

LEVIRATE MARRIAGE AN OVERVIEW OF AN ANCIENT MATRIMONIAL CUSTOM

Abstract

Using the historical-critical analysis, this paper elucidates the ancient institution of the levirate marriage, a particular type of conjugal union attested in Assyria, Ugarit, Hatti, Israel, and beyond. The study presents the biblical stories of Judah and Tamar, respectively Boaz and Ruth, highlighting the complexity of kinship ties, inheritance rights, and cultural norms that have influenced marriage customs over time. The paper also briefly discusses the status of women in the classical Jewish family and its importance in the development of society. Expanding the historical lens, the final section of the work examines the status of levirate marriage in the Middle Ages and modern times, showing that this marriage practice is not limited to Antiquity, but existed also in certain regions in the post-antique period. Even though levirate marriage was quite widespread at one point in the history of civilization, it remains an almost extinct phenomenon today.



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Introduction

Levirate marriage (לֵוִיָּתוּם) represents a particular type of marriage practised in antiquity by various nations, especially in the East, in Assyria, Ugarit, Hatti, Israel and beyond (DeVine 1942, 326). Still present today in some African or Asian communities, this custom stipulates that after the husband's death, the widowed woman should be married to one of the deceased husband's brothers. Hence the name *levirate* for this custom, as *levir* means brother-in-law in Latin.

Using the historical-critical method, in our study, we will briefly present the status of women in the ancient family of the East, the advantages and disadvantages of levirate marriage, as well as its echoes throughout history. Regarding the case study, we will analyse the marriage between Judah and Tamar, as well as that between Boaz and Ruth, to see concretely how this type of marriage was applied in biblical history. Finally, we will attempt to ascertain whether this matrimonial custom extended or not into medieval history and recent history, to ultimately outline a more comprehensive profile of this type of marriage, from its origins until the present.

Levirate marriage in the context of antiquity – generalities

In antiquity, *levirate marriage* was practised by several peoples, but not by all. In the Assyrian legal corpus, it is stated that if a young man dies, the deceased's father can give the respective woman to his brother, and if he has neither brothers, nor children, nor other relatives in the household, then the woman remains widowed and can leave anywhere (Leggett 1994, 12-7). The same custom was practised in the Hittite Kingdom. According to the law there, if a man dies, either his brother or his father must take the widow as his wife and take care of her (Leggett 1994, 21). It seems that this custom was also practised in Ugarit, and evidence of this is an inscription on the tomb of King Arihalbu, where he explicitly forbade his wife from becoming his brother's wife through inheritance (Tsevat 1958, 237-43). Finally, in Mesopotamia (Nuzi), once the bride was purchased from her family, she would remain under the authority of the new family even after her husband's death (Leggett 1994, 24).

In ancient Greece, there existed the concept of *ἐπίκληρος*. According to this concept, orphaned girls without a family had to be married to a close relative of the deceased. The same practice occurred in Sparta, where these women were known as *πατροῦχοι*. Furthermore, this practice is frequently encountered in Greek literature, and Agariste is a well-known example in this regard. She was the daughter of Cleisthenes from Sicily and was married to Megacles (Lacey 1968, 276).

In contrast to the people who practised the law of levirate in one form or another, there was no such custom in Sumer, and anyone who dared to marry the wife of his deceased brother was sentenced to death (Civil 2011, 252). There was likely no such practice in Babylon either, as *the Code of Hammurabi* does not contain any provision explicitly regulating this matter (Burrows 1940, 5), only possible arguments by deduction, but nothing more (Neufeld 1944, 49).

Therefore, as can be seen, the law of levirate was not an exclusive Jewish custom but was practised by several peoples in various forms, most likely adopted by the Jews over time. Despite the formal differences regarding this custom, the people shared an important common background: the position of women in the family and society.

