

Étan Levine

Marital Relations
in Ancient Judaism

2009

Harrassowitz Verlag · Wiesbaden

ISSN 1439-619X
ISBN 978-3-447-05868-1

Table of Contents

Preface.....	VII
Acknowledgements	IX
Abbreviations	XI
Prologue: Introduction to a People	1
The People of Families – Nomothetic Information: Covenant and Circumcision – Covenant and Continuity – Societal Law and Human Sexuality – Lore Supplements Law – Asking the Right Questions – Crossing the Intellectual Divide	
I. Kinship and Law in Biblical Israel.....	14
The Family Book – Divine Covenant as Marital Covenant – The People’s Familial Historiography – The People – The Tribe – The Clan – The Family-House – The Marital Unit – The People’s Supervision of the Family – Structures of Monogamy and Polygamy – On the House Divided – The Morality of Biblical Polygamy – Levirate Surrogate Marriage – A People of Two Genders	
II. The Home as a ‘Small Temple’	40
Becoming a People of Families – The Book, Bookmen and Book Folk – Discourse on Gender: Sex, Marriage and Reproduction – The Jewish People Attends Every Wedding – Marriage as a Religious Imperative – Reproduction as a Religious Imperative – Encouraging Youthful Betrothal – Who Marries Who? Prohibited and Preferred Unions – The Incest Taboo – Levirate Surrogate Marriage – The Ethnicity Requirement – Lineage, Status and Community Preferences – Polygamous Marriages	
III. On Gender and Legal Status.....	76
Gender Status in Antiquity – The Linguistics of Gender – Women’s Legal Rights and Judicial Review – Marital Law and Gender Status – She Ascends With Him	
IV. Love as a Legal Construct.....	97
The Loving Bond – Marital Choice in Heaven and on Earth – Infatuation is not Love – Love and Ontological Security – Honor as Protective Care – Loving Laboring – Compassionate Connection: Spousal Dignity – Conflict Avoidance and Resolution – Transcending Ambivalence and Alienation – Divorce as Amputation – The Divorcing Wife – Divorce as Sexual Separation – The Idea of Eternal Existential Unity	
V. Validating Human Eroticism	140
Sexuality in Bible Lore – Conjugal Joy: Liberation from Reproduction’s Tyranny – Transcending Gynophobia – Confronting Sex Negation – Jewish Sexuality and Anti-Semitism	
VI. Free Will, Law and the Moral Imperative	152
Determinism as Judaism’s ‘Original Sin’ – Transcending Temptation – Israel’s Self-Discipline as Self-Definition – Human Dignity and Sexual Modesty – Female Dignity as Legally	

Inviolata – Pre-Marital and Extra-Marital Sex – The Sweetness of Stolen Waters – Betrothal as Sexual Consecration – ‘You Will Not Covet’ – The Concept of Emotional Fidelity	
VII. Woman as Sexual Suspect.....	187
On Cross-Cultural Sexual Mistrust – Wifely Fidelity, Children’s Paternity and Israel’s Covenant – Male Control of Female Chastity – The Accused Bride – A Bride’s Presumed Innocence – <i>Sotah</i> : The Suspected Adulteress – Measure for Measure in a Procedure – Emotional Cleansing – Abrogating the <i>ah</i> Double Standard – A Wife’s Presumptive Innocence	
VIII. Sexual Relations in Marriage Law.....	209
‘ <i>Onah</i> ’: the Crux of Marriage – Ramifications for Textual Interpretation – Ramifications Regarding Female Sexuality – A Husband’s Conjugal Responsibilities – A Husband’s Sexual Rights – The Sexual <i>Quantum Meruit</i> – The Marital Couch vs. The Scholar’s Seat – Sabbath and Holy Day Sex – Sex During Pregnancy – Postpartum Sex	
IX. The Time to Refrain From Embracing.....	232
Wholeness and <i>Holiness</i> – The Menstruating Fountain of Life – Sexual Separation During Menstruation – Female Sexual Empowerment – <i>Niddah</i> : Bodily Purity and Female Dignity – Sanctity, not Anxiety	
X. Love’s Body: Anticipation and Idealization.....	243
Anticipating Conjuality – Sexual Realities and Cognitive Dissonance – On Bridal Virginity – Conjuality and Age Symmetry – Physical Aesthetics in Jewish Culture – Winning the Genetic Lottery – Aesthetic Subjectivity – The Poetry of Sexual Anticipation – The Idealized Body – Uniqueness of the Beloved – Beautification Necessities – Religious Dispensations for Beauty and Dignity – Aesthetics and the Aging Wife	
XI. Lawful Conjuality: The Loving Embrace.....	266
Wedding as Entering Eden – Lovemaking Surroundings – Privacy of Conjugal Sex – Cleanliness in Conjuality – Consummating Marriage – Sexual Learning – To Whom Does a Woman’s Body Belong? – Conjuality as Lovemaking – Holistic Sexuality: Emotional Fidelity – The Whole-Body Experience – Over-Knowing as Love’s Executioner – Sanctity in Sexuality – The Consequences of Repugnant Sex – Marital Intercourse as a Free Option – The Concept of Marital Rape – Timing: By Invitation Only – Who Solicits and Initiates an Encounter? – On Sexual Positions – Intercourse: ‘Usual’ and ‘Unusual’ – Woman Comes First: The Female Orgasm – On Masculinity and Virility – Aphrodisiacs and Healthful Behavior – Aging and Virility: The Parade’s End	
XII. Children: Married Life and Eternal Life.....	313
Conjuality as Eternity’s Portal – How Babies are Born: The Three Parents – The Infertility Dilemma – The Mothering Instinct – How Many Children to Have – The Preference for Sons – On Birth Spacing – Attitudes to Birth Control – The Woman’s Body and the Woman’s Decision – The Crises of Childbirth – Positions for Reproductive Sex – ‘I Can Make All My Children Be Males’ – Repeated Female Orgasms – Repeated Sex During Pregnancy – Blessing For the Person Who Has Everything	
Epilogue.....	335
Select Bibliography.....	339
Index.....	347

