

14 Levirate marriage

If after the death of her husband a widow marries her husband's brother it is called a levirate marriage. According to old beliefs it was done only exceptionally and was considered to be incestuous.¹ In Sumerian law it was prohibited. King Ur-Nammu stipulates,

If a man marries the wife of his older brother (after he has died), he will be put to death. If a slave marries his mistress (after his owner has died), he will be put to death.²

We might be inclined to view this institution from the point of view of the widow or of the brother, but that is an incorrect standpoint. Rather we should put ourselves in the position of the father of the dead man.³ As the head of the family it is his task to find a wife for his sons to raise up progeny. If that does not work for the first son because of a premature death, then a second attempt should be made with the second son. It is the interests of the family as a whole, not of individuals, which were considered paramount. The 'bride' (*kallatu*) does not just belong to the bridegroom but she is the bride of the head of the family or of the whole family. Levirate marriage saves the father from paying a second bride price for a second son. The woman will be moved freely from the one to the other.

The Hittites, the Hurrians (in Nuzi), the Assyrians, the Canaanites and the Israelites all practised levirate marriage. It is thought to have been an Indo-European institution introduced by the Hittites.⁴ It is mentioned almost exclusively in law-books (Middle Assyrian Laws §§ 30, 33, 43; Hittite Laws § 193; Deuteronomy 25:5–10),⁵ and seems to be restricted to the period between 1500 and 1000 BC. The stories of Tamar (Genesis 38) and Ruth in the Old Testament show that 'marriage with a brother-in-law' was an accepted practice. The widow involved is referred to as a *y^ebāmā*, and a treatise in the Mishnah with that title deals with levirate marriage. The masculine cognate of the Hebrew word has now cropped up in Amorite in an Old Babylonian letter, about a woman who does not want to live with her husband any longer, and wishes to go with her children to the house of her brother-in-law (*bit ya-ba-mi-ša-ma*).⁶ But whether the word there actually means 'brother-in-law' we dare not say.

1 S. Lafont, *Femmes* (1999) 177 f.

2 M. Civil, CUSAS 17 (2011) 252 §E5–6.

3 G. Cardascia, RHD 37 (1959) 13.

4 C. H. Gordon, *Studies O. Loretz* (1998) 322; *Studies M. C. Astour* (1997) 274.

5 A. Skaist, art. 'Levirat', RIA VI/7–8 (1983) 605–608; but not in the Old Assyrian period, see M. Ichisar, RA 76 (1982) 168–173.

6 OBTR 143:10 with S. Page, Iraq 30 (1968) 94 f.

The Old Testament law says that the woman may not belong to a ‘stranger’ (*zār*), meaning a person outside the family. The Hebrew cognate is found in cuneiform texts from Emar as *za-ya-ri* and possibly also *zarrari*. There a woman ‘follows a stranger’ after the death of her husband. She was allowed to do that, but in consequence she lost all her previous possessions, for property was intended to remain within the family. Perhaps levirate marriage was intended to stop family wealth draining away to a ‘stranger’.⁷

Ariḫalbu, a king of Ugarit ruled out any levirate marriage for his widow, saying that after his death none of his brothers should marry his widow and seize the throne.⁸ That may have been an *ad hoc* arrangement.⁹

What happened if there were no *levir* to continue the family is illustrated by what happened to Tamar. Her husband Er had died and his brother Onan was assigned the task.

But Onan knew that the offspring would not count as his; so whenever he lay with his brother’s wife, he spilled his seed on the ground so as not to raise up offspring for his brother (Genesis 38:9).

Her father-in-law Judah took action and had sex with his daughter-in-law. Evidently this was allowed as there were no more possible spouses of her generation left within the family. In the Hittite laws (§ 193) there is an explicit provision for this, and a later manuscript adds ‘there is no offence’.

If a man has a wife, and the man dies, his brother shall take his widow as wife. (If the brother dies,) his father shall take her. When afterwards his father dies, his (i.e. the father’s) brother shall take the woman whom he had.

A case of ‘practical levirate’ is found in the archives of a family from the Neo-Babylonian period.¹⁰ From these we can follow the history of Ea-iluta-bani and Ili-bani from the city of Borsippa between 687 and 487 BC. After the death of any marriage partner the surviving partner would regularly enter into a second marriage with a relative of the deceased partner: with a brother it happened twice,

⁷ J. Huehnergard, CBQ 47 (1985) 428–434.

