

# Levirate Marriage: The Limits of the Law

By Professor Martin Lockshin

The unusual law of levirate marriage in the book of Deuteronomy raises many questions—exegetical, sociological, and philosophical—and definitive answers are hard to find. In a slight reworking of the New Jewish Publication Society translation, the text in Deuteronomy 25 reads as follows:

5. When brothers dwell together and one of them dies without a child (יָרֵם), the wife of the deceased shall not be married to a stranger. Her husband's brother shall unite with her: he shall take her for a wife and perform the levir's duty.
6. The first son that she bears shall be accounted to the dead brother, so that his name may not be blotted out in Israel.
7. But if the man does not want to marry his brother's widow, his brother's widow shall approach before the elders in the gate and say, "My husband's brother refuses to establish a name in Israel for his brother; he will not perform the duty of a levir."
8. The elders of his town shall then summon him and talk to him. If he insists saying, "I do not want to marry her,"
9. 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!"
10. And he shall go in Israel by the name of "the family of the unsandaled one."

Among other, perhaps more serious, problems, the text seems to contradict directly the injunction in Leviticus 18:16: "Do not uncover the nakedness of your brother's wife." In other words, Deuteronomy requires that which Leviticus forbids. According to the accepted traditional Jewish harmonization, it is ordinarily forbidden for a man to marry his brother's widow; however, if that widow is childless, then such a marriage becomes not only permitted but it is even considered meritorious (a *mitzvah*).

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Another solution—never offered in traditional rabbinic sources, but suggested by Karaites, among others—seems obvious. The text suggests that the “brother” of the deceased should perform the levir's duty. However, the word “brother” can have many meanings, both in Hebrew and even in modern spoken English. Some Karaites accordingly argued that some kinsman of the deceased should perform the levir's duty, but out of deference to the book of Leviticus, it ought not to be the brother of the deceased.

Theoretically one could also cite the biblical narratives that refer to *yibbum* to prove that, in the Bible, people other than a brother of the deceased may perform the levir's duty. In the one Torah text that tells a story of *yibbum*—the story of Judah's daughter-in-law Tamar (Genesis 38)—at least one character in the story, Tamar, thinks it appropriate that a family member other than the deceased's brother perform the levir's duty. However, the strongest evidence for such a non-halakhic reading is from the Book of Ruth, which we read on Shavuot. At the end of the book, the elders at the gate recognize two members of the clan as potential candidates to marry the childless widow, Ruth. A serious twisting of the text is required to claim that either Boaz or Ploni Almoni (the “John Doe” of ancient

Israel) is a brother of Ruth's deceased husband, Mahlon. The text seems to imply that the levir's duty is passed along from the closest relative of the deceased to those less closely related, just as an inheritance from an intestate person might be passed along to the surviving relatives, with the closest living relative being the beneficiary.

The Book of Ruth itself seems to make precisely this comparison. The potential new husband of the widow Ruth is the man who not only has levirate responsibilities but also is associated most closely with the estate of the deceased (Ruth 4:5). He has a responsibility to redeem the estate, to buy back and presumably take control of the ancestral holding of the deceased. However, rabbinic tradition never linked the responsibility to redeem the estate to the laws of *yibbum*. If, for example, a man without brothers dies and leaves a childless widow, halakha states unambiguously that, in such a case, no *mitzvah* of *yibbum* is incumbent on the other relatives, even if they are the heirs. Before we consider why that is the case, let us take one step back and consider the underlying rationale for the law of the levir.

As is the case for so many *mitzvot*, the Torah provides no clear reason for this *mitzvah* of *yibbum*; it simply states that a levirate marriage ensures that the deceased's “name may not be blotted out in Israel.” Curiously, halakha never required what seems to be the simple meaning of this verse—that the child who is born to the levir and the widow be given the name of the widow's deceased husband (see *Yevamot* 24a). Furthermore, the author of the medieval work, *Sefer ha-hinukh*, who almost always explains *mitzvot* in rational terms, writes in commandment 598 that the true meaning of this *mitzvah* can only be understood in kabbalistic terms.