embarrassingly self-indulgent: given more to self-projection than to self-scrutiny, with its repetition of exhausted idioms and ready-made slogans most resembling a cuttlefish: squirting ink to cover its retreat. So I part from apologetics by presuming to suggest that the Rabbis were not unerringly salutary: their motives and values were not invariably impeccable, and antiquity does not guarantee a monopoly on virtue. By all reasonable standards this hardly seems a spectacular heresy: in the medical metaphor of Maimonides on ‘erroneous tradition’ (מנהג טעות) and ‘foolish tradition’ (מנהג שטות), “The fact that there are sick people does not justify spreading the disease.”²

As Homer reminds us, navigation hazards include opposite dangers (*Incidis in Scyllam cupiens vitare Charybdim*), so while not eliding praiseworthy and socially valuable aspects of anti-traditional historians, I had to reject the less admirable features often excused by their many sympathizers: complacencies as self-righteously offensive as their opposites. For Jews have a hoary tradition of questioning majority opinion, particularly when it became or threatened to become, established, hardening into dogma destructive of independent thought. And though Jewish sages did *not* recreate a marital Garden of Eden, some gave it a good try. So enraged attempts to discredit tradition *in toto* go beyond crankiness and abuse, rising into the foothills of paranoia. Frankly, by now it is a bit of a bore, so why give further hearing to those who stand around unsmilingly in black, exhibiting no discernible interest in anything unrelated to their own ennui, repeating a devastating caricature wherein the Jewish male was *Pithecanthropus erectus*, indeed more *pithekos* than *anthropos*! In sailing the sea of ancient Judaica a helmsman must always strive to present the *intentio auctoris* fairly, allowing all on board without giving any the wheel. So though not politically correct, I have tried to be an ‘equal opportunity offender’.

Fourth, Jewish sages avowed that concealing the source of a tradition was tantamount to delaying the Redemption, yet as a reader I know that if a text is absorbing, footnotes afford scant pleasure. (Encountering one, as Noël Coward remarked, is like going downstairs to answer the doorbell while making love.) So though notes may lend weight to contentious assertions and diffident speculations, I refrained from the massive citing, reviewing and criticizing of previous scholars that often bury academic studies. This book would include many more notes were I to indulge in debate, yet I am still abashed by their number.

Fifth, if “*traduttori traditori*”, then I alone am guilty of all translations including sexist renderings (e.g., *mankind* and *human*, that shorten to *man* taking the pronoun *he*.) Though not wanting to reinforce gender inequity I didn’t know how to correct this without falling into awkward circumlocution and cacophony. (More, Adam’s rib is included in our linguistic structure: *man* harks back to the Sanskrit *manus* that meant born of woman.) And just as other words began preemptively and became innocuous, so using *man* for “all of us” may be neutered (or at least house-trained) if we who use it recall its etymology and proffer appropriate apologies for the linguistic sins of our fathers (*sic*).

A comforting academic aphorism holds that with an appropriate disclaimer any book can be made respectable. My hope is that this study will not constitute the definitive refutation of that hypothesis!