In ancient thinking, the family meant “a community of individuals consisting of a father, mother, and children, and by extension, all individuals of the same blood or all those living under the same roof” (Snell 1997, 52). The central authority in the family was held by the man, a kind of *Paterfamilias* (Mihăilă 2011, 210), who provided shelter and sustenance for everyone, with the other members being his property (Vatamanu 2011, 175-231). In the case of marriage, the young woman transitioned from her father’s ownership to that of her new husband, who received her into his home by paying a certain redemption price, referred to as *mohar* in the Old Testament. This price was a compensation from the new husband to the girl’s former family, both for the fact that she was born and raised there, economically supported throughout her childhood by her father, and for the fact that in the future, by moving to her new husband’s house, she would no longer be able to assist her former family through various household duties (Radu 2020, 37).

In the case of Jacob (Gn 29), we learn that he worked for seven years for his future father-in-law, Laban, to marry Rachel, indicating that the marriage had clear socio-economic implications. The woman was under the care of a man who protected her. In return, she offered him the continuity of the family name through children, love, and assistance in household matters. Once the bride was redeemed by her future husband, no one else could approach her without being accused of violating her master’s house and causing a disturbance in the city. For this reason, in ancient Greece, a man was not allowed to have intimate relations with a woman unless she was either a slave, from another city, or not in any way associated with any Athenian man, to avoid infringing on someone else’s property (Mason 2022).

In this context, in antiquity, levirate marriage was a mechanism through which women received social protection, being safeguarded from poverty and abuse. For men, assuming a levirate marriage brought both advantages and disadvantages. On the one hand, the man no longer had to pay the bride’s redemption price to receive his deceased brother’s wife into his home. On the other hand, he did not benefit from offspring, as they would inherit the name of the deceased.

Although there are feminist voices today that vehemently accuse Holy Scripture, among other things, for including the law of levirate in the Old Testament, which they claim degrades women, we cannot assert in the context of that time that this practice was demeaning. Instead, it was a mode of social organization built around the head of the household, who was responsible for the woman and children, providing them with shelter, safety, and sustenance, without other men intervening in their household (Maurice 2014, 287). It is not very clear in large families which of the brothers would inherit the deceased's wife, but we know that people always tried to keep women and assets within their own families, practising endogamy (Matthews 1988, 21). In Assyria, this practice existed even when a man bought a girl for marriage but then did not marry her. In this case, the father and his brothers had the right of pre-emption over the woman (Leggett 1994, 12-7).

In Samaria, the deceased brother's brother-in-law could inherit the widow only if she had never had intimate relations with his brother before his death (Talmud Kid-dushin 65b), and in Babylon, some cases mirrored classic levirate, meaning it was customary for the widowed man to marry his deceased wife's sister (Burrows 1940, 7). Thus, regarding levirate marriage, we can say that in antiquity, in the East, there were certainly many forms of this custom, which was a common practice for people of that time.

Case study: Judah and Tamar, Boaz and Ruth

Judah and Tamar (Gn 38)

Chapter 38 of Genesis tells us that one day, Judah saw Tamar, a Canaanite woman, and fell in love with her. So, Judah took Tamar as his wife, and they had three sons together: Er, Onan, and Shelah. When Er grew up, he married a woman named Tamar, but circumstances led to his early death, leaving Tamar a widow. In this case, Judah insisted that Onan, his second son, fulfil the levirate law and marry Tamar (Burrows 1940, 23) to raise offspring for his deceased brother. Thus, Onan went to Tamar and slept with her but did not fully comply with the levirate marriage because he avoided raising offspring for Er by spilling his seed. Shortly after, Onan died, and Tamar became a widow once again. Then, Judah proposed to Tamar to wait until Shelah grew up, stating that he would marry her and raise offspring for Er, as was the custom of the time.

