

ANAT ISRAELI / TAL ILAN

Massekhet Gittin

Chapters 4–5

*A Feminist Commentary
on the Babylonian Talmud
III/6/d–e*

Mohr Siebeck

Anat Israeli / Tal Ilan
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on the Babylonian Talmud

edited by

Tal Ilan

III/6/d-e

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Text, Translation, and Commentary

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Foreword and Acknowledgement

Divorce bills, ‘improvement of the world’ and destruction: A personal Forward

Anat Israeli

Four decades ago, when I had to choose a topic for my PhD, I did not hesitate much: I knew that I wanted to research the descriptions of the Destruction of the Second Temple in rabbinic literature.¹ Though I had not formulated for myself the roots of my motivation for choosing this topic, it became clear to me as time went by: The destruction of the ancient national home echoed the destruction of my family’s private home, two decades earlier, when I was a 16-year-old teenager in Kibbutz Dovrat in the Jezreel Valley, where I was born and raised. In 1973, the Yom Kippur war took from us two sons, my older, beloved brothers, Ephraim and David Israeli. It was a very private, but to some extent also a national destruction.² When the war broke out, the Defense Minister, Moshe Dayan spoke of his fear that we are facing the destruction of the Third Temple. My wish to delve into the works of those who summed up, explained, and justified the second destruction, as well as those who rose out of it and built from it a new Judaism, seems to me today a natural choice, against the background of a national and personal trauma.

In the decades that have gone by since the composition of my doctoral thesis, much has happened in the world, in scholarship and to me personally. Gradually, I understood that my entry as a woman to the world of the Talmud was part of a huge historical breakthrough, of the entry of women into the academic world in general, and into the most unique and influential composition in the Jewish library in particular. I also understood that I could further ascend to a higher level, which required not just proficiency in this most complicated of books, but also a gaze at it through gender-lenses. My own personal move from the experience of tragedy and rehabilitation at the beginning to the experience of bringing forth female voices in the religious cultural and national discourse, which had been, ever since its inception, a uniquely male voice.

¹ Part of my PhD was published under the following title: ISRAELI-TARAN, *Legends of the Destruction*.

² Examples that connect a personal destruction to the Destruction of the Temple are rampant in rabbinic literature itself. See e.g. STEIN, “Collapsing Structures.”

This long and continuous movement, in which I am now involved for many years, has created the link between myself and Prof. Tal Ilan, and her culturally and historically important Feminist-Commentary-of-the-Babylonian-Talmud project, whose value, I am sure, will become evident and expand in the future.

When I finished writing my commentary on the last chapter of the mishnaic and talmudic tractate *Qiddushin*,³ Prof. Ilan suggested to me to return to the Destruction legends and take another look at them, this time through gender lenses. At first, I was terrified. The offer to go back appeared to me like a personal retreat to my familial tragedy, which I had overcome after many years. However, slowly the terror gave way to a new love.

I first fell in love with what I had completely missed in my previous work – the meaningful circular structure in which the destruction legends are embedded: It begins with the dramatic step taken by the mishnaic editors, who chose to combine two chapters dealing with ‘the improvement of the word’ (תיקון העולם) in the middle of Tractate *Gittin* (divorce bills), which deals with the dissolution of the family and the destruction of the private home. Even before this term is analyzed, so as to understand its exact meaning, its very location suggests that the dissolution of one structure may also be the beginning of the improvement of another one. The circular structure is further evident in the amazing contradictory combination made by the Babylonian editors between the second ‘improvement of the world’ chapter (chapter 5) and the destruction-legends literary unit, which is embedded in its center. The destruction of the national home is situated in the middle of the improvement/correction (תיקון), just as in the previous layer, the ‘improvement of the world’ was placed in the middle of the personal family destruction. At the center of the literary unit on the Destruction legends is the story unit about the circumstances that brought about the foundation of a new cultural and spiritual center in Yavneh, an institution that will mark the beginning of the rehabilitation and “improvement” of the Jewish nation in the centuries after the destruction. This multilayered structure of destruction-correction-destruction-correction, hidden within the halakhic discourse of Tractate *Gittin*, is a powerful literary pearl, still relevant to our present life in the State of Israel. While writing this introduction, Israel is under the shock of the horrific Hamas attack on October 7th, 2023, and is fighting for its life, losing many of its daughters and sons. We are in the midst of a new cycle of destruction. It is very difficult at this point in time to imagine the correction or improvement that will emerge from it, but history and the ‘improvement of the world’ chapters in *Gittin* compel us to believe that a correction is imminent.