Haifa, 2008

É. L

2 (*Responsum* #263)!” In Aristotle’s formulation, “*Amicus Plato, sed magis amica veritas* (Nichomachean Ethics, 1,6).”

Prologue: Introduction to a People

The People of Families

It is sublimely apposite that antiquity's first mention of Israel was intended to be the last! Indeed, the *only* reference to Israel in Egyptian sources is the victory stele raised by Pharaoh Merneptah (1291 BCE) avowing that "Israel is laid waste, his seed is no more." This obituary has recurrently proven premature: most recently, 3,000 years later in 1967 CE, Egypt was invaded by the 'seed that is no more' in Israel uniform!¹ The enigma of Jewish survival despite the best efforts of Egypt, Assyria, Babylon, Rome, Christendom, Islam and others, and despite unparalleled persecutions and lures to desertion, "is such an extraordinary phenomenon in world history and the history of religion that many a fine mind has doubted whether it can at all be explained in merely human terms." Perplexity is warranted, "However, such escape into the irrational and miraculous is merely a profession of intellectual lassitude. It certainly does not absolve the serious student of historic developments to inquire into the more overt human mainsprings which have shaped the destinies of mankind and the Jewish people during the last two thousand years."²

Organic continuity for three millennia despite all rational prognoses is multi-factorial: no single cause explains passionate loyalty to ethnic and cultural self-preservation despite dispersion and disadvantage. But one *fundamental* characteristic revealed by archeological and literary evidence is that from its earliest origins this was a family-based People. A Domestic law reflects the relative strengths of the overall political authority and of the family.³ For in milieus where the supreme entity came to be an ethnically diverse state, with the outer boundary being a political structure, inner bounds too emphasized the political units as administrative subdivisions. But the distinctive feature of Hebrew society was its emphasis upon the *family* as its basal bounded entity.⁴ First, the family was regarded as the

1 To complete the irony, the actual 'seed that is no more' were the ancient Egyptians: their language, literature, religion and culture buried in the sands or displayed in museums along with their mummified bodies!

2 Salo Baron, *A Social and Religious History of the Jews*, II, 215, q. W. von Humboldt, *Gesammelte Schriften*, X, 97f.

3 So in a strong state such as Babylonia during the 3rd Dynasty of Ur and the Hammurabi dynasty a patriarch's power was kept limited, in weak states of Assyria, Syria and Canaan during the 2nd millennium BCE he had almost unlimited power. See I. Mendelsohn, "The Family in the Ancient Near East," *BAR* III (1970) and C. Saporetti, *The Status of Women in the Middle Assyrian Period* (Malibu 1979).

4 In Mesopotamia, "The family played a part inevitably, but its autonomy was severely restricted by political and economic considerations. Though blood was thicker than water, bread and taxes rated still higher. That is why adoption, which tends to loosen family ties, became such a prominent factor in Mesopotamian society; contrariwise, the institution of the levirate, which stands guard over blood relationship, never took hold in Mesopotamia proper. Thus, there is not a single attested case of adoption in the Bible, and the institution of levirate marriage, though progressively attenuated, continued into the post-biblical period (Speiser, *Genesis*, 61)."

natural human unit: the only institution founded by God at the birth of humanity. Second, Israel's self-definition as God's People defined its constituent tribes, clans and families. Third, these kin-groups identified and governed every man, woman and child.

The fact that the Bible conventionally adjured parents to train their children (and children to obey parents) hardly warrants surprise, but most unusual is that it is parents and not clergy who are emphatically invested with the responsibility of transmitting the People's religious traditions!⁵ Early narratives describes individuals who were neither priests nor cult officials erecting altars, sacrificing and calling upon God, and rituals involving groups of households performed without supervision, support or clergy. Even when traditions became nationally-configured the family remained Israel's focal institution: it was family doorposts and clan gates, not institutional buildings, that bore its markers (Dt. 6:8).

Circumcision and Covenant: 'Nomothetic Information'