In the meantime, however, Shua died, and Judah himself became a widower. In this context, one day, Tamar went to Enaim, disguised herself as a prostitute, and waited for her father-in-law there, covering her face. So, Judah came and went to Tamar without recognizing who she was, promising to give her a young goat as payment if she slept with him. However, Tamar asked for his signet ring, his staff, and his cord as a pledge. When the servant came to bring the promised goat to the woman, he couldn't find her, but after three months, it was discovered that Tamar was pregnant from her act of prostitution. At that moment, Judah wanted to have her killed. However, upon seeing the pledged items he had given to Tamar, he spared her life and accepted her into his household, and she gave birth to twin sons, Perez and Zerah.

Regarding the life and marriages of Tamar, there has been considerable discussion in biblical literature, particularly concerning her relationship with Onan, the middle son of Judah. For the deeds of Onan, the term *onanism* is used in specialized language (first used in a London pamphlet in 1716 – Stolberg 2000, 37). However, there has never been a uniform theological response regarding the sin committed by Onan. What did it consist of? Was it the spilling of seed on the ground? Was it the non-completion of the intimate act (*coitus interruptus*)? Was it Onan's refusal to fulfil his duty as a brother-in-law and take Tamar as his wife (Gn 38:8)? Or was it his lack of seriousness towards his father and the other members of the household, publicly claiming that he would have offspring with Tamar to continue the lineage of his deceased brother, but ultimately failing to do so?

For the rabbis, touching the genitals was considered an impure act (*Niddah* 13a), and the Old Testament states that one who loses semen (קרי) must cleanse himself and his clothes, being unclean until evening (Lv 15:16-18). However, nowhere is the death penalty mentioned for this act, so Onan's cause of death was probably something else, especially considering that natural secretions, as stated by St. Athanasius of Alexandria in his first canon, cannot be considered a sin, as they are ordained by God, and the status of *malkuth* is questionable in this regard (Conțac 2008).

According to St. Epiphanius of Salamis, Onan's mistake was that he avoided having offspring (Coogan 2010, 131), an argument also made by St. Jerome and St. Clement of Alexandria, asserting that God commanded humans to multiply (Gn 1:28), and Onan disregarded this command. Following this theory, virginity and monastic abstinence would become something against nature, but that is not the case. Therefore, the most sustainable hypothesis remains that Onan erred by taking advantage of Tamar

through deceit, not fully fulfilling the agreement. Moreover, he was selfish, thinking that if he did not raise offspring for his brother, then his father Judah's wealth would not be divided among three, but only two (Niditch 1979, 143-9). Thus, Onan's sin was a fraud (DeVine 1942, 323-40), which had direct consequences for the entire family. He was not obliged to marry Tamar, but he had the duty to publicly state his intentions, that he did not want to raise offspring for his deceased brother, and to accept public disapproval in this case, within a ceremony called **חליצה** (Dt 25:9 – Vigoder 2006, 463-4).

Regarding this, Josephus Flavius says: "If a man dies without having children, his brother should marry the widow, and the son who will be born shall bear the name of the deceased, becoming the heir of the first husband. This serves the interests of the state because in this way families do not die out and their wealth is preserved, and the marriage of the woman to a close relative of the first husband will comfort her for the misfortune she has endured. However, if the brother in question does not want to marry her, the woman shall go to the assembly of the elders of the city and testify that she desired to remain in the family and bear children for her first husband, but that his brother refused to marry her, thus insulting the memory of the deceased. When asked by the elders why he has an aversion to marriage, whether he cites a trivial or significant reason, the elders shall incline in favour of the woman. Then, after the woman removes the sandals of her brother-in-law, she shall spit in his face, saying that he deserves to be scorned because he has defiled the memory of the deceased. Afterward, he shall leave the assembly of the elders of the city, covered for life with the stigma of shame, while she is free to marry whomever she desires" (*Jewish Antiquities* IV, 8, 23).