Modern readers of the Bible have attempted to give sociological explanations for the law. Some argue that it reflects the desire that marriage remain within a tight social circle, giving exogamy (marrying out) a new and very restrictive meaning. Others claim that the law reflects a powerful patriarchal system; a woman becomes part of the clan into which she marries and is never allowed to leave that clan, even after the death of her husband when she might gain possession of his estate. As the notes in the *New Jewish Study Bible* (Oxford, 2004) put it, “The widow's marriage outside the clan would diminish the landholding of the clan.”

Another explanation is that, in antiquity, widows without sons—like all women without a husband—were considered dangerous and overly powerful, and they had to be controlled. In other words, the levirate law protects the power of men by eliminating or at least reducing opportunities for the existence of powerful and wealthy unattached adult women. Some try to give this idea a more positive formulation, arguing that women in ancient societies required the protection of husbands. The Torah, according to this explanation, took steps to protect unattached women from a life in which they would have no man responsible for them.

All of these explanations are theoretically possible. However, one surprising detail in the rabbinic interpretation of the law of the levir argues against any explanation that connects this law to patriarchy: that is the interpretation of the Hebrew word יָרֵם in the biblical text. The Bible describes what is to be done with a woman whose husband dies and does not leave behind a יָרֵם. Many translations of the Bible—for example, the *Revised Standard Version*, the *New International Version*, and even the New Jewish Publication Society translation—say that the levir law is implemented when a man dies and has not left a son behind. But the rabbis say that the law is in force only if a man dies without leaving a living child (see *Sifre* Deuteronomy 288, in which a woman is considered not subject to the law of the levir even if the only surviving descendant of the deceased is a daughter's daughter.) In other words, according to accepted rabbinic interpretation and all halakhic authorities, a widow who has a daughter but no son is not subject to the law of the

levir. For such a woman, the law of Leviticus 18:16 would apply, and her dead husband's brother would not be allowed to marry her. (The rabbinic understanding that the word **בן** in our verse means "son or daughter" is reflected in some older English translations, such as the *King James Version* and the 1917 Jewish Publication Society translation.)

The rabbinic explanation that the law of the levir applies only to women who have no children, male or female, essentially undercuts the possibility of seeing the law in simplistic patriarchal terms. If unattached women with money represent a danger to the patriarchy, the law ought to apply even if the widow has a daughter. If the law is meant to protect unattached women from the abuses possible in a patriarchal society, surely the widow with a daughter and no sons would need at least as much protection as the childless widow!

From an exegetical perspective, the rabbis did not have to say that the phrase **בן אין לו** means that he had no *child*. The identical Hebrew phrase appears once more in the Bible, in Numbers 27:8. The context makes it clear that the phrase there means that the man did not have a *son*. (The full verse reads "If a man dies and does not have a son (**בן אין לו**), give his inheritance to his daughter.") Why then does halakha say here that the phrase **בן אין לו** in Deuteronomy means that he did not have a son or a daughter, and why does halakha rule that a widow with a daughter is not subject to the law of the levir?

Of course, any answer to such a question is speculative. A traditionalist might simply answer that this is what the Oral Law taught, so that is the halakha. However, it is also possible to see this interpretation as part of a larger historical process of limiting the law of the levir. As I noted in the beginning of this essay, the levir could easily have been defined as being any relative of the deceased, as implied in the Book of Ruth. But the rabbis did not so interpret the law. In addition, the law could easily have been applied to a widow with a daughter—as so many modern translators of the Bible claim—which would allow the phrase **בן אין לו** to be interpreted in Deuteronomy the same way it was interpreted in Numbers. But again the rabbis limited the law.

A final example of limiting the law of the levir is the preference of halakha for *halitza* (the "unsandaling" ceremony) over

*yibbum*. A simple reading of the text from Deuteronomy is that *halitza* is meant to disgrace a potential levir who refuses to do the right thing: the *mitzva* of *yibbum*. But already in Mishnaic times (*Bekhorot* 1:7) we find the suggestion that "nowadays" Jewish law should steer people toward performing *halitza*, not *yibbum*. The intentions of the men who perform *yibbum*, it is argued, may not be proper, and so we ought to reverse the Torah's priorities and see *halitza*—the ceremony that will free the widow to marry anyone—as the preferred solution. And although the debate about whether *halitza* or *yibbum* is preferred continued through talmudic times, by the Middle Ages there existed a fairly strong consensus discouraging and even prohibiting *yibbum*, at least in Ashkenazic countries.

