were specific to certain subgroups or sects within the ancient Jewish world.

Given the diversity of late Second Temple Judaism, a universal statement on lawful marital practices is wanting. For example, some late Second Temple texts indicate that the signing of a marriage writ was essential to the validity of marriage. Other texts from the era, do not mention the existence of such a writ whatsoever. Moreover, some

texts suggest that some ritual of marriage was *de rigueur*, while the majority do not mention any rituals at all. That said, our definition of a licit Jewish marriage (or divorce) is limited: if a Jew marries (or divorces) and his or her marriage does not violate the narrowest reading of the biblical marital laws, such as the prohibition against union with close kin or Gentiles from certain ethnic groups, then the marriage can be labeled Jewish.

Returning to the example of the Herodian family, we repeatedly observe that even though the Herodians had a strong interest in developing their positions in the alliance/kinship system, Jewish custom and law nearly always trumped these concerns. Indeed, one notes that only one of the Herodians' forty-nine marriages, Drusilla's marriage to a gentile who did not convert, is in clear violation of biblical law. Most of the time the Herodians rejected desirable marriages to unconverted Gentiles, since these unions contravened Jewish law, even when these marriages would have bolstered the family's stature. Similarly, although the Herodians frequently considered marriages within the family itself to be ideal, rarely do their many intra-family marriages violate Jewish law. On the contrary, family policy was to avoid incestuous marriages in agreement with biblical ordinances prohibiting these types of unions.

While the Herodians' marital choices generally accorded with accepted Jewish practice, Josephus periodically notes that their marriages and divorces defied Jewish law. For example, he condemns the marriages of two Herodian princes to their half-brothers' former wives as being in violation of Jewish law. Similarly, he criticizes a Herodian princess for sending her husband a divorce writ, an action he understands as being outside of the bounds of accepted Jewish practice. That said, it is important to note that none of Josephus' appraisals of the Herodians' behavior can be accepted uncritically. On

the contrary, when Josephus deems one of the family's actions as being in violation of the "ancestral law," it is important to go back and establish the most literal reading of the biblical text on any given issue. Having done so, one can begin to imagine how other late Second Temple Jews, whose interpretations are not extant, might have viewed the Herodians' decisions.

If one separates out the rabbinic extra-biblical teachings from the more narrow biblical laws described in Josephus' histories, one notes that while the Herodians display little interest in upholding rabbinic stringencies, their commitment to biblical law is firm. For example, the Herodians regularly paired uncles and nieces in marriage in opposition to the rabbinic (and Qumran) position, although notably not in violation of the biblical stance on these marriages. They also circumvented the late Second Temple view of the biblical prohibition against marriage to gentiles by insisting upon the conversion of their gentile marriage partners. Moreover, although Josephus condemns the two marriages to wives of half-brothers, we have shown that the Herodians may have considered these unions acceptable, relying on the lack of a biblical prohibition on marriage to a half-brother's wife in contrast to the clear biblical prohibition against union with relatives of a half-sister. Thus, even if standard Second Temple interpretation forbade this type of union, a literal reading of the biblical text itself allows it.

Adopting a similar literal reading of Deuteronomy 24, one can likewise explain the Herodians' practice of divorce initiated by women. Biblical guidelines on divorce in Deuteronomy 24 present the husband as initiating divorce and sending a divorce writ. However, no law specifically forbids women from initiating divorce. Moreover, as Brooten argues so forcefully, Deuteronomy 24 is a case law. It only represents one

particular manifestation of licit Jewish divorce protocol, a case in which a man wishes to divorce a woman who is living with him on his family's estate. Given that the divorce guidelines in Deuteronomy 24 are case specific, it is possible that other divorce procedures were acceptable to end unions as well. For example, women may have had the ability to initiate divorce. Lastly, as we have shown in regard to the symbiotic relationship of the Jewish and Roman court systems to one another, Roman legal positions could bridge the gap in the absence of a clear biblical statement granting women the right to initiate divorce.

The close readings of the Torah reviewed above open up the possibility that some late Second Temple Jews may have understood these two marital practices, namely marriage to a half-brother's former wife and divorce initiated by women, as licit. Indeed, many competing interpretations of Jewish law were in circulation in the late Second Temple, and Josephus only represents one of those strands of interpretation. Thus, an uncritical acceptance of Josephus' views of the Herodians' marital practices has the reader evaluating the Herodians in terms of an interpretation of Jewish law to which they did not subscribe. Given the above, the Herodians' failure to comply with Josephus' views on proper marital practices does not mean that they were not committed to fulfilling the requirements of the Torah. In the Late Second Temple period, many competing interpretations of Jewish law were in circulation. The royals' failure to comply with one of these many schools does not make them impious Jews. On the contrary, it shows the Herodians' practices to be one more example of the great diversity that characterized Judaism in Roman Palestine.