Tiqun Olam (improvement of the World – תיקון עולם) has become a popular idiom in this day and age, and is used often for meaning that are most remote from the initial intention of the rabbis. We shall have more to say on this term in the general introduction below. For me, however, today, feminism in general, and

³ ISRAELI, *Qiddushin* 4 (FCBT III/7/d).

the integration of women in Jewish culture in particular, are a huge ‘improvement of the world,’ which is happening now and, it should be hoped, will continue and be empowered in the coming generations of our daughters and granddaughters.⁴ The feminist improvement of the world reveals the gendered constructs intertwined in the entire rabbinic literature, and is particularly evident through the entire Tractate *Gittin* and the laws of divorce, especially in chapter 4. It seems that women’s exclusion and weakening is stretched in this chapter to its limits.

The feminist commentary on chapters 4-5 of Tractate *Gittin* does not cover all the complex issues of these chapters, just as other feminist commentaries that have already been published, and which I hope will continue being published, cannot give a complete picture of these. Nevertheless, it is a fresh, innovative, and corrective view. I am grateful to Prof. Ilan for the opportunity to close my own talmudic circle. I am also grateful to her for the fruitful cooperation, for her huge contribution to the commentary, for her translation work, and for the countless omissions and mistakes that she spotted.

Anat Israeli, October 2023, Qiryat Tivon

Some further Notes

Tal Ilan

The decision concerning the volumes to be published in *FCBT* is a work in process. Short tractates (and even long ones, if they are not solely devoted to women and gender issues) are commented on in single volumes, but *Seder Nashim* (the Order of Women) cannot be treated in the same way. Somewhere along the way I decided that, on principle, in tractates of this order, every chapter merits a volume. Anat Israeli was the first scholar to attempt such a project. In 2021 she published a volume on Chapter 4 of Tractate *Qiddushin*. It was a courageous and very successful endeavor. For this reason, I suggested she write another volume in the series, and thought it would make sense for someone, who had already worked intensively on many traditions from *Gittin* Chapter 5, to write this commentary. When she came back to me with a positive answer, she also had an important comment to add – Chapter 5 belongs together with Chapter 4; both deal with ‘the improvement of the world’ (תיקון עולם). She was right of course, and thus it was decided that the commentary volume we will work on together will be devoted to these two *Seder Nashim* chapters.

⁴ The person who gave the term *tiquon olam* this meaning for the first time (at least in Hebrew) is Leah Shakdiel, see her SHAKDIEL, “To Open the Second Eye.”

I was exceptionally pleased with this outcome, because I have a very special relationship with *Gittin* Chapter 4. Like Anat Israeli, I too came late to rabbinic literature. Like Anat I was raised in a kibbutz (Lahav), and like her, I first saw a page of the Talmud when I went to university. In the summer of 1979 I took an intensive introductory course to the Babylonian Talmud (מכינה בתלמוד) at the Hebrew University in Jerusalem, and the text we concentrated on was *bGittin* 4. It was a revelation to me. Even now, over forty years later, you can still wake me in the middle of the night and I will blurt out in perfect Aramaic: כל דמקדש אדעתה דרבנן מקדש והפקיעינו רבנן לקידושין מיניה (*bGit* 33a – and see below, p. 96). I have, of course, over the years had the opportunity to return to this chapter, but not in such an intensive way, and I thank Anat for this. Opportunity here You have probably noticed, from Anat's forward, that most of the work done on this volume is hers. I fully acknowledge it. I have enjoyed working with her immensely and sincerely hope that we may produce more volumes in the coming years.

Because I am now officially retired, I no longer have funds to pay assistants to write commentaries or work with other commentators. Therefore, much of the work usually performed by my assistants was undertaken by Anat and myself this time around. Anat did the indices, and I the formatting. In the case of the later, I wish to thank again Matthias Spitzner of Mohr Siebeck for patiently guiding me through the formatting process. If I have made mistakes, they are mine and not his.

Finally, and as always, I thank Mohr Siebeck for its continued support of the *FCBT*. The publication of this volume was supervised by Elena Müller, who has been most helpful and responsive. We have been fruitfully working on the publication of the *FCBT* with Mohr Siebeck since 2008 and I anticipate successful further co-operations in the coming years.

Tal Ilan, February 2024, Jerusalem

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Gittin Chapters 4-5

Introduction

This composition is a feminist commentary on chapters 4 and 5 of Tractate *Gittin* in the Babylonian Talmud. The rationale, methodology and format of the *FCBT* have been described in detail in the introductory volume to the entire series, as well as in Anat Israeli's Introduction to her commentary on chapter 4 of Tractate *Qiddushin*,¹ and we repeat here the main points.²