⁸ PRU III 76 RS 16.144 with S. Lackenbacher, *Textes akkadiens d’Ugarit* (2002) 288 f.; TUAT NF 1 (2004) 114 f., ‘Leviratsehe in der Königsfamilie von Ugarit?’

⁹ W. H. van Soldt in: S. Lafont, *Trois millénaires de formulaires juridiques* (2010) 114 n. 150.

¹⁰ F. Joannès, ‘Un cas de remariage d’époque néo-babylonienne’, in Durand, *La Femme* (1987) 91–96 (cf. J. C. Greenfield, *ibidem*, 78); B. Still, *The social world of the Babylonian priest* (2016) 268. The first marriage is evident from TCL 12 85, the second from TuM NF 2/3 no. 1, the third from Joannès (see next note) 53, 256 L 4716, and TuM NF 2/3 no. 163.

with a sister once, and with a cousin twice.¹¹ So it happened four times within about thirty years, between 551 and 522. We cannot say that what lay behind these marriages was the custom of levirate, but in practice it is tantamount to it.¹² Endogamy is a better term, a subject we discussed at the end of Chapter 12 about incest. From the transfer of goods, such as the dowry, one rather gets the impression that the intention was to keep the wealth within the two families. In this way one man could accumulate a double dowry from the two sisters whom he had married. They all belonged to the Ili-bani family. Later, after he had died, his brother married his widow, so that the whole family wealth remained undivided in his hands, the only male survivor of his generation.

In another family the head of the family married a woman from the Ili-bani family, he died, and his brother married her in sequence. In the terms of her will¹³ she divided her possessions (her dowry) between her own sons by her first husband and the sons of her second husband, who was now head of the family. His uncle also acquired a part of the private property thanks to this will. This giving of presents gave someone a certain freedom to make his own decisions, apart from the undivided family property in which he had a part. This favoured the nuclear family unit over the extended family.¹⁴

Since the discovery of these marriages, archives from Sippar have been reconstructed and show that within rich families male cousins married female cousins and nieces married uncles.¹⁵

There was also the practice of *sororate* marriage, where a widower married the sister of his deceased wife. When a young woman died her husband could enter into the same relationship with her younger sister. Cases of this are known from the Persian era. In the first instance the woman had already died before the wedding, and in the second instance her brother made an arrangement for the dowry. But because it was much smaller than that of the first wife ('in the house of my father there is nothing'), the man and his father complained against the brother.¹⁶

11 Noticed earlier by San Nicolò; see now Joannès, *Archives de Borsippa* (1989) 39–44 (the fifth generation); 52–54 (the fourth generation).

12 With San Nicolò, slightly different Joannès in Durand, *La Femme*, 93, 94 f. (3). Many girls are born which is not good.

13 TCL 13 174, Joannès in Durand, *La Femme*, 93; *Archives de Borsippa*, 41.

14 Joannès, 95 f.

15 C. Waerzeggers, 'Endogamy in Mesopotamia in the Neo-Babylonian period', *Festschrift Christopher Walker* (2002) 319–342.

16 C. Wunsch, AfO 42–43 (1995–96) 41 f. The second instance is TCL 12 32, with H. Petschow, ZSS 76 (1959) 80–82.

In Emar we find a sororate marriage which was regulated by contract. A holy woman who already had three daughters took the initiative to marry a man on equal terms in case of a divorce, and she gave her eldest daughter to the man as his (second) wife. If that girl were to die, the man would have to marry her second daughter.¹⁷ In the Bible a sororate marriage with two sisters, both alive, was forbidden (Leviticus 18:18), and the initial infertility of Rachel, the sister of Leah, both of whom Jacob married (Genesis 29 f.), was seen as a punishment from God.¹⁸

¹⁷ *Emar VI/3* no. 124 with TUAT NF 1 (2004) 148 f. For more complicated marriages in the same area involving sisters see AT 91 (Alalah) according to M. Yamada, NABU 2014/92, and W. W. Hallo, 'Love and marriage in Ashtata', CRRAI 47/1 (2002) 203–216 (Emar).

¹⁸ L. Barberon, *Les religieuses et le culte de Marduk* (2012) 233 n. 1260; S. Greengus, *Laws in the Bible and in early Rabbinic collections* (2011) 28.