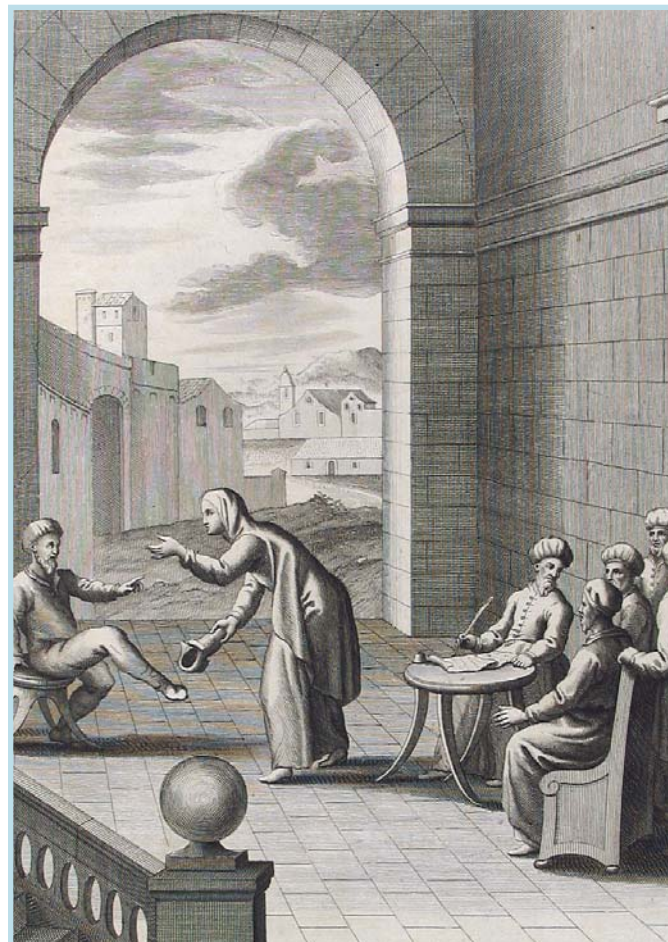
It would be an exaggeration to argue that over the millennia the rabbis consciously decided to take steps to limit the law of the levir and eventually to legislate it out of existence. Still, changes in the laws of *yibbum* and *halitza* offer a comforting example of how rabbinic tradition, exegesis, and legislation can take a law that perhaps made sense in an ancient society but that would be quite foreign to the world in which we now live and can find ways to neutralize it.

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## Yibbum: Present Day Implications

Although the story of Ruth is not the classic case of *yibbum* described in Deuteronomy, Shavuot provides an opportunity to focus on this issue which has serious implications, even today, for Jewish women. As is clear from the two articles, historically there was a split as to whether *yibbum* or *halitza* takes precedence. Ashkenazim have favored *halitza* over *yibbum*, the Oriental communities *yibbum* over *halitza*, and the Sephardim are somewhere in between. In 1950, after the establishment of the State of Israel, Chief Rabbis Herzog and Uziel prohibited *yibbum* so that there would be one established law for all. But this issue can still cause hardship for a woman waiting to be released by *halitza*, and through the generations, rabbis have tried to address this. By becoming a *yevama*, a woman is bound to her husband's brother and she can thus be in the same limbo as an *agunah* if the *yavam* (her brother-in-law) is a minor, is incompetent to go through the *halitza* ceremony, cannot be located, or refuses to perform *halitza*. The widow in all these cases becomes an *agunah* and cannot remarry. She is then subject to the same problems as other *agunot*—the inability to get on with her own life, being vulnerable to extortion and blackmail, etc.

*Jennifer Stern Breger, Editor*



**THE HALITZA CEREMONY**

*Augustin Calmet, 1732*

*Courtesy of the Library of the Jewish Theological Seminary.*

*Christian theologians had a great interest in the halitza ceremony and there are many European illustrations of the ceremony and of the shoe or sandal used in books about Jewish customs.*