Feminist Commentary

What is a feminist commentary? It is a commentary based broadly on feminist-gender scholarship that has developed over the last decades. This relatively young discipline, in its general as well as Jewish-talmudic manifestation, has already undergone several meaningful transformations. At first, scholars attempted to identify the historical presence and influence of both specific and unique women, and of women as a collective, as well as to reveal women who had been erased from the collective memory, or whose contribution to history has been removed or silenced. In the next stage, scholarship moved on to address not just women themselves but also the (mostly male) attitude of the sources to women. This brought about a shift from a historical to a literary focus. The move from analyzing the attitude to women of Judaism/the rabbis/ halakhah/aggadah, etc., to unraveling the gendered systems in a broader sense, characterizes the latest stage in this development. This is the point at which research moves from women to gender studies, and the emphasis is now placed on issues of culture and society. Such a

¹ See ILAN, "Introduction," 1-18; ISRAELI, *Qiddushin 4 (FCBT III/7/d)* 1-3, and in all the introductions to the other commentaries in the series.

² The texts we present in the main body of the commentary are from the printed Vilna Talmud. Tal Ilan, chose the Vilna edition since this is the text that has been studied throughout the entire Jewish world in the last several centuries and is thus culturally the most influential textual variant. This fact justifies its use in this commentary, for it best explains the position of Jewish society towards women and gender in the past and in the present. Nevertheless, we have not ignored meaningful textual variants on gender and women deriving from talmudic manuscripts. At times, these variants do not appear as alternative versions or scribal errors but rather as independent and tendentious texts. In such cases, it is possible to unearth, to a certain extent, intentional silencing, or to reconstruct gendered contents, according to time, place or other considerations.

study broadly investigates the gendered construction of femininity and masculinity offered by the rabbis. It attempts to locate sites where, and ways in which, these constructions occur, and also seeks to reveal cracks in these constructions, such as oppositional voices, slips of the pen, subversive positions erased or “corrected” etc.³ Another scholarly stage follows the work of Daniel Boyarin and Michael Satlow, and despite claims to the contrary, it argues that the rabbinic cultural construction of masculinity has not yet been satisfactorily explored and that equal attention should be paid to this topic.⁴

Our feminist reading brings into account all the above-mentioned methods, as well as the results of feminist and gendered scholarship, according to its relevance to the topic at hand. Our commentary will address all issues that we have encountered that touch upon women, their appearance in the sugyot under discussion, their status in the text, the attitude towards them and so forth. It will also address gender issues, i.e. social and cultural manifestation of both genders, as they are constructed in the sugya. Basically, the *Bavli* constructs women in Jewish society as second class members in the community. Nevertheless, in some cases we unearth beneath a unified façade, contradictions, exceptions and a variety of voices that conceal within them gendered power-relations. In this context, we agree with Aryeh Cohen’s remarks on the purpose of feminist reading:

... a feminist project ... takes a path different from, but complementary to other attempts at rethinking history and culture ... the point of which is to challenge patriarchal or misogynistic assumptions. The analysis of the history of patriarchal ideas points to their internal conflicts and contradictions, and leads to the deconstruction of the implacable facade of eternal verity implied by the absolutist mode of their articulation – especially in legal writing. As a direct result of this type of analysis, the weighted choices of the patriarchal actors are laid bare and other choices present themselves – those paths less or not yet travelled which could make all the difference.⁵

The Academic Research of the Babylonian Talmud

The academic study of the Talmud is of course much older than the academic study of gender, and it too has undergone many changes during its century-and-a-half existence; yet no period within this timeframe, it seems, has been as lively and as innovative as the first two decades of the 21st century. The old tools of the scholar’s trade had been, from the start, philology and history. The former attempted to identify the “correct” version of a text by comparing textual witnesses and synoptic

³ There are several reviews of these processes. We refer the reader to two articles most pertinent to the issue at hand: ALEXANDER, “The Impact of Feminism”; ROSEN-ZVI, “Review of Fonrobert.”

⁴ See for example BOYARIN, *Unheroic Conduct*; SATLOW, “Try to be a Man.” For further reading on this topic see the reviews of ROSEN-ZVI, “Rise and Fall,” and also the bibliography in KIPERWASSER, “Wives of Commoners,” 421, n. 13. To this list, one may add Kiperwasser’s own article as well as KOSMAN, “Overview of Masculinity.”