Regarding this case, we remain with the idea that levirate marriage represented for the Jews an act of social protection for the widow and the name of the deceased (Vamosh 2009, 40). The widow's brother-in-law had the option to refuse the marriage, but he had to announce this publicly so that someone else could marry her, take care of her, and receive her into his home. Under these circumstances, concerning the law of levirate marriage, we can say that in the case of Tamar, she sought to become the wife of Judah, desiring to raise descendants for her deceased husband. If this had disgraced her, she could have remained in the uncertain status proposed by Onan. However, we see that she wanted to be a mother and live with Judah, fully assuming her communal responsibility and ultimately becoming part of the genealogy of the Savior (Mt 1:3).

Boaz and Ruth

Ruth is another woman known for her levirate marriage. The Old Testament presents Elimelech leaving Bethlehem during a time of famine and going to the land of Moab with his wife Naomi. After her husband and their two sons died, Naomi decided to return to Bethlehem. In this context, one of the daughters-in-law, named Ruth, which means *friend* and is a Moabite by birth, insisted on accompanying her mother-in-law on the journey home, while the other daughter-in-law, named Orpah, which means *she who turns back*, decided to stay in Moab.

Thus, Naomi and Ruth arrived in Bethlehem during the harvest season, where they coincidentally met Boaz, a wealthy relative of Elimelech, whom Ruth would assist in the fieldwork. Boaz heard about the young woman's actions and was impressed by her love for her mother-in-law. Likewise, Ruth was delighted when she met Boaz. Therefore, following her mother-in-law's advice, Ruth approached Boaz's feet during the night, and he covered her with his garment and promised that if no other closer relative would redeem her, then he would pay the redemption price and take her as his wife. So, Boaz inquired of the relatives of Naomi, and since no one wanted to marry Ruth, he redeemed all the widow's possessions: the house, the lands, and even Ruth herself, with whom he would bear Obed, the grandfather of King David.

In the Old Testament, there was a certain sexual libertinism (Luckenbill 1917, 12), but in the case of Ruth, we see that there was also a certain orderliness. Boaz did not allow himself to marry the young Moabite woman until he first asked the closer relatives if they wanted to redeem her, as they had the right of first refusal (Luckenbill 1974, 63-143). In the present narrative, the redeemer (גואל) is a more distant relative, which highlights that the levirate law allowed for some flexibility. The purpose of marriage in the Old Testament was for the woman to have a home and a family and for the man to have strong descendants.

It is also interesting in this case that Orpah, the other daughter-in-law of Naomi, remained in Moab and nothing more is mentioned about her, not even when Boaz redeemed Naomi's entire family estate, including the house, lands, and even Ruth. Rabbinic literature identifies Orpah with Rafa, from whom the giant Philistines were born, with whom King David fought in his time (*Sotah* 42b), but this is not clear historically. However, what is certain is that Ruth became the wife of Boaz when he redeemed the estate of Elimelech.

Regarding Boaz, we are not sure if he was a brother-in-law to Ruth (יבמה – Dt 25:5). Lv 25:25 states that if a brother becomes poor and sells his property, any close relative can redeem it; this is also found in Nm 27:11. Furthermore, according to Lv 21:2-3, the concept of *close kinship* refers to all relatives living in the same household. In this context, it is possible that Boaz redeemed Ruth not necessarily as her brother-in-law but as a close relative.

In the Old Testament, YHWH Himself presents Himself as the redeemer of the people of Israel in the metaphor of the mystical wedding (Is 54:5), and the prophet Hosea says that He paid silver, barley, and wine to redeem His beloved (Hos 3:2), just as Rebekah was redeemed in her time (Gn 24:53). This redemption involved the payment of a bride price by the future husband, manifested in various goods, such as a ring (Hos 2:17), or even work performed for the future father-in-law, as happened in the case of Jacob, who worked seven years for Laban to receive the hand of his chosen bride (Gn 29) (Seters 1969, 394).

In the New Testament, Christ Himself reveals Himself in the context of the mystical wedding as the Redeemer, paying with His Blood the price of redemption for us, thus making us free (Heb 9:12; Rom 3:25). He is the ἀντίτυπος of Boaz, fulfilling at the appointed time the anticipated events in the Book of Ruth. And even though some argue that Ruth does not have historical character, being merely a Jewish narrative anticipating Christ, it certainly provides an interesting historical basis for the levirate law, considering that any narrative is always constructed with the support of real concepts (Beattie 1974, 252).

