

THE EVOLUTION OF A LAW

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There is no law in the Bible that stipulates how a marriage relationship between a man and a woman is established, nor any ritual creating this special bond. We may infer from the two marriages described in the Torah that a marriage is effected when a bride-price had been paid and the man and woman spend the night in the *huppah* (Ps. 19:6) -- originally the bridal chamber -- where the union was to be consummated.¹

It was apparently felt that it was not necessary to spell out marriage customs in the Torah, as they were generally practiced and non-legalistic. When it comes to dissolution of a marriage, the Torah devotes only two rather terse and somewhat ambiguous verses to the requisite procedure.

However, one aspect of family life has a full six verses in the Torah. This is the law on levirate² marriage³ in Deuteronomy 25:5-10:

When brothers dwell together and one of them dies and leaves no son, the wife of the deceased shall not be married to a stranger, outside the family. Her husband's brother shall unite with her and take her as his wife, and perform the levir's duty. The first son⁴ that she bears shall be accounted to the dead brother, that his name shall not be blotted out in Israel. But if the man does not want to marry his brother's widow, his brother's widow shall appear before the elders in the gate and declare, 'My husband's brother refused to establish a name in Israel for his brother: he will not perform the duty of levir,' the elders of the town shall then summon him and talk to him. If he insists saying, 'I do not choose to marry her,' his brother's widow shall go up to him in the presence of the elders, pull the sandal off his foot, spit in his face, and make this declaration: Thus shall be done to the man who will not build up his brother's house! And he shall go in Israel by the name of 'family of the unsandaled one.'⁵

Why does the Torah, generally concise and sparing of words, give such lavish space to this law, in contrast to nothing on marriage and little on divorce? Why all this detail and specificity? I shall argue in this paper that this

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was necessary because by this law the Torah was correcting and superseding older laws on this subject that were followed in earlier times.

It is known that levirate marriage was practiced not only by the Israelites but also by the Canaanites, Hittites, Assyrians and other peoples of the Middle East.⁶ Genesis 38 tells us that levirate marriage was already a necessary part of family life long before the revelations at Sinai; in fact, as early as the Patriarchs.⁷ In this chapter, Judah married a Canaanite woman and had three sons with her: Er, Onan, and Shelah. When Er was of age to marry, Judah found him a wife, whose name was Tamar. Er died childless and then *Judah said to Onan, 'Join with your brother's wife and do your duty by her as a brother-in-law, and provide offspring for your brother'* (v. 8). Onan, knowing that the offspring he might father would be reckoned for his dead brother, refused to impregnate Tamar. He died for this sin. Shelah was still a child, so Judah sent Tamar back to her parents to wait for Shelah to mature. However, when Shelah was old enough to father a child, Judah failed to comply with the law out of fear that Shelah also would die.

Tamar then decided to take matters into her own hands; if she could not have a child by Shelah that would guarantee her future, she would have one by her father-in-law himself. Dressing herself as a professional harlot and heavily veiled, she sat by the roadside where she knew Judah would pass. Knowing that Judah's wife had died and he was probably hungry for a sexual encounter, she could hope that he would accept her invitation. Tamar was right. When Judah came by and saw a "harlot," he agreed to give her a kid from his flock as her fee. Tamar demanded that he leave his staff, seal and cord with her as surety until the kid was delivered to her. She then disappeared from the scene without waiting for the kid, taking those tokens of identity with her.

Tamar was not Shelah's wife *de facto*, but she was considered so *de jure*. So, when it was discovered she was pregnant, Judah assumed she had committed adultery, punishable by death, and ordered that she be put to death. On the way to her execution, she sent the staff, seal, and cord to Judah with the message that their owner was the man who impregnated her. Judah stopped the execution and declared, *She is more in the right than I* (Gen. 38:26). Tamar gave birth to twins, Peretz and Zerah, who are accounted as Judah's sons (I Chr. 2:4).

This story raises a number of questions. What right did Judah have to commute her sentence, when he himself was subject to the death penalty according to Deuteronomy 22:22? Was not Tamar fearful that her pregnancy would brand her as an adulteress, condemned to die? And if Judah was so fearful that his third son would die like his older brothers, why did he not resolve all difficulties by having Tamar and Shelah perform the ceremony of *halitzah*?

The classical Jewish exegetes ignore these questions, on the principle that all this happened before the Torah came down from Sinai. Therefore, as far as they were concerned, there was no adultery, no incest,⁸ no *halitzah*. Modern Bible scholars approach these problems from the same principle, but go a step further. They point out that there was no incest because the levirate law at the time extended to the father-in-law; otherwise, Tamar's strategy would be tantamount to committing suicide. Finally, *halitzah* was not yet an option in patriarchal times.