⁵ COHEN, “This Patriarchy,” 111.

parallels, studying its language and vocabulary as well as perusing the works of its early interpreters; the latter attempted to understand, in the words of the German historian von Ranke “wie es eigentlich gewesen ist,” i.e. what really happened, and what did not. In the previous generation, important tools were added to these, among them the Hellenistic and Christian background behind many texts, the analysis of small literary units, as demonstrated by Yonah Fraenkel and his school,⁶ the identification of literary structures within longer textual units, the division between, and the comparison of, sources from Babylonia with those from the Land of Israel, as well as the division between, and comparison of discrete textual layers within the talmudic text itself, and more.⁷

In the present generation of scholars, additional important developments can be detected. Firstly, much emphasis has been placed on the work of the anonymous editors of the *Bavli* – the *stamaim* – who are the ones responsible for the composition’s final form.⁸ Secondly, the Irano-talmudic turn, which places the *Bavli* in its Iranian cultural setting, and recently also in the context of early Eastern Christian writings, has experienced a resurgence of interest instigated by Yaakov Elman and his successors.⁹ Thirdly, much emphasis is placed on textual characteristics in general, and on the characteristics of oral transmission of these texts in particular, using contemporary textual and performance theories.¹⁰ Additionally, the study of internal hermeneutics and intertextuality has been upgraded. This trend has shown, by the use of allusions and triggers, that in many cases a certain sugya is actually in dialogue with another tradition in the *Bavli* or elsewhere in rabbinic tradition, and this dialogue is just sitting there, waiting to

⁶ See for example FRAENKEL, *Ways of the Aggadab*. See also the Overview of NEWMAN, “Closing the Circle.”

⁷ For these and other developments see ROSEN-ZVI, “Orality, Narrative, Rhetoric”; “Secularizing the Talmud.”

⁸ David Weis Halivni (See for example HALIVNI, *Formation of the Babylonian Talmud*) and Shama Friedman (See for example FRIEDMAN, *Talmudic Studies*) are principally responsible for this research direction and among their most influential followers is Jeffrey Rubenstein (See for example RUBENSTEIN, *Culture of the Babylonian Talmud*). BRODY, “On Dating the Anonymous Portions,” and DOLGOPOLSKI, *Open Past*, have sounded a warning against the extreme position of this scholarly approach, see SECUNDA, “Gaze and Counter-Gaze,” 149-151 and references there.

⁹ On the Irano-Babylonian turn and the dispute that is currently raging about its validity between Robert Brody and its supporters see SECUNDA, “This, but also That,” 233-238 and the references there. On the context of early eastern Christian writings, especially those written in Syriac, in which rabbinic literature is embedded, see references in BAR-ASHER SIEGAL, *Early Christian Monastic Literature*, 1-67. See also a summary of the cultural and political influences on Babylonian Jewry in the context of our chapter in BELSER, *Rabbinic Tales*, XV-XIX.

¹⁰ On the textual-verbal turn see SECUNDA, “Gaze and Counter-Gaze,” 151-152. For an example of the use of performance theory see LIPSHITZ and ROSEN-ZVI, “Talmud as a Performance”; PILZ, *Food and Fear* (which will be discussed below in the clause *Chapter 5 in the Bavli: On the Destruction Stories*).

be deciphered.¹¹ The last, and perhaps most important development for our commentary, is the exposure of the acute self-criticism of the rabbis, which does not skip even the greatest sages, embedded at the very heart of some major and famous talmudic stories.¹² In our commentary we shall attempt to use some of these methods, when relevant to gender inquiry, and we shall of course make use of the results of these studies, where necessary.

Tractate Gittin

Tractate *Gittin*, the sixth in the Order of *Nashim* deals with all aspects of the production of the divorce bill (*get*), i.e. the legal procedure that dismantles and cancels the marriage bond.¹³ Handing the *get* and divorce are both actions taken by the husband. He divorces and his wife is divorced, just as in marriage, he buys (קונה) and his bride is bought (נקנית).¹⁴

The *get* document and the permission to divorce a wife are not a novelty of the rabbis, and are already stated categorically in Deut 24:1-2:

כִּי יִקַּח אִישׁ אִשָּׁה וּבִעְלָהּ וְהָיָה אִם לֹא תִמְצָא חֵן בְּעֵינָיו כִּי מְצָא בָּהּ עֲרוּת דָּבָר וְכָתַב לָהּ סֵפֶר כְּרִיתוֹת וְנָתַן בְּיָדָהּ וְשָׁלְחָהּ מִבֵּיתוֹ. וְיִצְאָה מִבֵּיתוֹ וְהִלְכָה וְהָיְתָה לְאִישׁ אֲחֵר.

If a man takes a woman and becomes her husband; if she fails to please him because he finds something obnoxious about her, and he writes her a bill of divorcement, hands it to her, and sends her away from his house. She leaves his household and becomes [the wife] of another man.

In any case, Tractate *Gittin* presents this procedure in a new light. At the beginning of the 1st century Roman law also recognized the possibility to divorce a wife and transform the family structure. It is usually argued that this change in Roman law was intended to increase fertility in a city that suffered from a demographic decline. The new Roman legislation on divorce was, according to Yair Furstenberg,¹⁵ one of

¹¹ As we will show for example in our discussion on the daughters of Rav Nahman in *Bavli* 4/29. *bGittin* 45a; on the daughter of Resh Laqish in *Bavli* 4/36. *bGittin* 47a; and of Martha bat Boethus in *Bavli* 5/14. *bGittin* 56a, as well as the allusions to the concubine of Gibeah that we will discuss in the excursus of *The Destruction story-cycle: Summary and conclusions*, and more. See also SEPTIMUS, “Trigger Words and Simultexts.”

