Levirate Marriage and the Family in Ancient Judaism


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The goal of this delightful new book by Dvora Weisberg, is to examine the evolution of levirate practice as reflected in Hebrew Bible and Rabbinic literature. In biblical instruction, when a man died without male offspring, his brother (the levir) was to "perform the duty of a husband's brother," sleeping with the widow to give her a male heir. The intended boy-child was given the name of the dead husband and inherited his biological grandfather's property in the place of the dead husband. Any brother-in-law who refused to perform this duty was publicly shamed by the widow, who removed his sandal and spit in his face before the elders of the community. His entire household was stamped thereafter with the title "the house of the one whose sandal was pulled off" (Deuteronomy 25:10). This practice, created to avoid the name of the deceased being "blotted out in Israel," had many unintended consequences for the widow, the levir, the levir's wife or wives, and any progeny that resulted.

Levirate, as practiced in the Rabbinic period, progressively diverged further and further from biblical practice. The reason, according to Weisberg, is that “the family imagined by and legislated for in rabbinic literature is not the family portrayed in the Hebrew Bible.” (195) Rabbinic law prioritised the concerns of the nuclear family over the extended family, individuals over communities. They also gave precedence to the concerns of the living over those of the dead, striving to reconcile the competing interests of all the members of the levirate family.

Chapter 1, "The Institution of Levirate," offers an introduction to levirate from a cross-cultural perspective. The Hebrew bible includes only one brief pericope of legislation on the subject (Deuteronomy 25:5–10) and two narratives that confuse the issue (Genesis 38; Ruth 3–4). Weisberg considers how levirate fits into marriage and kinship systems from other, better-documented traditional societies. She identifies a constellation of traits that are typical of societies that practice levirate and explores some of the ways that it affects complex attitudes and practices regarding widowhood, lineage, paternity, and inheritance. As a result, she rejects the simplistic reduction of levirate to a cultural manifestation of misogyny. In the end, she does not use this comparative information insensitively to "fill out" the Biblical account but to better understand why levirate was problematic for the early rabbis.

In the second chapter, "Levirate from the Hebrew Bible Through the Mishnah," Weisberg turns her attention to the Hebrew Bible. The Hebrew Bible did not dictate rabbinic instruction on the subject, but it was the starting point for all rabbinic debate, the lens through which the subject was first examined. At the end of the chapter she surveys the sparse Second Temple literature on the subject as well as the relevant rabbinic texts in the Mishnah and Tosefta. Weisberg is alive to the ambiguities of the biblical legal texts and is careful not to over-argue in her interpretation. Deuteronomy 25 provides the only clear instruction on the subject, limiting levirate obligation to a man's brothers. The narratives of Genesis 38 and Ruth 3–4, however, open the possibility that a kinsman other than a brother might marry the widow and raise children for her dead husband. Weisberg observes that Deuteronomy 25 served as the foundation of all rabbinic instruction on levirate and that the rabbis granted more authority to the incest prohibitions in Leviticus (18.16; 20.21) than to the narratives in Genesis and Ruth. Perhaps the greatest innovation
in the Mishnah is its focus on the nuclear family, the levir and widow, to the near-exclusion of the extended family, who, in Deuteronomy 25, have a significant role and interest in the new marriage.

Weisberg widens her focus in the third chapter, "Mapping the Family," to explore the kinship and family structures that are reflected in rabbinic literature. She begins with an examination of kinship terminology and definitions of "family," before roaming widely through rabbinic literature to examine texts touching upon mourning rites, testimonies, incest, inheritance, and levirate marriage. What emerges is a complex picture in which kinship ties were defined and enforced in a variety of ways, depending upon circumstances. Perhaps most importantly, she observes that throughout the literature, the primary focus of one's familial responsibilities is, first, to the individual's nuclear family created by marriage, and only second to the nuclear family of origin. Obligations to the extended family pale by comparison.

Chapter 4, "Brothers," discusses relationships and obligations between brothers. The obligation to provide children for a dead brother suggests duties that supersede self-interest. As construed by Deuteronomy 25, levirate offered little choice to the man who was obligated to perform it, and it was honoured at a significant economic cost. Rabbinic law allowed any surviving brother to serve as levir and attempted to mitigate the burden of levirate, making it almost identical to a regular marriage in terms of paternity and property. Ironically, this created a potential conflict among brothers, by making levirate financially beneficial. In the end, Weisberg shows that the rabbis were willing to promote the interests of the living brother over those of the dead brother, even if it meant undermining the institution of levirate.

Weisberg then turns her attention from brothers to widows in chapter 5, "From Wife to Widow and Back Again." Levirate widows are in particular circumstances. They are not free to marry whomever they choose, unless the dead husband's brothers release her. She is not a blood relative of her dead husband's family, but she is tied to his family, even though the marriage that made her part of the family has come to an end. She is, even before she is married to a living brother, bound to her husband's family as if he were still alive. Rabbinic literature focuses on just this period of ambiguity, when the levirate wife is 'reserved,' so to speak, for her husband's brother but is not yet a part of his household by marriage. Rabbinic law introduced a formal marriage between the levir and the widow, dissolving the uncomfortable ambiguity of the biblical instruction, under which the husband's death created a quasi-marriage, which included marital rights but excluded personal choice and ritual sanction. The rabbis also empowered religious courts to resolve potential cases of levirate as they deemed fit, annulling whatever power the levir or his "proper" wife might have over the widow or the widow might have over the levir. Here again, the rabbis demonstrate the priority of the concerns of the living over those of the dead.

In chapter 6, "Paternity and Continuity," Weisberg turns her attention to the last member of the new union, the posthumous heir of the deceased brother. Levirate children are, perhaps, in the most precarious position. In levirate, paternity of the child is assigned to the deceased husband, although he is not the biological father. The biological father, in most cases, raises the child but is disinherited (in part) by his own biological child. This potentially explosive mixture of conflicting interests inspired the rabbis to insist that the child of a levitate marriage be recognized as the legal offspring of the levir. The levir, then, become de jure husband to the widow and father to the child. The new marriage took precedence, under rabbinic law, over the old marriage. This included property rights. The child could not, in rabbinic practice, inherit in the name of the deceased. Levirate, in
all but name, had been effectively dissolved. In its place, was a new nuclear family. No member of the family was relegated to twilight relationships or substitute roles.

The greatest contribution of Weisberg’s study is that it adds new depth and dimension to our understanding of rabbinic literature, in particular its creative rev visualization of biblical law for the concerns and needs of a new culture and a new day. But this is not its only contribution. She nuances (rather than overturns) previous scholarship on the family in ancient Judaism, adding distinctions and shades of colour to the conclusions of scholars like Reuben Ahroni, Shaye Cohen, Jacob Neusner, and Michael Satlow. She also paints a more complex picture of the dynamics of levirate, in particular the tensions it created for all parties in the levirate family, and the inventiveness of rabbinic law to redress those tensions.

Weisberg put a great deal of labour and love into this work. The argument is nuanced, clear, and compelling. The prose is flowing, and the research is thorough. *Levirate Marriage and the Family in Ancient Judaism* was a pleasure to read and deserves a central place within the growing body of scholarly literature on the family in ancient Judaism.