The Bible records another instance of a levirate marriage, that of Boaz and Ruth, as related in the Book of Ruth. It appears that Ruth's status was inextricably connected to the estate left by Elimelech, her father-in-law, and inherited by her late husband, Mahlon. In order to marry Ruth one must redeem the estate, for she came along with it. Boaz is ready to redeem the estate, but there is a man who was a closer relative to Elimelech. Boaz devised a scheme whereby this relative (who remains anonymous in the story) was prepared to renounce his rights, and this was effected by the process of *halitzah*.⁹

Now, according to the narrator, these events occurred *in the days when the Judges judged* (Ruth 1:1), that is, the 12th century BCE, about 500 years after the period of the Patriarchs. During those five centuries, much Israelite history had transpired -- the Exodus and the sojourn in the wilderness, the arrival in the Promised Land and its partial conquest. It is to be expected that laws, customs, and modes of life would change over such a long period of time. In this instance, such a change involved establishing the ritual of *halitzah* and extending the law of levirate marriage beyond the immediate family to other relatives, however distant. This change was probably the consequence of the transformation of Israelite society from semi-nomadic clan life to agrarian tribal life.¹⁰

The 12 tribes were united into a monarchy under Saul and David, then separated into two kingdoms after the death of Solomon. There was, in this epoch,

a considerable increase in the urbanization and commercialization of life, bringing with them changes in social patterns and conceptions of morality. The family rather than the tribe takes center stage as the basic unit of society.¹¹

Thus, in the eighth century BCE, during the reign of King Hezekiah and the era of the prophet Isaiah, the religious and intellectual leaders of their time, *the men of Hezekiah* (Prov. 25:1) revised Jewish tradition. Credited by the Talmud with having written (edited?) Isaiah, Proverbs, Song of Songs and Ecclesiastes (Baba BB 15a), and identified by modern Bible scholars as the "School of Deuteronomists," they effected changes in a number of archaic laws and adopted the levirate laws as stated in Deuteronomy.

The father-in-law was no longer permitted to perform the duty or the *halitzah*, a practice which convention had allowed heretofore. Secondly, the new code cued the leaders of the society to prevent the widow from being held hostage by distant relations; levirate marriage regained its original custom as an instrument of choice for the brothers, should they find it inexpedient to marry the widow. In order to make sure that law was now clearly understood, it was necessary to spell it out in great detail and specificity, but not yet does the levirate law express an option to the widow to refuse such a marriage.¹²

The rabbis of the Middle Ages and since extended the law forbidding a man to marry his brother's wife (Lev. 18:16) to cover marriage with the widow of his brother, thus making it mandatory for the widow to perform the ritual of *halitzah* in all cases, regardless of the levir's desires (and the woman's own). In essence, this ruling abrogates the original purpose of the levirate marriage.

Nonetheless, the *halitzah* ceremony must be performed, as the Bible insists, when the levirate marriage, under any circumstances and for any reason, does not take place. It has been known that recalcitrant brothers-in-law have refused to free their brothers' widows through *halitzah*, thereby making her a hostage. The problem has been recognized, and in Israel at least, the rabbinate has issued decrees, honored in the courts, that tend to ameliorate this situation.¹³

NOTES

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1. The marriage of Isaac to Rebekah takes place when he brings her into the tent of Sarah, his late mother (Gen. 24:67). At the marriage of Jacob to Leah, her father Laban makes a feast for his people after which he brings Leah to the place where Jacob is waiting for her. Jacob had already paid the bride-price by tending Laban's flocks for seven years (he did get free room and board).
2. From the Latin *levir* = brother-in-law. The Hebrew is *yavam*.
3. The Talmud devotes an entire tractate to this law, Yevamot.
4. According to the Talmud the first child could be a girl with the same rights.
5. The Hebrew root of the word for "removing the sandal" is - *h-l-tz*. Hence the widow's act is called *halitzah*.
6. *The Interpreter's Dictionary of the Bible* Vol.III, p.282. See also A.E. Speiser, "People and Nation of Israel," *Journal of Biblical Literature*, Vol.79 (1960).
7. Midrash Rabba 85:5 states that Judah was the first to practice levirate marriage. This implies that the law antedated him. See also the Ramban (Nachmanides) on Gen. 38:8.
8. Similarly, Jacob could be married to two sisters in spite of the prohibition in the Torah (Lev. 18:18).
9. The narrator writing this story, according to modern scholars in the post-Exilic period and in his own words very long after the events he describes had taken place, deems it necessary to explain to his readers what *halitzah* is in regard to the redemption of property. In the days of Jeremiah, the Seventh-Eighth Century B.C.E. this was no longer practiced (Jer. 32). For further discussion of this matter see my article "A Problem in the Book of Ruth," *Jewish Bible Quarterly*, XXII:3 (July-September 1994) pp.178 ff.
10. The territorial integrity of each tribe is reflected in the story of the daughters of Zelophehad (Gen. 27:36). See also my article, "The Daughters of Zelophehad Revisted," *Jewish Bible Quarterly*, XXV: 3 (July-September `1997).
11. Speiser, p. 162.
12. In Proverbs 25:1 they are called "Hezekian's men,;" and in the Talmud, Hezekiah's company," B.B. 16a. Modern Bible scholars speak of the "Deuteronomic school" in that era.
13. The rabbis, in a much later era, empowered the wife to sue for divorce, but the husband still had to agree by ordering the scribe to write the bill of divorce.

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