¹² See for example FAUST, “Criticism”; BOYARIN, *Socrates and the Fat Rabbi*; “The Talmud as a Fat Rabbi” and others. In our commentary see the first two examples mentioned in the previous comment, and also our discussion of Abba bar Martha in *Bavli* 4/12. *bGittin* 37b, and in our excursus on *Martha bat Boethus and the daughters of Naqdimon ben Guryon and of Ben Kalba Savu’a in the Bavli* in *Bavli* 5/14. *bGittin* 56a.

¹³ See the detailed review of the history of the *get* in SAFRAI and SAFRAI, *Mishnat Gittin*, 8-35.

¹⁴ See in *mQid* 1:1, and in *tKet* 12:3 and our discussion of it in *Mishnah* 4/1. *mGittin* 4:1; *Mishnah* 5/1. *mGittin* 5:1-3. On these terms in association with marriage in Tractate *Qiddushin* see in detail in BRESINSKY, *A List of Purchase Methods*.

¹⁵ FURSTENBERG, “Provincial Rabbis.”

the reasons that motivated the rabbis to view divorce, beyond a mechanism for individual family problems, also as a means for solving national-demographic problems and promoting fertility.

What, then, is the purpose of Tractate *Gittin*? The obvious answer appears to be the arrangement of the separation between a husband and his wife, or more precisely, the arrangement of the processes by which the husband divorces his wife. However, such a definition falls short of exhausting the halakhic, gendered and social goal of the tractate. Judith Hauptman begins the chapter she devoted to divorce¹⁶ in the following words:

It is very tempting to dismiss Mishnah *Gittin* as the volume that places men squarely in control of women's marital availability in that only men may dissolve a marriage and therefore responsible, to this very day, for women's suffering serious disabilities under Jewish divorce law. However, if we look at the tractate as a whole and ask ourselves what it is trying to accomplish, we will discover that the answer is more complicated. For the goal of this tractate, as we will see, is to ensure that the *get*, the instrument of divorce, is above reproach, and therefore fully protects women and children from unscrupulous men who would challenge its validity. Of course, the rabbis accepted the patriarchal construction of marriage, but within this framework they sought to improve the lives of the women governed by their laws. We cannot construe their end product as egalitarian; the right to issue a bill of divorce remains, even today, in the hands of men. But the introduction of a forced *get* and marriage annulment gave women seeking to extricate themselves from marriage options they never had before

...

Hauptman is thus of the opinion that, even though Tractate *Gittin* fortifies the evident superiority and exclusivity of men as initiators and executors of the *get*, it also protects women from the arbitrary decisions of abusive husbands. Such protection is necessary, according to her opinion, because of the negative portrayal of divorcing husbands as reflected in the tractate:¹⁷

In many different passages throughout the tractate, in five out of the nine chapters, M *Gittin* portrays the divorcing husband as a man who decides one day to divorce his wife but on the next changes his mind ... The repeating image of vacillation throughout this tractate suggests that, in the eyes of the rabbis, divorcing husbands, or perhaps men in general, are emotionally unstable, one moment so angered that they decide to divorce, as evidenced by Bet Hillel's example of burnt food (M *Gittin* 9:10), and the next sufficiently calm that they regret their decision.

A different approach is offered by Aryeh Cohen.¹⁸ In his opinion, a deeper probe into the text reveals that Tractate *Gittin* (both in the Mishnah and in the *Bavli*) is mainly about the transferal of the authority to divorce from the husband to a court of law. This is reflected, in his opinion, in *bGīt* 33a (discussed below in *Bavli* 4/3. *bGittin* 33a):

¹⁶ HAUPTMAN, *Rereading the Rabbis*, 102.

¹⁷ HAUPTMAN, *Rereading the Rabbis*, 108-109.

¹⁸ COHEN, "Giddul's Wife," 218-223.

תנו רבנן: בטלו – מבוטל, דברי רבי. רבן שמעון בן גמליאל אומר: אינו יכול לא לבטלו, ולא להוסיף על תנאו, שאם כן, מה כח בית דין יפה? ומי איכא מידי דמדאורייתא בטל גיטא, ומשום 'מה כח בית דין יפה' שרינן אשת איש לעלמא? אין. כל דמקדש, אדעתא דרבנן מקדש; ואפקעינהו רבנן לקידושין מיניה.