9.2 The Herodians' Complex Jewish Identity

The Herodians' status as exemplars of the great diversity of late Second Judaism is further enhanced by investigation into their relationship to Hellenism and aspects of Greco-Roman culture. Following the lead of Josephus, who notes that the Herodians were much closer to the Romans than the Jews, many criticize the Herodians for their overt interest in Hellenism and consider their interest in Hellenism to come at the expense at their Jewish loyalties. I agree that that the Herodians were heavily influenced by Hellenism. Yet, this statement comes with an important caveat, namely, their commitments to both Hellenism and Judaism are complex, partly because each aspect of those commitments is somewhat uneven.

One of the masterful aspects of Barclay's book on the Mediterranean Diaspora is that he separates out various Diaspora Jewish communities by geography and within those geographic regions, he categorizes the Jews as exhibiting low, medium, or high levels of assimilation or acculturation. A Jew placed in the "low" category may physically live in an isolated Jewish neighborhood, have a limited grasp of Greek language and culture, and observe certain Jewish practices, such as Sabbath observance, strictly. A Jew classified as exhibiting a "high" level of assimilation by Barclay may participate in sacrifices to the emperor, socialize primarily among Gentiles, and may even have apostatized.

The Herodians complicate Barclay's assimilation model because they do not neatly fall into one of these categories. On the contrary, at times the Herodians exhibit very conservative Jewish impulses. For example, the firmness with which they abided by the biblical prohibition on images is striking for a family as wealthy and worldly as the

Herodians. On the other hand, the family did many things that show them to have been highly Hellenized. Behaviors that suggest the Herodians might sometimes fall into the "high" assimilation category, include their close relationships to the imperial Roman house and their tendency to send their young to Rome for education. Similarly, their patronage of Gentile institutions and in particular, Herod's patronage of a pagan temple and presence at pagan sacrifice indicate a "high" level of assimilation. Returning to the issue under discussion in this study, namely the Herodians' marital practices, we discovered yet another factor, which complicates any simplistic categorization of the Herodians' identity. Herod, who Josephus regularly criticized for his open pandering to and love of Rome and Hellenistic ways, was an open practitioner of polygamy, a practice that was not only illegal by the terms of Roman law but was viewed as distasteful by the Romans as well. Thus, Herod's interest in adopting Roman ways was not absolute; on the contrary, he did not attempt to hide his Jewish particularity from the Roman elite.

9.3 Marital Choices as Markers of Identity and Diversity

Marital choices are at the crux of ethnic boundaries. Indeed, marital choices have the potential to bridge, confirm, or even redraw ethnic boundaries. For example, the decision to strictly uphold a prohibition against exogamous marriage demonstrates a clear desire to erect firm boundaries between one's own familial or ethnic group and those of outsiders. Jews generally and the Herodians in particular seem to have been more flexible in this regard. That is, Jews allowed for the possibility that exogamous marriage partners could be transformed into endogamous ones. These marriages, in turn, would

have blurred the neat boundary between Judaism and Hellenism, if such a boundary were ever so distinct.

Another way in which marital choices have been so central to establishing identity in this study is particular to Jews like the Herodians who were concurrently Roman citizens. Due to their ancestry and citizenship status, the Herodians were free to adopt either Jewish or Roman law in adjudicating their marital plans. Although the Herodians had the option to appeal to Roman custom, they repeatedly demonstrate their commitment to Judaism in this sphere even when so many other of their decisions appear to all but disregard their connection to Judaism. For example, they were clearly beholden to the particular Jewish definition of endogamy and as such rejected Gentile suitors who refused to convert.

We cannot tell from the evidence whether the Herodians' loyalty to Jewish marital practices was a reflection of their own sense of obligation to Jewish tradition or rather a response to the intolerance of the population towards rulers who did not observe Jewish marital guidelines. We do know, however, that the Herodians knew how central marital decisions were to establishing issues of identity. Thus, even though some of their marital practices bordered on the illicit, in the majority of cases the Herodians' opted for less controversial marital decisions. Indeed, although Greco-Roman culture together with the diversity of late Second Temple Judaism combined to offer the Herodians a wide range of options concerning marriage and divorce rites, the safest choices appear to have been those that were not derived from the extremes of Jewish practice but rather those practices accepted as licit across the Second Temple Jewish world.