At birth a Hebrew male entered a divine Covenant, and at maturity he would enter a marital covenant, and whatever conscious reasons for circumcision existed in ancient cultures, (e.g., hygiene, a puberty rite, a substitution for human sacrifice, a symbol of submission to a deity or human authority,) in Hebrew society its express purpose was to mark him as a member of the People and a participant in its Covenant. This too was a *parental* responsibility. The covenant related to procreation and perpetuation, with its marker incumbent in perpetuity upon Abraham's lineage, house-born (יְלִידֵי בַיִת) and acquired (מִקְנַת כֶּסֶף): only circumcised males could be admitted into the People and participate in its rites.⁶ This genetal imprint denoted existential identity: "The Jew... carries in his flesh a constant reminder of the fact that his own self perpetuation is also the perpetuation of Israel's mission and that the offspring which he begets are not merely his own heirs but also the prospective agents and witnesses of an eternal God."⁷ Circumcision emphasized, even as it restricted and transcended, natural and generative sexuality. By divine command, men willingly marked their reproductive organ with the sign of their covenant with God: the mark of Hebrew identity also identifying the divine purpose for the People (עַם). The sexual organ was given a *religious* identity essential to family life, "But why a rite applicable only to the male children? Because males especially need extra inducements to undertake the parental role. Freed by nature from the consequences of their sexuality, probably both less fitted and less interested by nature than women for the work of nurture and rearing, men need to be acculturated to the work of transmission. Virility and potency are, from the Bible's point of view, much less important than decency, righteousness, and holiness. The father is re-called to this teaching, and, accordingly, symbolically remakes his son's masculinity for generations to come. When he comes of age, the son will also come to understand the meaning of the mark of his fathers and their covenant and their covenant with God; presumably, it will

5 Cf., e.g., Ex. 12:26, 13:8, 14, Dt. 5:5, 6:6, 12, 20, Ju. 17:4, Jer. 23:33 and I Sam. 19:13.

6 See Gen. 17:1f., 23, 21:4, Ex. 12:48, etc. The procedure itself included baring the penis corona by splitting the membrane and pulling it down, so texts cite two requirements: circumcising and baring. Cf. Tb *Yebamot* 71b, Dt. R. Ch. 6 (cit. Gen. 17:13, Ex. 4:26) on 'פְּרִיעָה'.

7 T. H. Gaster, *The Holy and the Profane* (New York 1955). Cf. Jacob Neusner, "Sin", in *The Theology of the Oral Torah*, 457f.

decisively affect how he uses his sexual powers and how he looks on the regenerative and nurturing powers of woman.”⁸

The basic existential question underlying all sexual law and morality is whether a human being is meant to act on impulse alone, and whether the entire concept of sexual self-control is a eunuch-like delusion. Clearly, an unaided individual can not know, for ethical monotheism is technically ‘cultural information’: a term signifying information that cannot be obtained through (or inferred from) direct observation, but must necessarily pass from one mind to another. And if everything is nebulous about a matter so elementary as the morals of sex, there is nothing to guide people in the more complex moralities of all other personal relationships and activities. But circumcision is a ‘nomothetic statement’: a Jew *must* observe covenantal laws: imprinting the penis of a newborn male on its eighth day of life created an ethical marker as well as an ethnic one.⁹ Every living person is a ‘chronoholistic system’: one whose behavior (or state) at one time does not permit the prediction of behavior (or state) at another time. And since the ‘I’ is a frontier, mobile at each instant, there is the need for a permanent covenant marker signifying the spiritual control of the physical: a ‘circumcision of the heart’.¹⁰

Circumcision was the clearest possible indicator of the nexus between sexuality and religion: a Jewish ‘mission statement’. At various times in history, such as after the conquest of Palestine by Alexander the Great, Jews encountered people who regarded circumcision as a barbarous custom and held circumcised males in contempt. The Christian New Testament thoroughly denigrated this Jewish rite that so symbolized the ‘burden of the Law’.¹¹ Whereas polemicists argued that had God wanted Man to be circumcised the male penis would have been created that way, Jews refuted that just making the claim was a *malum in se*: God willed that all of Creation be ‘raw material’ for improvement by humans (תקון עולם), even humanity itself!¹² Legend told that those men who were described as ‘perfect’, or destined to hear the divine voice to or be in the divine presence were *born* circumcised!¹³ So while assimilatory Jews might refrain from circumcising their sons and even subject themselves to a painful operation to restore an uncircumcised appearance, when Antiochus Epiphanes attempted to destroy Judaism by prohibiting circumcision under threat of death,

8 Leon R. Kass, “Regarding Daughters and Sisters; The Rape of Dinah,” *Commentary* 104 (1992), 34.

9 Gen. 17:12f., 21:4, Lev. 12:3, 3:3, 5. Cf. Ju. 14:3, I Sam. 17:36, 31:4, 2 Sam. 1:20, I Chr. 10:4, etc.

10 See Lev. 26:41, Dt. 10:16, 30:6, Jer. 4:4, 6:10; 9:25. So Ezekiel’s expansion, “no alien *uncircumcised in heart* and uncircumcised in flesh shall enter my sanctuary (Ez. 44:9).” Cf. Tb *Nedarim* 31bf. Legend tells of Israelites initially objecting when told to desist from immoralities prevalent in Egypt (Tb *Yoma* 75a, q. Nu. 11:10).