Our rabbis taught: If he cancelled it (=the husband cancelled the *get* in another court-of-law, as forbidden by Rabban Gamali'el the Elder) – it is cancelled; these are the words of Rabbi. (the son of Rabban Shime'on ben Gamali'el, and the grandson of Rabban Gamali'el the elder's grandson). Rabban Shime'on ben Gamali'el (the father of Rabbi and the great-grandson of Rabban Gamali'el the Elder) said: He cannot cancel it and cannot add to its conditions, for if so, what is the authority of the court-of-law? Is there anything from the Torah (whether written or oral) that cancels the *get*, and because of (the argument) 'what is the authority of the court-of-law' we release a married woman to all the world? Yes. Whoever betroths, betroths on the authority of the rabbis, and the rabbis can annul his betrothal.¹⁹

This familial, multi-generational dispute rages within the family of the Nasi (=the Patriarch), and it touches on the foundation of the rabbinic project to formulate the halakhah and with it dominate the agenda of the Jewish people. It is open to some interpretation (see in *Bavli* 4/3. *bGittin* 33a), but in any case, it discusses the position of the rabbinic court-of-law; or in other words, the legal standing of the sages regarding the most sensitive personal law of divorce. The text opens with the question, whether a cancellation of a *get* performed in a different court-of-law from the one in which it was issued, in opposition to Rabban Gamali'el the Elder's prohibition, is valid or not. It ends with a stammatitic question and a decisive answer to it, which crystalizes the entire purpose of Tractate *Gittin*: Betrothal is always performed with the sages' permission, including the decrees and dicta issued by their courts-of-law. Obviously, all forms of divorce are according to their ruling and are, therefore, their responsibility. When it becomes necessary, they can annul the betrothal retroactively, and thus they can also annul the authority of the husband over divorce.

Aryeh Cohen further claims that at the foundation of the rabbis' concept of divorce one can detect the well-known biblical metaphor, also repeated in rabbinic parallels, according to which the exile of the Israelites can be compared to the metaphysical divorce between the God of Israel and his people. A final divorce of this nature is viewed as the worst possible scenario for the Jewish people, for in such circumstances, the Israelites will never be redeemed. The metaphysical divorce concept is thus temporary, and it is in the interest of all to put an end to it and prevent its becoming permanent. Therefore, preventing a divorce is always preferable for the Israelite, and by extension to the wife.

I do not claim that there is a direct causal relationship between the mythic narrative and the law. Rather, I claim ... that law is not understood and does not grow in a

¹⁹ The emphasis, and addition in parenthesis, here and throughout the book, are our own.

vacuum ... I suggest that the Talmudic discussions of divorce reflect and react to the cultural negotiation around Exile that divorce is woven into.²⁰

Cohen does not develop the original claim of this move to its logical conclusion. Throughout the article he discusses the power-relations between the court-of-law and the husband, but not between the divorcing husband and his divorced wife. This is because, while in the metaphor there are two parties – God and his people – in Tractate *Gittin* there are three parties – the court-of-law, the husband and the wife. The correlation between the source (=the metaphor) and its target (=the reality of the divorce proceedings) are thus not precise, and it is our task to draw them closer. Cohen shows and proves how the sugya on *mGit* 4:1 does indeed discuss the authority and absolute power of the rabbis over Jewish men who approach them. He ends the article with the following words:

... In this context of divorce, all the power was in God's male hands. Female Israel had no control at all over the proceedings. In a move which is an almost exact mirroring and reversal, the Rabbis interpret into existence their own ultimate power over all marriages and divorces, and insist on their exclusive right for interpretation of action and word. **The husband is silenced, and the transaction is between the court and the wife.** In this situation, control is restored and Exile deferred.²¹

However, we find difficult to accept the description of the divorce 'deal' as one struck only between the court-of-law and the wife. As we shall see further down, in the mishnaic chapter, in the talmudic sugya, especially from the point of view of the court-of-law, the wife is neither present, nor taken into account, as though she does not really exist. The husband's absolute advantage over his wife in the divorce process is hardly discussed in the chapter, because it is so obvious and absolute.

Cohen's suggestion that the biblical metaphor deeply influences the rabbis' divorce model seems to us to be correct, but requires expansion. This is a model of a couple but it takes place on three (and not two) levels: the metaphysical super-human level, the national-political level and the personal-familial level. All these levels co-exist under crisis and exile conditions, with the danger of the breaking of a bond and the loss of contact between the two parties. On the first, strong side are God/the court-of-law/the husband and on the weak side are Israel/Israelite men/the wife, as in the following table:

The God of Israel	The people of Israel
The court-of-law, their decrees and rulings	Clients of the court of law: Israelite men
The husband	The wife

²⁰ COHEN, "Giddul's Wife," 208, and by extension 218-223. For a different approach see SAFRAI and SAFRAI, *Mishnat Gittin*, 24-31. They think that in the talmudic period, and even more so in the mishnaic period, private divorce bills were issued with no intervention of a court of law. Such an intervention was necessary only in unusual cases, where certain difficulties arose. The rabbinic take-over of all divorce proceedings was a later development.