Tamar and Ruth remain two telling examples of the levirate law (*The Encyclopedia of Biblical Literature*, 307), and while in the case of Tamar, the lack of seriousness of Onan was highlighted, in the case of Ruth, we observe the effectiveness of this practice, with the man becoming the protector of the widow, redeeming her, receiving her into his home, and providing for her needs, even having two children together.

Levirate marriage at different times throughout history. A current practice in the 21st century?

In *The Jewish Wars* (1, 24, 447), Josephus mentions that Jewish men had the ancestral custom of marrying multiple women, and it is likely that this practice was followed in Judaism until the 10th century CE when Rabbi Gershom enacted a decree

against polygamy (Vamosh 2009, 33). So, even in the early Christian centuries, there was some marital freedom, at least in Judaism.

The tractate *Yevamot*, found in the *Babylonian Talmud in Nashim*, contains a collection of provisions regarding the levirate law. It consists of 16 chapters and was written in the early 3rd century CE, which proves that levirate marriage was still practised in Israel at that time. This is not surprising considering that the political authority accepted marriage between brothers-in-law in the 1st century CE. King Herod himself was married to Herodias, his sister-in-law (Mk 6:17) (Kokkinos 1986, 42). At the same time, some ancient authors, such as Julius Africanus, speculate that the difference between the two genealogical lists of the Savior in the Gospels of Matthew and Luke is due to the levirate law (The Ecclesiastical History 1,7). This was a common practice in Israel.

Levirate marriage is indirectly mentioned even by the Savior Himself in the Gospel of *Mark* 12:18-27 when the Sadducees challenge Him, asking about the status of married people in the *afterlife*. If the levirate law was not practised at that time, the Sadducees' question would have been meaningless. Therefore, this dialogue must be evidence that Jews in the first Christian century still practised this type of marriage.

Today, levirate marriage is prohibited in both Judaism and Christianity, but it is still practised in some isolated communities. It appears that in the 4th century CE, the rabbis issued a decree, in agreement with Roman authority, declaring the levirate practice illegal (Monnickendam 2019, 138; Grubbs 2002, 161-2). In the case of the Church, we see that a similar decision was made in the 4th century CE at the Council of Neo Caesarea in 315, and those who did not comply with the new regulations were excommunicated (Council of Neo-Caesarea^{1954, 35-8}). Furthermore, in Canon 23, St. Basil the Great forbids this practice (St. Basil, Letters 199, 23).

Until the time of Emperor Constantine the Great, Christians in the empire complied with imperial legislation regarding marriage, following the principle *nuptias, non concubitus, sed consensus facit* (marriage is constituted by consent, not cohabitation). The legislation of Justinian (527-565) does not provide any religious implications for marriage but states that through marriage, man and woman become an inseparable community (*Iustiniani institutions* I, IX). In the 8th century, in Byzantium, the *Ecloga* mentions that young people who wanted to marry were blessed in the Church (*Ecloga*, II, 9). However, it was only in the 9th century, through Emperor Leo VI's *Novella* 89, that a wedding celebrated in the Church became mandatory for

Christians and recognized as such by the state (Meyendorff 1990, 105). In the case of slaves, Church weddings were accepted only in the 11th century, during the reign of Alexios I Komnenos, even though the blessing of the newlyweds by the Church was unofficially performed since the 4th century, including in their case, at least in Armenia and Constantinople (Meyendorff 1990, 105). Therefore, there is no evidence or records of an officially celebrated levirate marriage in the Church during that time.

Starting in the 8th century, in Byzantium, polygamy was completely banned, and under these conditions, levirate marriage became difficult to accept as women became partners to men rather than mere property. Concubinage was also condemned, and a law issued by Leo VI in Byzantium stipulated that adultery would be punished by cutting off the noses of unfaithful individuals (Drimba 1998, 272), establishing a certain marital order in the empire.