11 So, “Stand fast in the liberty wherewith Christ has made us free and be not engaged again with the yoke of bondage. Behold I, Paul, say to you that if you be circumcised, Christ shall profit you nothing. For I testify to you further that ever man who is circumcised is obligated to fulfill the entire Law (Gal. 5:1-3).” See Rom. 2:25-3:1, Phil. 3:3, Col. 2:11, etc. As most early Christians, the Gospel of Thomas dismissed circumcision: “His disciples said to him: Is circumcision profitable or not? He said to them: Were it profitable, their Father would have begotten them circumcised from their mother... (Logion 54).”

12 The Tiberian Rabbi Hoshaiiah (c. 280 CE) in Gen. R. 11:7 and Seder Eliyahu Z. 2, refuted a philosopher by arguing that even divinely revealed ‘Written Torah’ required human fulfillment by ‘Oral Torah’!

13 ARN 2:5 cites Adam, Seth, Noah, Shem, Jacob, Moses, Samuel, David, Jeremiah, Zerubbabel, and even ‘Wicked Balaam’.

his edict was overwhelmingly and bravely resisted by mothers and fathers.¹⁴ So Jewish dogma: “Whoever surgically alters his covenant of our father Abraham has no share in the world-to-come!”¹⁵

The Covenant of Circumcision and the Covenant of Marriage told a man with whom and how he could have sexual relations. Indeed, given ancient cross-cultural gender conflicts, it might take years for a couple to dissociate conjugality from the lust for power *over* a mate. The ‘evil urge’ to traduce the experience of tender caring by aggressive force and control could murder marital love: unaffectionate sexuality is not ‘*eros*’ but ‘*thanatos*’. Yet now a wife could see that conjugality was intended as a loving act in the eyes of God and of her man. In fact, it was as the lovemaking organ that the slang term for ‘penis’ was “The peacemaker between husband and wife”.¹⁶ The Jew’s circumcised penis attested that just as the divine Covenant protected all human dignity from abuse, the marital covenant protected a wife from all sexual abuse, including one’s own!¹⁷ Two thousand years ago, attendees at a circumcision rite would respond to its blessings, “Just as he has entered into the Covenant so may he enter into Torah, into marriage and into good deeds.”¹⁸ And the appropriateness of it all was not lost even upon the philosopher Benedict Spinoza (1632-1677) who concluded that circumcision alone had been enough to ensure the survival of the Jewish People!¹⁹

Covenant and Continuity

Albeit reductionist, there is essential insight in Eli Wiesel’s noted response to the Dali Lama that the survival of the Jewish People was due to the fact that when they were forced to leave the Land of Israel, the Jews carried with them not precious ornaments nor valuable artifacts, but their book and the idea of unity. Jewish marriage did more than bond two individuals: it created and maintained extended kinships, sustained local communities, produced new generations and perpetuated the People of Israel. It was the legalized structure wherein traditions were enshrined: a microcosm of the values and practices preserved in Jewish society. The centrality of the family was preserved unabated in post-biblical Judaism, for a society’s *existential* beliefs about its identity and role in the universe are expressed in its *essential* social relations. Marriage is a human universal, yet it is individually interpreted by every culture and every age. And Israel’s divine covenant had concomitants for the covenant of marriage: mandating loyalty, kinship bonds, human dignity, sexual sanctity, equity, responsible child-rearing and creating goodly society.²⁰

14 See Judean rulers imposing circumcision on subjugated neighbors: Hyrcanus coercing the Idumaeans, and Aristobulus the Ituraeans. Cf. I Macc. 1:15, 60, 2:46; Josephus, *Antiq.* 12:5:1, 13:9:1, 13:11:3, I Cor. 7:18f., Tj *Peah* I, 16b.

15 Rabbi Elazar Hamodai (d. 135 CE), in M *Abot* 3:15.

16 Tb *Shabbat* 145a: משיים שלום.

17 See Dt. 10:16, Tb *Nedarim* 31bf. and Tb *Pesahim* 49b. Cf. N. Rackover, “יהסי אישות בכפייה בין בעל “ ויאשתו”, *HLA* 6/7 (1980), 1-23 on Jewish rulings against any spousal violence

18 See benediction formulae in Tb *Shabbat* 137b.

19 *Tractatus Theologicico-Politicus* (1670 CE), 3:53.

20 Thus, acts of infidelity, adultery, incest, rape, promiscuity, unjust divorce, etc., not only betrayed individuals but polluted all Israel.