²¹ COHEN, "Giddul's Wife," 226.

Divorce is an act of dismantling a relationship, realistically or symbolically, by the stronger side against the weaker one. They result from the ‘sin’ of the weaker partner and the ‘rage’ of the stronger one. This is how the prophets of Israel understood the destruction of the First Temple and the Exile that followed it. The same is true for the relationship between the court-of-law and the husband, when the former expropriates the authority over betrothal and divorce from the latter (or in the words of the gemara *מיניה רבנן לקידושין*),²² and so too in the case of the husband, who has decided to divorce his wife for some reason. Since the Israelite man/husband appears in two of the three couples, once as the weak, passive party, and once as the strong, active one, his position and power in this system is not stable. The wife’s status (and its mirror image – God), on the other hand is stable. It is always (in the case of the wife) of no consequence (or, in the case of God, all powerful).

As Cohen shows at the beginning of his article, in the Bible²³ and in rabbinic midrash²⁴ The question of the finality of the *get* is critical for the metaphysical level: Will God allow his people to return to its land in the future? Cohen’s suggestion, that the metaphysical narrative influences the earthly concept of divorce endows the rabbis’ action with meaning – creating a time-gap between the divorce act and its realization, by inserting the messenger, who is a representative of the court-of-law, and thus making its annulment possible. And indeed, the entire tractate is replete with issues involving the messenger,²⁵ and at the beginning of *mGit* 4 a long discussion addresses the question of postponing the finality of the *get* or finding ways for cancelling it in the time-gap between a court appointing a messenger and the document delivered into the woman’s hand.

Recently, David Brodsky analyzed the entire mishnaic Tractate *Gittin*,²⁶ concentrating on its opening (*mGit* 1:1-2), which describes the borders of the land

²² In the discussion in *bGit* 33a the situation is one in which the husband no longer wishes for the divorce to go through, for he has tried to cancel it in another court-of-law. According to the metaphoric model, we can assume that the court-of-law interprets the action of the husband, who attempted to trick the legal-system, as a ‘sin’ against it, and ‘raging’ against him, refuses to annul the divorce. However, the stammaitic declaration on the retroactive annulment of the betrothal (and consequently the divorce too) is not specific to this case; it is much more general and all-encompassing.

²³ E.g. Isa 50:1; Jer 3:8.

²⁴ E.g. *SifDeut* 306; *GenR* 19:9; 21:8; *LamR* 1:1; *bSan* 105a; *ExodR* 31:10; *NumR* 1:5; *Tan mishpatim* 11; *vayeshev* 4; *ba-midabar* 5; *Psalms Midrash* 139:1. All citations of midrashic homilies represent the relationship between God and Israel as divorce.

²⁵ E.g. *mGit* 1:1-4, 6; 2:1, 7; 3:3, 5-6; 4:1; 6:1-7. It is important to note that the messenger is also inserted into the halakhah of betrothal, see *mQid* 2:1: *האשה בו ובשלוהו. האיש מקדש בה ובשלוהו. האיש מקדש את בתו כשהיא נערה בו ובשלוהו ...* (the men betroths alone or by a messenger. The woman is betrothed alone or through a messenger. The man betroths his daughter alone or through a messenger ...) Cohen does not address this issue.

²⁶ BRODSKY, “Mishnah Gittin.”

of Israel, its two central chapters – those devoted to the ‘improvement of the world’ (תיקון העולם – *mGit* 4-5), and its ending (*mGit* 9:10), which is the only location where, for the first and only time, the question of the legitimate grounds for divorce are laid out: “Beit Shammai say: A person may not divorce his wife unless he has found in her fornication ... and Beit Hillel say: Even if she burnt his dish (ובית בית שמאי אומרים: לא יגרש אדם את אשתו אלא אם כן מצא בה דבר ערוה ... ובית הלל אומרים: אפילו הקדיחה תבשילו). Like Cohen, Brodsky emphasizes the strong connection created in the tractate between the private couple and the national coupling between Israel and the God of Israel. He also emphasizes the presence of an echo of a dispute between different groups in Jewish society of the Second Temple period, and then between Jews and Christians, concerning divorce. While the Dead Sea Sect, the Christians, and to a certain extent Beit Shammai viewed divorce as a grave sin, the editors of the mishnah saw in it a necessary corrective for a bond that had gone sour.²⁷ Brodsky explains the presence of the two chapters on the ‘improvement of the world’ in the center of the tractate as a national-communal expansion of the principle the mishnah sets out to constitute: Divorce is not necessarily associated with fornication, as Jesus argues in the New Testament (see e.g. Mark 10:2–12; 1 Cor 7:10-11) and as do Beit Shammai at the end of *mGittin* (*mGit* 9:10 cited just above). On the contrary, they are an opportunity to ‘improve the world,’ as are the other ‘improvement-of-the-world’ decrees in these chapters.