10. Appendix 1: The Herodian Marriages[90]

Abbreviations:

B	Brother	H	Husband
D	Daughter	M	Mother
Div.	Divorced	S	Son

[90] Based on Hanson's chart of the Herodian marriages (Hanson, "Genealogy and Descent," 78-81).

Exog.	Exogamous	W	Wife
F	Father	Z	Sister

Name	Father/Mother	Spouse	Status
		First Generation	
Antipater #2	Antipater #1	Cypros	Exog.?
		Third Generation	
Herod	Antipater #2/Cypros	Doris	Div.
		Mariamme #1	Royal
		Malthace	
		Cleopatra	
		Mariamme #2	Priestly/Div.
		Elpis	
		Phaedra	
		Pallas	
		Cousin	FBD
		Niece	BD
Pheroras	Antipater #2/Cypros	D of Alexander #1	BWZ
		Servant	Exog.?
Salome	Antipater #2/Cypros	Joseph #2	Ruler
		Costobarus	Ruler/Exog.?/ Div.
		Alexas	
		Fourth Generation	
Phasaelus #3	Phasaelus #1	Salampsio	FBD
Daughter	Phasaelus #1?	Herod #1	FB
Antipater #3	Herod #1/Doris	D of Antigonus	Royal/Exog.
		Mariamme #3	BD
Aristobulus #1	Herod #1/Mariamme #1	Berenice #1	FZD
Alexander #2	Herod #1/Mariamme #1	Glaphyra	Royal/Exog.
Salampsio	Herod #1/Mariamme #1	Phasaelus #3	FBS
Cypros #2	Herod #1/Mariamme #1	Antipater #4	FZS

Herod Philip #1	Herod #1/Mariamme #1	Herodias	BD/Div.
Archelaus #1	Herod #1/Malthace	Mariamme Glaphyra	Div. BW/Royal/ Exog.
Herod Antipas	Herod #1/Malthace	D of Aretas IV Herodias	Royal/Exog./ Div. BD
Olympias	Herod #1/Malthace	Joseph #3	FBS
Herod Philip #2	Herod #1/Cleopatra	Salome #3	BD
Salome #2	Herod #1/Elpis	S of Pheroras	FBS
Roxana	Herod #1/Phaedra	S of Pheroras	FBS
Berenice #1	Costobarus/Salome #1	Aristobulus #1 Theudion	MBS MBWB
Antipater #4	Costobarus/Salome #1	Cypros #2	
Daughter	Costobarus/Salome #1	S of Alexas	MHS
Joseph #3	Joseph #1	Olympias	FBD
Son	Pheroras	Salome #2	FBD
Son	Pheroras	Roxana	FBD
Daughter	Pheroras	S of Antipater	FBSS

Fifth Generation

Herod of Chalis	Aristobulus #1/Berenice #1	Mariamme #5 Berenice #3	FBD BD
Marcus Julius	Aristobulus #1/Berenice #1	Cypros #3	FZD
Aristobulus #2	Aristobulus #1/Berenice #1	Jotape #1	Royal/Exog.
Herodias	Aristobulus #1/Berenice #1	Herod Philip #1	FB/Div.

		Herod Antipas	
Mariamme #3	Aristobulus #1/Berenice #1	Antipater #3	FB
Cypros #3	Phasaelus #3/Salampsio	Agrippa #1	MBS
Cypros #4	Antipater #4/Cypros #2	Alexas Silcias	FMHS
Mariamme #5	Joseph #3/Olympias	Herod #4	MFSS
Son	Antipater/D of Antigonus	D of Pheroras	FFBD
Daughter	Antipater #3	Herod #4	FBS
	Sixth Generation		
Berenice #3	Agrippa #1/Cypros #3	Marcus Herod #4 Polemo	Ruler/Exog. FB Royal/Exog./ Div.
Mariamme #6	Agrippa #1/Cypros #3	Archelaus Demetrius	Exog./Div. Ruler/Exog.
Drusilla	Agrippa #1/Cyros #3	Azizus M. A. Felix	Royal/FBWB Ruler/Exog.
Aristobulus	Herod #4/Mariamme #5	Salome #3	FZD
Salome #3	Herod Philip #1/Herodias	Herod Philip #2 Aristobulus #4	FB FBSS
	Seventh Generation		
Gaius Julius Alexander	Tigranes	Jotape #3	Royal/Exog.

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Biography

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