From the 12th century onward, intimate life experienced new moments of emancipation in Europe. In the Middle Ages, in the West, concubinage developed considerably, and legal wives were often obligated to live in the same house with their husbands' concubines. Moreover, in Venice and Geneva at that time, many married merchants declared themselves unmarried to deceive women (Drimba 1999, 254). The orgies of Marozia were famous in the Vatican (Hofmann 2002, 8), and Pope Alexander VI (Hrib 2006, 40) and Benedict IX (Gregorovius 2010, 47) were known for their sexual immorality. In the Middle Ages, in the West, a tax called *Callagium* (Berry 2005, 82) was even imposed on priests who wanted a woman in their homes. It is said that in that context, Jan van Leyden declared it illegal for girls to remain virgins and reinstated polygamy (Blond 1976, 122). Despite reaching such depravity, there is no indication that the levirate law was reinstated in the Middle Ages, and no written documents supporting this have been found.

Currently, in Islam, levirate marriage is allowed, provided that the woman agrees to her new husband without being forced to accept this custom (Quran 4:19). In Sub-Saharan Africa, levirate marriage is still practised in certain communities in Kenya, Sudan, Uganda, and Zambia, but due to the spread of HIV/AIDS, it is now declining. Widows whose husbands died from this disease are practically condemned not to remarry (Kudo 2022). Additionally, Christian and European cultural influences have discouraged these practices in many African regions, and levirate marriages are becoming less common here.

In Europe, under conditions of monogamy, a woman can marry her former brother-in-law today, whether she divorced her husband, or he passed away. Although, from a civil perspective, this practice could be allowed, it is prohibited from a religious standpoint, as we can see in the practice of the Church and in Canon 23 of St. Basil the Great, which explicitly forbids this type of marriage. Even so, without a redemption price and explicit obligations, more or less evident, for closer relatives to marry the widowed woman, there is no law like levirate marriage today. Women have a completely different status than that of the property of the *Pater Familias* and are free to decide for their future without any economic or social constraints.

Conclusions

Summarizing what has been presented so far, we can conclude that levirate marriage was an ancient custom practised not only by Jews but also by several other peoples, aiming to provide social protection for widowed women and maintain the deceased's lineage.

In the Old Testament, the levirate law is mentioned in Deuteronomy, and Tamar and Ruth are examples of this practice. As seen in the case of Tamar, women were not demeaned by this custom but rather sought to have a home, a family, and raise offspring for their deceased husband. The same happened in the case of Ruth, who took the first step towards marriage with Boaz.

Levirate marriage, in certain cases, involved polygamy as a matter of fact, but monogamy has always been the Jewish ideal, as we can see from the example of Adam and Eve. The Talmud, following the biblical model (Dt 17:17), recommends that a man should not multiply wives to avoid dividing his heart (*Sanhedrin* 21a). In Christianity, this is even more evident through the mystical marriage proposed by the New Testament between Christ and the Church.

Levirate marriage is still practised today in certain restricted communities in Kenya, Sudan, Uganda, and other countries in Sub-Saharan Africa, but it is on the verge of total disappearance due to HIV/AIDS and the influence of Christianity and Europe.

In Europe, from a legal point of view, it would not be impossible for a widow to marry her brother-in-law today, but it is prohibited by the Church. Nevertheless, even in this case, it would not be considered a levirate marriage, as there is no redemption price for the widowed woman, as she is not considered the property of the deceased family.

Taking these aspects into consideration, we can conclude that levirate marriage was an ancient practice aimed at providing a certain social stability to the family. However, the perfect model of marriage is Christ and the Church, which the Book of Ecclesiastes anticipates us to embrace, saying: “Enjoy life with the wife whom you love, all the days of your vain life that he has given you under the sun because that is your portion in life and in your toil at which you toil under the sun” (Eccl 9:9).

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