Our commentary will only concern the central section on ‘the improvement of the world,’ which in many aspects departs from the tractate’s central concerns. We have, in any case, found in it references to both Hauptman’s, Cohen’s and Brodsky’s approaches. The tractate thus consists of different and sometimes contradictory positions.

Chapters 4-5 in the Mishnah

At the center of Tractate *Gittin* are chapters 4-5, which deal, as just mentioned, with the decrees of the rabbis ‘for the improvement of the world.’ The new dimension that divorce receives in these chapters forms the foundation of the tractate. It presents some of the procedures of divorce as improving the world, and adds to them a number of decrees that deal with other issues, many of them not gendered, but which also have the same purpose. These topics are the collection of a *ketubbah* from the inheritance by a widow; the *prozbul*; decrees pertaining to slaves; and others pertaining to captives. The entire Chapter 5 is a sort of appendix to Chapter 4, as the *Tosfot* explain at the opening of their commentary to this chapter:

אין ענין נזקין אצל גיטין. אלא, משום דתנא לעיל ב'השולח' מילי דתיקון העולם, תנא ליה הכא.

²⁷ And see also a philosophical analysis of the tractate, supporting the positive view of divorce in order to create an alternative relationship, in DICKMANN, “The Gift of Get.”

There is no connection between ‘damages’ (=chapter 5) and divorce. However, because in the previous *ba-sholeah* chapter (=chapter 4), issues about the improvement of the world are discussed, he teaches it here.²⁸

Thus, according to the *Tosfot*, this chapter is not an organic part of the Tractate, because it is not about the *get*. It was appended here because of the phrase ‘for the sake of the improvement of the world’ (מפני תיקון העולם), which features in the previous chapter. In the second part of the chapter the term ‘for the sake of the ways of peace’ (מפני דרכי שלום), which is close in its meaning, is added.²⁹ Chapter 5 expands the concept ‘improvement of the world’ further, to issues touching on the laws of damages; debts; collection of alimony; laws pertaining to priests and deaf persons; the return of lost property; trade laws; and finally, laws enacted ‘for the sake of the ways of peace,’ intended to alleviate unnecessary tension and maintain decent relations among community members and their neighbors. At the heart of these decrees is the law of *sigriqon*, which addresses the political tensions created in the Land of Israel after the revolts against Rome (the Great Revolt of 66-70 CE and the Bar Kokhba Revolt of 132-35 CE). The ‘improvement of the world’ decrees thus deal with human, social and public law.³⁰

Abraham Walfish, whose scholarly project is to unearth literary phenomena in the Mishnah, has pointed out that *mGit* 5 is constructed from beginning to end based on stringing, as follows: In each mishnah a certain central term appears, which is also present in the previous mishnah, and another central term also appears in the mishnah following it. Thus, the term זיבורית (bad land) connects between *mGit* 5:1 and 5:2; the term נכסים משועבדים (mortgaged property) connects *mGit* 5:2 and 5:3; the term בנות (יתומות)/יתומים ([orphaned] girls/[male] orphans) connects between *mGit* 5:3 and 5:4; the term אביהן/אביה (their father/her father) connects *mGit* 5:4 and 5:5; the term גזל/סיקריקון (theft/*sigriqon*) connects *mGit* 5:5 and 5:6; the term מקח (negotiation) connects *mGit* 5:6 and 5:7; the term חרש (a deaf person) connects *mGit* 5:7 and 5:8; finally, the term דרכי שלום (the ways of peace) connects *mGit* 5:8 and 5:9. In this way, all the mishnayot of the chapter are strung together (and this is even true for a different division of the mishnayot, in some manuscripts).³¹

In matters pertaining to the ‘improvement of the world’ and the ‘ways of peace,’ women in general play a part, in particular, when they touch on divorce, but these chapters also discuss topics that are not in any way associated with divorce or women. Evidence of the collection and reorganization of the

²⁸ The *Tosfot* on *bGit* 48b, s.v. מתניתין הניזקין שמין להן בעידית.

²⁹ EPSTEIN, *Introduction*, 995 is of the opinion that the division between chapters 4 and 5 is not essential, but rather technical. The editor divided the literary unit into two equal chapters, of nine mishnayot each, because together, the chapter would have been too long.

³⁰ On the date of the reduction of these two mishnaic chapters see our discussion in the next clause on ‘the improvement of the world.’

³¹ WALFISH, *Literary Phenomena*, 102.

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